Academic Articles and Reports Roundup: January 2017

As we moved into the first month of 2017, we continued to see articles addressing concerns about healthcare costs and the role of the market in healthcare. This month's Roundup covers 1) state oversight of vertical integration in healthcare|2) the influence of provider and insurer market share on price negotiations|3) frameworks for analyzing product-hopping antitrust claims|and 4) former President Obama's comments on "repeal and delay" of the ACA.

Source Executive Editor Jaime S. King and Erin Fuse Brown published *The Double-Edged Sword of Health Care Integration: Consolidation and Cost Control* (Indiana Law Review). Their article highlights how states can play a critical role in managing the risks and benefits of vertical integration in healthcare. Professors King and Fuse- Brown point out that while vertical integration theoretically reduces overuse and waste, it also poses risks to competition and consumer welfare, if left unregulated. Empirical data shows that vertical integration often leads to increased market power, increased referral and reimbursement rates, and reduced consumer choice. The authors argue that states should manage vertical integration and promote competition through oversight of price and quality. They point to six tools states can use to regulate vertical integration: (1) all-payer claims databases|(2) state antitrust enforcement or immunity|(3) ACO certification programs|(4) rate oversight authority|(5) provider price caps|and (6) rate regulation. Professors King and Fuse Brown also emphasize how states are uniquely positioned to oversee vertical integration. Because state officials have broader knowledge of the particular market dynamics than their federal counterparts, states are often better positioned to effectively address competitive harms

posed by healthcare consolidation.

Market Share Matters: Evidence of Insurer and Provider Bargaining Over Prices (Health Affairs) by Eric T. Roberts, Michael E. Chernew, and J. Michael McWilliams explores how insurer and provider market share impacts healthcare pricing through an analysis of multipayer claims data collected from physician office practices. The authors found, as one might expect, that in price negotiations both insurers and providers benefit from having large market shares. Providers charged insurers with larger market shares (those with 15 percent or greater market power) less than insurers with small market shares (those with less than 5 percent market share). The large insurers negotiated to receive 21 percent lower prices for physician office visits than the small insurers. Looking at market power for providers, the study revealed that insurers need larger market share to negotiate lower prices from large provider groups than from smaller provider groups. The article emphasizes that insurance mergers may lead to lower negotiated provider prices, but the authors discourage readers from assuming that the study implies that consolidation will lead to lower healthcare prices, as insurers are unlikely to pass the savings on to consumers. Even when consolidation could result in greater efficiency and lower reimbursement rates, the authors conclude that consolidation is neither the best nor only way to lower prices. They emphasize that when consolidation occurs, "additional policies that remedy the consequences of a lack of competition among insurers and providers might be needed to limit the influence of market power on health care spending."

In *Product Hopping: A New Framework* by Michael A. Carrier and Steve D. Shadowen (Notre Dame Law Review), the authors offer a new antitrust analysis to guide courts in product hopping cases. The authors define "product hopping" as instances where a pharmaceutical manufacturer releases a new version drug that has no generic equivalent, and encourages doctors to prescribe

the new version instead of the original. The article highlights the inconsistencies in the five cases to date involving antitrust challenges to product hopping. The authors argue that courts should use a "non-economic-sense" test, which opens manufacturers to antitrust liability only if their actions serve no business purpose other than to inhibit generic competition. Two "safe harbors" in the author's framework would also shield drug manufacturers from antitrust scrutiny if new versions of existing drugs do not create competitive harm. According to the authors, this new framework provides consistency and better suits the unique economic realities of the pharmaceutical market.

Finally, President Barak Obama has already entered back into the fray of healthcare debates, publishing *Repealing the ACA Without a Replacement – The Risks to American Healthcare* (New England Journal of Medicine). In the piece, President Obama defended the accomplishments of the health law, pointing out improvements in coverage and increases in value-based payment contracts. The article recognizes challenges to healthcare that the ACA has not addressed, such as rising prescription drug costs and lack of competition in some markets. But, President Obama warns, repealing the ACA without comprehensive replacement programs could prove to be dangerous. He emphasizes the risk of preventing further investment in value-based care and care-coordination, disrupting hospital markets, and reaping uncertainty for employer coverage requirements. He also uses the ACA ban on preexisting conditions to explain the complex trade-offs Republicans must address in their version of health reform.

That's all for the Roundup. As always, let us know if you think we have missed any interesting articles! Enjoy your reading materials for the month!