Breaking the bond of marriage
(The case of psychological incapacity)
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Getting unmarried in the Philippines is not purely a private affair. Under our legal system, marriage occupies a rung much higher than a mere contract. While the act of marriage is an act similar to entering into a contract, the parties to the marriage do not have, like the case of an ordinary contract, wide latitude or discretion to establish the terms and conditions of their relationship. Indeed, unlike an ordinary contract, the marriage contract is not subject to mutual resolution or termination if the parties no longer intend to be bound by their agreement. Once married, the dissolubility of the union is subject to state intervention and approval.

Legal View of Marriage
In the Constitution, marriage is characterized as:

Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the state. (Sec. 1, Art. XV).

The constitutional view thus shows that marriage is a social institution secured from violation and that the state is mandated to protect marriage. The state has a stake in the inviolability of marriage because the constitution views marriage as the foundation of the family. In turn, the family is viewed in the constitution as the foundation of the nation.

Following the Constitution, Philippine law on marriage, (the Family Code of the Philippines), provides the details on how marriage is maintained to be inviolable and how the state protects marriage as a social institution. The view of the law echoes that of the Constitution. Thus:

Marriage is a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code. (Family Code, Art. 1)

Requisites for a valid marriage
To understand the inviolability of marriage, a discussion of the legal requisites for a valid marriage should be made. The permanency of the marriage bond arises from the validity of the marriage. In other words, if there is no defect in the marriage, in terms of compliance with all of the legal requisites, then the marriage becomes unassailable.

There are two kinds of requisites under the Family Code. These are the essential and formal requisites to a marriage. The essential requisites for a valid marriage are:

1. Legal capacity of the contracting parties who must be a male and a female; and
2. Consent freely given in the presence of the solemnizing officer.

The marriagable age in the Philippines that will give capacity to the parties is 18 years of age or upwards. Moreover, legal capacity for the spouses to be married to each other includes no impediment by reason of blood or public policy. Although the parties are of age, if the parties are related by blood to each other, or that the parties are related by law, then they are incapacitated to marry each other because the marriage becomes incestuous or it violates public policy.

Consent in marriage must not be obtained by means of fraud, force, intimidation or undue influence. As will be discussed later on, fraud to secure consent in marriage is limited and particular to those provided in the law.

On the other hand, the formal requisites to a valid marriage are:

1. of the solemnizing officer;
2. a valid marriage license except in marriages where license is exempt; and
(3) a marriage ceremony which takes place with the appearance of the contracting parties before the solemnizing officer and their personal declaration that they take each other as husband and wife in the presence of not less than two witnesses of legal age.

The solemnizing officer is not only limited to the duly authorized minister of a duly registered church or religious sect where one of the contracting parties belongs.

The following persons can also solemnize:

1. any incumbent member of the judiciary within the court’s jurisdiction;
2. any ship captain or airplane chief for marriages in articulo mortis between passengers or crew members while the ship is at sea, or the plane is in flight and during stop-overs at ports of call;
3. a military commander of a unit, who is a commissioned officer, for marriages in articulo mortis.
4. consul-general, consul or vice-consul of the Republic of the Philippines for marriages between Filipino citizens abroad.

The formal requisite of a marriage ceremony requires that it be made publicly, that is, in the chambers of the judge or in open court, in the church, chapel or temple or in the office of the consul-general, consul or vice-consul as the case may be.

Legal consequence for the absence or defect in any of the requisites

The absence of any of the essential or formal requisites shall render the marriage void ab initio. The only exception is a marriage performed before a person not legally authorized to solemnize marriage where either or both parties contracted marriage believing in good faith that the person had the legal authority to do so.

What are void marriages?

