



In the Literature

Highlights from Commonwealth Fund-Supported Studies in Professional Journals

Getting the Product Right: How Competition Policy Can Improve Health Care Markets

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Access to full article: <http://content.healthaffairs.org/content/early/2014/05/13/hlthaff.2013.1183>

Synopsis

Because of the health care system's long history of regulation and subsidies, efforts to promote competition in health care markets through antitrust enforcement alone are unlikely to be effective. Regulation not only has distorted prices, but also has altered the nature of the products that are bought and sold. Instead of continuing to bill for "process steps and inputs," health care providers should offer products that create measurable value for consumers. Antitrust enforcers should work closely with federal and state regulators to incentivize this behavior.

The Issue

As hospitals, physicians, and insurers consolidate in response to health care reform, some commentators have called for stricter antitrust oversight to prevent the acquisition and abuse of market power. In this Commonwealth Fund-supported article, William M. Sage of the University of Texas at Austin School of Law argues that health care markets are so distorted by government regulations and subsidies that efforts to encourage competition through antitrust enforcement alone are unlikely to be effective. Specifically, he directs policymakers' attention to the goods and services that health care consumers pay for and the value they provide. He suggests that competition will improve only when health care providers "assemble and warranty" most of their products and stop billing for professional process steps, such as office-based procedures, and inputs, such as intravenous fluids, of uncertain value.

"Competition policy makers—meaning both antitrust enforcers and regulators—should focus more attention on whether the goods and services being supplied are in fact valuable to consumers."

Creating a Competitive Product

Typically, it is physicians who define health care products: they devise steps that allow them to diagnose and treat medical conditions, which are then translated into billing codes by the physicians or their suppliers. Most insurers, in turn, negotiate with providers over these reimbursable components, such as a night in the hospital or a CT scan. Because the emphasis is on care processes,

workflows, and inputs—rather than assembled products with defined clinical objectives—this approach tends to discourage efficiency.

Instead, Sage suggests that providers and insurers should compete for consumers by offering products with “intuitive and measurable value to the buyer.” In health care, such products might include bundled payments for a particular course of treatment, monthly maintenance therapy for a chronic condition, or a full diagnostic workup by a cancer center for an identified malignancy. Some of these products might come with warranties, which create incentives for providers to improve the quality and safety of care. This has not yet happened in more than a handful of circumstances because it runs counter to the regulatory history of health care.

Addressing the Problem

Sage proposes that regulators and antitrust agencies work together to create incentives for health care providers and plans to offer competitive products. Among his recommendations:

- Medicare administrators should work with antitrust authorities to shift payment toward assembled, warrantable products, and should ensure that consumers have information to compare these products on the basis of price, quality, and safety.
- Policymakers should reduce regulatory barriers that prevent new health care facilities and health professionals from competing in the marketplace, such as by getting rid of unnecessarily restrictive licensing laws or certificate-of-need requirements.
- To encourage accountable care organizations (ACOs) to define and market competitive products to consumers, Medicare should base ACO payment on the measured value of assembled products as well as on aggregate savings to the program.
- Health care innovators should be shielded from both unnecessary regulation and anticompetitive conduct by entrenched providers, payers, and suppliers, who may view new fields such as mobile health technology as threats to their business model.

The Bottom Line

Arguing that “the greatest obstacle to effective competition in health care is failure to understand the product,” Sage concludes that policymakers should launch a combined effort involving both regulation and antitrust enforcement that encourages the health care industry to define and market products that have value and meaning to consumers.

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This summary was prepared by Martha Hostetter.