1. Those contracted by any party below 18 years of age even with the consent of parents or guardians;
2. Those solemnized by any person not legally authorized to perform marriages unless such marriages were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so;
3. Those solemnized without a license, except marriages exempt from license requirement;
4. Those bigamous or polygamous marriages;
5. Those contracted through mistake of one contracting party as to the identity of the other; and
6. Those subsequent marriages contracted without registration in the civil registry of the judicial declaration of nullity of a previous marriage;
7. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage;
8. Incestuous marriages, whether the parties be legitimate or illegitimate, between ascendants and descendants of any degree; and between brothers and sisters, whether of the full or half-blood;
9. Marriages declared void for reason of public policy, including the following:
   a. between collateral blood relatives, whether legitimate or illegitimate, up to the fourth degree;
   b. between step-parents and step-children;
   c. between parents-in-law and children-in-law;
   d. between the adopting parent and the adopted child;
   e. between the surviving spouse of the adopting parent and the adopted child;
   f. between the surviving spouse of the adopted child and the adopter;
   g. between an adopted child and a legitimate child of the adopter;
   h. between adopted children of the same adopter; and
   i. between parties where one, with the intention to marry the other, killed that other person’s spouse, or his or her own spouse.

A defect in any of the essential requisites shall render the marriage voidable. The defect may be due to vitiating consent of the parties, or to lack of parental consent in case where one or both of the parties are at least 18 years old but below 21. If the party is below 18 years old, this means absence of the requisite of legal capacity and thus, the marriage is void.

Dissolving the marriage bond

There are two legal actions that can be taken in order to dissolve the marriage bond. These actions are annulment of voidable marriage and judicial declaration of nullity of void marriages. The parties cannot determine or agree between themselves that they are no longer married to each other. For the marriage bond to be dissolved, there
must be a legal cause and that the cause must be determined, proven and adjudicated in court. The court cannot pass judgment based on the stipulation of facts of the parties, or a confession of judgment.

Indeed, even if there is a case filed in court either for annulment or declaration of absolute nullity of marriage, the Court shall order the prosecuting attorney or fiscal assigned to it to appear on behalf of the State to take steps or prevent collusion between the parties and to take care that evidence is not fabricated or suppressed. The prosecuting attorney or fiscal may even oppose the action through presentation of his own evidence, if in his opinion, the proof adduced is dubious and fabricated. The protagonists in the case are not only the contracting parties, but the state as well.

Annulment of voidable marriages

The proper action for a voidable marriage is annulment. This marriage is valid until set aside by the court. All the essential and formal requisites for a marriage are present in this marriage. However, there is a defect in the essential requisite existing at the time of the marriage. The defect may be a ground for annulment, or the parties may ratify the marriage by their subsequent actions and thus, cleansed the marriage of the defect.

The marriage is voidable and can be annulled for any of the following causes:

1. That the party in whose behalf it is sought to have the marriage annulled was 18 years of age or over but below 21 and the marriage was solemnized without the consent of the parents, guardian or person having substitutive parental authority over the party, in that order, unless after attaining the age of 21, such party freely cohabited with the other and both lived together as husband and wife;

2. That either party was of unsound mind, unless such party after coming to reason, freely cohabited with the other as husband and wife;

3. That the consent of either party was obtained by fraud which consists of:
   a. non-disclosure of a previous conviction by final judgment of the other party of a crime involving moral turpitude;
   b. concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband;
   c. concealment of sexually transmissible disease, regardless of its nature, existing at the time of the marriage;
   d. concealment of drug addiction, habitual alcoholism or homosexuality or lesbianism existing at the time of the marriage, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife;

4. That the consent of either party was obtained by force, intimidation or undue influence, unless the same having disappeared or ceased, such party thereafter freely cohabited with the other as husband and wife;

5. That either party was physically incapable of consummating the marriage with the other, and such incapacity continues and appears to be incurable; or

6. That either party was afflicted with a sexually-transmissible disease found to be serious and appears to be incurable.

Judicial declaration of nullity of void marriage

There are requirements imposed by the Family Code in cases of void marriages for the parties to remarry. There must be a final judgment by the court declaring the nullity of the marriage and that this judgment must be recorded in the appropriate civil registry. These requirements are understandable in the case of voidable marriages since these marriages remain valid unless annulled.

However, a void marriage, like a void contract, produces no legal effect and cannot be a source of any right or obligation. Despite the well-accepted notion of voidness, the Family Code has imposed the requirements of judicial declaration and recordation of the final judgment. In the case of Domingo v. Court of Appeals, 226 SCRA 572, it was held that:

a declaration of the absolute nullity of a marriage is now explicitly required either as a cause of action or a ground for defense. Moreover, where the absolute nullity of a previous marriage is sought to be invoked for purposes of contracting a second marriage, the sole basis acceptable in law for said projected marriage to be free from legal infirmity is a final judgment declaring the previous marriage void. (Domingo, id at p. 579)

Grounds for nullity

A marriage is null for various, stated causes. The marriage lacks one of the essential or formal requisites. In addition, the marriage may be void due to incest as defined by law or for reason of public policy or for some other cause as provided in the Family Code. Outside of the causes provided under the Family Code, a marriage is not and cannot be considered void.

The case of psychological incapacity

When the Family Code took effect on August 3, 1988 by means of Executive Order No. 209, it carried with it an entirely new ground for nullity of marriage, i.e. psychological incapacity. Art. 36 of the Code provides that:

A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential obligations of
marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

Subsequently amended by Executive Order No. 227, the action for declaration of nullity of marriage, celebrated before the Family Code and on the ground of psychological incapacity, shall prescribe in ten years after this Code shall have taken effect, or August 3, 1988. This means that for marriages contracted before the effectivity of the Family Code, the parties to earlier marriages can still file an action for nullity based on this ground within ten years from August 3, 1988.

The Family Code was the handiwork of the Family Code and Civil Code Revision Committee composed of civil law experts, and not of the legislature. In the explanation of the rationale of Art. 36, the Committees, through Justice Sempio-Dy, said that because of the "strong opposition that any provision on absolute divorce would encounter from the Catholic Church and the Catholic sector of our citizenry, the two Committees "did not pursue the idea of absolute divorce" and instead:

opted for an action for judicial declaration of invalidity of marriage based on grounds available in the Canon Law. It was thought that such action would not only be an acceptable alternative to divorce but would also solve the nagging problem of church annulments of marriages on grounds not recognized by civil law.

As a consequence, Art. 36 was taken by the Family Code Revision Committee from Canon Law of the Catholic Church, specifically, Canon 1095 of the New Code of Canon Law.

Construction of psychological incapacity

The Family Code Revision Commit-}

tee did not give any examples of psychological incapacity for fear that this would limit the applicability of the provision under the principle of ejusdem generis. The Committee left it to the individual judges "to interpret the provision on a case-to-case basis, guided by experience, the findings of experts and researches in psychological disciplines and by decisions of church tribunals which, although not binding on the civil courts, may be given persuasive effect."

In the case of Santos v. Court of Appeals, 240 SCRA 20, the Supreme Court held that psychological incapacity does not comprehend all possible cases of psychoses as extremely low intelligence, immaturity and like circumstances. The term "psychological incapacity" should be confined to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.

Decided cases on psychological incapacity

There are three (3) cases decided so far by the Supreme Court where the principal issue is psychological incapacity. The treatment of the Supreme Court on the meaning of psychological incapacity serves as jurisprudence for future cases.

The first case is Santos v. Court of Appeals, id. In this case, the husband (Leousel) filed a complaint for "voiding of marriage under Art. 36 of the Family Code" against his wife (Julia).

It appeared that the couple lived with the parents of the wife. After the birth of a baby boy ten months after the marriage, the ecstasy did not last long. There were frequent interference by the wife’s parents into family affairs. Occasionally, the couple would start a “quarrel” over a number of things, like when and where the couple should start living independently from the wife’s parents or whenever the wife would express resentment on the husband’s spending a few days with his own parents.

Before the second year of the marriage, the wife left for the United States to work despite the husband’s plea. It was only seven months thereafter that the wife called the husband by phone. She promised to return after the expiration of her contract. The wife did not. When the husband was not able to locate or get in touch with his wife, he filed the action for nullity of marriage on the ground of psychological incapacity.

The facts of the case according to the Supreme Court in no measure at all, can come close to the standards required to decree a nullity of marriage.

The second case is Chi Ming Tsoi v. Court of Appeals, G.R. No. 119190, Jan. 16, 1997. Psychological incapacity was established due to the fact that after ten months of cohabitation, the husband is reluctant or unwilling to perform the sexual act with his wife. It was established that the husband is capable of sexual intercourse and the wife has not posed any insurmountable resistance to the sexual union. The senseless and constant refusal to have sexual intercourse was held to be equivalent to psychological incapacity.

The last case is Republic v. Court of Appeals, G.R. No. 108763, February 13, 1997. The petition in this case alleged that:

Roridel and Reynaldo were married on April 14, 1983 at the San Agustin Church in Manila; that a son, Andre O. Olina was born; that after a year of marriage, Reynaldo showed signs of “immaturity and irresponsibility” as a husband and a father, since he preferred to spend more time with his peers and friends on whom he squandered his money; that he depended on his parents for aid and assistance, and was never honest with his wife in regard to their finances, resulting in frequent quarrels between
them; that sometime in February, 1986, Reynaldo was relieved of his job in Manila, and since then Roridel had been the sole breadwinner of the family; that in October, 1986 the couple had a very intense quarrel, as a result of which their relationship was estranged; that in March, 1987, Roridel resigned her job in Manila and went to live with her parents in Baguio City; that a few weeks later, Reynaldo left Roridel and their child, and had since then abandoned them; that Reynaldo had thus shown that he was psychologically incapable of complying with essential marital obligations and was a highly immature and habitually quarrelsome individual who thought himself as a king to be served.

The Supreme Court held that there is no clear showing that the psychological defect spooke of is an incapacity. The Supreme Court stated that:

It appears to us to be more of a “difficulty”, if not outright “refusal” or “neglect” in the performance of some marital obligations. Mere showing of “irreconcilable differences” and “conflicting personalities” in no wise constitutes psychological incapacity. It is not enough that the parties failed to meet their responsibilities and duties as married persons; it is essential that they must be shown to be incapable of doing so due to some psychological (not physical) illness.

Guidelines in the interpretation and application of psychological incapacity

The state of the law, prior to February 13, 1997, had resulted in various interpretations of psychological inca-

pacity and application of the law by judges. On Feb. 13, 1997, the Supreme Court en banc promulgated in the case of Republic v. Court of Appeals, id, the guidelines in the interpretation and application of Art. 36 of the Family Code for the guidance of the bench and bar. These are as follows:

1. The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity.
2. The root cause of the psychological incapacity must be:
   a. medically or clinically identified;
   b. alleged in the complaint;
   c. sufficiently proven by experts; and
   d. clearly explained in the decision.
3. The incapacity must be proven to be existing at the “time of the celebration” of the marriage.
4. Such incapacity must also be shown to be medically or clinically permanent or incurable.
5. Such illness must be grave enough to bring about disability of the party to assume the essential obligations of marriage.
6. The essential marital obligations must be Arts. 68 to 71 as regards husband and wife as well as Arts. 220, 221 and 225 in regard to parents and their children.
7. Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts.
8. The trial court must order the prosecuting attorney or fiscal and the Solicitor-General to appear as counsel for the state.

Conclusion

Marriage proceeds and begins from the act of two individuals. They and they alone have the sole prerogative in deciding to enter into the married life. The State has no legitimate interest in this private decision of the couple to get married. However, upon marriage, the spouses cannot decide between themselves to be unmarried. Even while the marriage suffers from a fatal defect, thereby making it void from the start, or a curable defect that nevertheless enable the aggrieved spouse to cause its annulment; the imprimitur of the State is essential. Without the State’s approval, the spouses in a void or voidable marriage remain bonded to each other. Neither of the spouses in either case can validly remarry.

The inclusion in the Family Code of a new ground for nullity of marriage, that is, psychological incapacity, was intended to remedy a peculiar situation where the spouses, although freed by the Catholic Church from their marriage bond, are legally incapable of remarrying. Thus, psychological incapacity was purposely taken from canon law. Because there is a separation of Church and State, the law requires that separate civil proceedings be conducted to establish the ground of psychological incapacity.

Nonetheless, the Supreme Court gave to church annulment (or properly speaking, the nullity of marriage) “great respect”. Indeed, the High Tribunal in a dictum said that ideally, what should be decreed by the Catholic Church as invalid should also be decreed invalid by the courts.

Finally, from the interpretation of the Supreme Court, the root cause of psychological incapacity should be medically or clinically identified. Hence, there must be expert evidence to prove the existence of this fact.

It is not enough that the aggrieved spouse, or other competent witnesses testify on the deviant actions of the guilty spouse for the remedy to be granted. The probable consequence for future cases is that petitioners must engage the services of medical experts on this field. The costs and expenses of litigation may thus effectively prevent a poor man, in the same manner that he is prevented from seeking church annulment, from availing of this remedy. □
The National Health Insurance Law
Its implications on health finance reform and the health sector in RP

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The National Health Insurance (NHI) Act of 1995, which President Ramos signed into law last February 14, 1995, has the following objectives: (1) to provide all the citizens of the Philippines with the mechanism to gain financial access to health services, (2) to create the NHI Program, to serve as the means to help people pay for health care services, (3) to prioritize and accelerate the provision of health services to all Filipinos, especially that segment of the population which cannot afford such services, and (4) to establish the Philippine Health Insurance Corporation (PHIC), which will administer the Program at the central and local levels.

As mandated by the law, the NHI Program shall provide health insurance coverage to all Filipinos and shall ensure affordable, acceptable, available and accessible health care services for all Filipinos. "This social insurance program shall serve as the means by which the healthy will pay for the care of the sick, and for those who can afford medical care to subsidize those who cannot. The program shall include a sustainable system of funds constitution, collection, management and disbursement for financing the availing of a basic minimum package and other supplementary package of health insurance benefits by a progressively expanding proportion of the population. The program shall be limited to paying for the utilization of health services by covered beneficiaries or to purchasing health services in behalf of such beneficiaries." (NHI Act of 1995)

This paper seeks to analyze the impact of this landmark legislation on the health sector finance reforms being instituted in the country. It will present the general features of national health insurance, after which it will explain the theoretical basis for social insurance. It will also discuss the impact of the national health insurance scheme on the major stakeholders in the health sector--including the Department of Health (DOH), health service providers like doctors, hospitals in the private and government sector, and, most importantly, the patients.

Features of the National Health Insurance

According to the recently drafted implementing rules and regulations (IRR) of the NHI law, the funds of the Social Security Services (SSS) and the Government Service Insurance System (GSIS) will be transferred to the PHIC within 60 days upon the completion of the IRR. Funding for the indigents will come from national and municipal sources: For 1st to 3rd class municipalities--50% from national government and 50% from municipal government; for 4th to 6th class municipalities--90% from national government and 10% from the local government unit (LGU) for the first and second year, after which the share of the LGU will gradually escalate to 20% on the third year, 30% on the fourth year, 40% on the fifth year, and 50% on the sixth year.

The basic benefit package (BBP) shall include in-patient hospital care like room and board; services of health care professionals, diagnostic, laboratory and other medical examination services; use of surgical or medical equipment and facilities; use of surgical or medical equipment and facilities; prescription drugs, and biological and inpatient education packages.

The BBP shall also include outpatient care like services of health care professionals, diagnostic, laboratory and other medical examination services; personal preventive services and prescription drugs included in the Philippine National Drug Formulary. The value of services offered should not initially be less than half the services covered under the Medicare I Program. The BBP will increase in value to the point where it will provide the same coverage for all members covered under the NHI. SSS and GSIS members will continue to pay the current levels of premium until a future date when the premiums are to be equalized over all those covered.

The employer, whether it be the private firm or a government office, will pay half of the premium, while the employee will pay the remaining half. Self-employed persons will have to pay the entire premium unless, by means of a means test, it is established that they can pay only a part of the premium. The premium of the indigents will be shouldered by both the national and local government according to the scheme mentioned previously. The estimated cost for payment of services for indigents by PHIC is P1.9 billion.

The NHI Program shall include all persons covered by the SSS or GSIS and their dependents including all retirees or pensioners of both systems; all persons covered by OWWA and their dependents; all self-employed persons with the capacity to pay the required contributions in part or in full; and all indigents identified through the means test, and their dependents.

The initial premium per household has been set at P1,180 per year. GSIS members shall pay their contributions on a monthly basis, while SSS members shall pay their contributions on a monthly or quarterly basis depending on their classification as employed, self-employed or voluntary members. Overseas contract workers shall pay the full amount of their annual contribution through the OWWA.
Theoretical Rationale for a Health Insurance Scheme

National health insurance may be viewed as an in-kind demand subsidy based on the argument that there are externalities in consumption of health care services. This means that the relatively well-off are willing to subsidize the health expenditures of indigents because good health has positive externalities on society. The degree of subsidy will differ depending on the values held by the non-poor with respect to the redistribution of medical care services (Feldstein: 1988).

Feldstein identifies three sets of values. The first set of values is termed minimum provision, meaning that no person in society should receive less than a certain quantity of medical care in case of illness. The second set of values, called equal financial access to medical care, means that an NHI plan would equalize the financial barriers by making the price of medical care the same for everyone. The third set of values requires equal treatment for equal needs. This means equal consumption of medical services regardless of economic or other factors affecting utilization. The first set of values requires the lowest level of subsidy while the third set of values is the most expensive to achieve.

According to Feldstein, if society wanted to assure that everyone received a minimum amount of medical care, an NHI scheme should either reduce the price of medical care or reduce that price to zero for everyone. A system of subsidies which lowers the price of medical care just to those whose consumption is less than the minimum would achieve this goal. If the second set of values were adopted by society, then this could be attained by establishing a free medical care system or through a system of subsidies that vary by income level. The third set of values, equal treatment for equal needs, underscores the need for medical care subsidy. The third set of values can be attained via differential subsidies varying according to income level.

The cost of subsidy under the three sets of values would be greater the more inelastic the supply of health care services is. For national health insurance to have the redistributive effects that are desired by society, there must be increased utilization. It will most easily occur when the price elasticity of demand for health services by those persons receiving subsidies is high. The more elastic the price elasticity of demand is, the greater will be the increase in demand for health services along an inelastic supply curve. (Feldstein: 1988)

National health insurance needs to be compulsory in nature and wider in coverage to attain its social purpose. The essence of social insurance is that a group of people with different probabilities of getting sick pool their funds together through premium payments so that this pool of funds could be used to cover curative and preventive medical expenses. Insurance is a risk transfer from the person paying the premium to the group pooling the funds. This risk sharing is most valuable when the insured event is largely unpredictable and the illness is extremely costly.

Impact of the NHI Law

In line with its social objectives, the government has provided a basic package of needed personal health services through premium subsidy or through direct service provision until the program is fully implemented.

The implementation of the law seems timely with the cost of health services going up due to the onset of the epidemiological transition leading to the prevalence of chronic and degenerative diseases like heart ailments and cancer. Hospitalization costs and doctors' fees, which go with these modern day diseases, will continue to rise. Moreover, existing studies (Solon, Herrin et al: 1991, 1993, 1996) and the 1995 DOH-PIDS baseline study show that only 21% of hospitals costs is financed by Medicare. A 1987 Intercare study indicated that the source of funds for health care expenditures comes from household spending-- 35.9%; taxes--19.6%; and other private sources --33.1%. So there is a need for government to step in and provide sources of funding for the health expenditures of its citizens.

The NHI law provides a new challenge for the DOH as it implements its new role as health policy formulator and as the regulator and standard-setter of the health sector. The DOH secretary sits as Board of Director of the Philippine Health Insurance Corporation as its ex-officio chairperson.

The role of the DOH is critical in the process of accreditation of health service providers and hospitals and health maintenance organizations. The benchmarks it will set will determine to a great extent the quality of health services available to the population. The assistance the DOH will grant to its regional offices will determine to a great extent the success of the program at the local level specifically in the enrollment of indigents and the filing and processing of their claims. The DOH and the LGUs have to tap community organizations to make the mechanisms of the program work. This is especially true in reaching out to workers of the informal sector and to the indigents.

For medical service providers, the NHI scheme opens a wider untapped market for their services. The administrative success of NHI will depend a lot on the system of accreditation of health providers, the time spent in processing provider claims and the establishment of a relative unit value scale acceptable to the professionals to be paid. The reimbursement scheme will also affect the decision of providers to participate in the scheme. DOH-PIDS baseline study has identified the following trends in physician participation in insurance scheme: (1) widening gap between Medicare reimbursable fees and actual inpatient consultation fees as room accommodation becomes more expensive, (2) the widening of Medicare reimbursable fees and actual fees at higher levels of care and (3) in Metro Manila, the charges for selected procedures are never fully covered by Medicare reimbursable fees even for those in the pay
ward. Despite the attractiveness of a bigger clientele, the uncertainty of speedy and full payment may inhibit many practitioners from participating.

In the case of the public, the prevailing Medicare premium payment scheme does not say much about the equity of the new NHI law. It is a known fact that Medicare premium payments are highly regressive. The fact that the new insurance scheme will ultimately offer universal coverage dictates that built-in checks must be instituted in the implementation scheme to prevent the occurrence of moral hazard and adverse selection. That the benefit package includes also outpatient procedures augurs well for promotive and preventive care rather than curative care.

Another controversial issue in the NHI implementation is that initially, members are not be entitled to the same package of benefits. SSS and OWWA members have a more comprehensive package than GSIS members. But the most thorny issue is the source of subsidy for the premium payments of indigents. The funds were supposed to come from the sin tax collection but so far Congress has only allocated P1.8 million out of the P10 billion required.

Conclusion

The key therefore to the success of the national health insurance law lies in its careful implementation. It must be able to: (1) reach out to the targeted beneficiaries of the program, (2) build in incentives which will encourage the efficient use of health resources, and (3) institute an equitable means of financing incurred expenditures.

To attain the first objective, making health services accessible to the indigents starts with an objective and economically sound basis for determining who the indigents are. The current means of testing used to determine indigence varies from one locality to another. Moreover, the concept of medical indigence which means an individual whose income is consumed by big health expenses may be a viable criteria in distinguishing non-indigents from true indigents. There are also the so-called political indigents.

To achieve the second objective, the DOH should establish standards for hospitals and set licensing requirements for health professionals to encourage them to adopt cost-effective treatment and techniques. At the later phase of implementation, the institution of co-payments and deductibles can be introduced. Accredited health practitioners can be allowed to compete for their patients. In the case of government devolved hospitals, revenue retention schemes should be allowed in these institutions to encourage them to adopt cost recovery measures. This could be an additional criterion for renewal of hospital licenses and professional licenses.

For the third objective, the government should tap sources other than Medicare funds to finance the premium and benefit avails of the indigents. The sin tax, since it has a sumptuary purpose (i.e. it curtails the consumption of goods which are detrimental to the health), would be an ideal source. But Congress should earmark these taxes so that they are not used for other purposes. As it is, PAGCOR money is an important source of funds for government health expenditures. Finally, the internal revenue allotment of local government units should be proportional to the health needs of the local government units concerned. This will make the subsidy scheme for indigents in these areas more viable and equitable.

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