

Articles & Reports Roundup

August 2014

As a lifetime student turned professor, the end of August always makes my heart beat a little quicker as school returns to session. So if you are also looking for a few things to get your brain moving again after the lazy days of summer, check out these articles!

First and foremost, Stephanie Alessi, UC Hastings alum and current fellow at the Stanford Center for Biomedical Ethics, published [*Making the Competition for Healthcare Dollars a Fair Fight: The Role of Antitrust Law in Improving Efficiency in the U.S. Healthcare Market*](#) in the DePaul Journal of Healthcare Law. This article arose out of Ms. Alessi's graduate research on [healthcare price transparency](#) while at UC Hastings. In this article, she argues that before price transparency initiatives can hope to bring down healthcare costs, the relevant market for healthcare goods and services must function in a relatively efficient manner. She examines the ability of dominant providers and insurers to exercise their market leverage in order to drive up costs and thwart price transparency efforts. Ms. Alessi proposes stronger and more consistent antitrust enforcement as a tool to break down existing market leverage to improve market efficiency before price transparency efforts are initiated. She also raises some innovative solutions, including the notion that leveraging a monopoly or near monopoly in one region to drive up costs in a more competitive region constitutes geographic tying, which should violate the Sherman Act. She concludes that antitrust law should serve as powerful tool to break down leverage that is driving up costs substantially in our healthcare system.

Also focused on breaking market leverage to drive down costs, David Howard published [*Adverse Effects of Prohibiting Narrow*](#)

[Provider Networks](#) in the August 14th issue of JAMA. Howard examines the push back from providers that has arisen from insurance plans with narrow networks being offered the exchanges. He notes that many states have stepped up enforcement of network adequacy requirements to ensure that patients have sufficient access to providers, and that in battles between providers and insurers over network inclusion, regulators have tended to side with providers. Insurers argue that they use networks to steer patients to higher quality providers and to lower costs by threatening higher priced providers with exclusion. Obviously, insurers can use narrow networks to limit patient access to care and for other nefarious purposes. But the risk of these harms must be weighed against the ability of providers, if they know they must be included in a network, to drive costs up at ever-increasing levels. Howard presents this argument in a clear and convincing manner and raises some realistic concerns about CMS and state requirements to broaden networks on the exchange.

Also of note, Susan Ridgley, et al., published [**Bundled Payment Fails To Gain A Foothold In California: The Experience Of The IHA Bundled Payment Demonstration**](#) in the August issue of Health Affairs. The article documents the challenges experienced by the Integrated Healthcare Association to establish a bundled payment system for orthopedic surgery. The goal of bundled payments generally is to bring down costs and improve incentives for providers to offer high quality care. The initiative sought “to bring together a group of stakeholders (health plans, hospitals, ambulatory surgery centers, physician organizations, and vendors) to develop, through a consensus process, the methods and means of implementing bundled payment” for orthopedic surgery. In spite of a high level of enthusiasm and support amongst stakeholders, the pilot project experienced substantial delays, withdrawal of participation from half of the original health plans and three-quarters of the original hospitals. The four biggest

challenges to implementing bundled payments, according to stakeholders, included: failure to achieve consensus on bundled payment definitions|lack of trust and competing interests among stakeholders|lack of technical infrastructure for processing and paying claims|and uncertainty about state regulatory decision making. Overall, the article offers advice and guidance about potential pitfalls to other entities attempting to establish a bundled payment process. Responses to this article were written by Tom Williams and Jill Yegian ([Bundled Payments: Learning from Our Failures](#)) and James Caillouette and James C. Robinson ([The “Failure” of Bundled Payment: The Importance of Consumer Incentives](#)), and are well worth reading.

Health Affairs also published Sze-jung Wu, et al.’s article [Price Transparency For MRIs Increased Use Of Less Costly Providers And Triggered Provider Competition](#), which examined the effect that giving patients price information for local MRI providers had on patient choice. Wu and colleagues found that providing price and provider information resulted in a \$220 reduction in cost per test and a reduction in use of hospital based MRIs between 45-53%. Further, price variation between hospital and non-hospital pricing was reduced by 30% following implementation. This study shows both the impact that price transparency initiatives can have on patient choice and provider pricing in a competitive market. Its findings (and others like it) encourage the use of price transparency initiatives in competitive healthcare markets, subject to the precautions suggested by Stephanie Alessi’s article referenced at the beginning of this post.

For the practitioners among you, David Wirth and Temi Akrinade published, [A Practitioner’s Guide to Price Concentration Analysis](#), in World Competition, Law and Economic Review. The article examines, in a not-too-technical manner, the potential for using Price Concentration Analysis to analyze the impact of market concentration on the marginal price of a good in a

given market. PCA has been used effectively both in UK and the US antitrust investigations and resulted in orders for divestiture. This article is designed to explain the benefits and potential pitfalls of this tool to legal practitioners who will need to be familiar with it due to its growing importance and influence.

Finally, CMS issued its [National Health Expenditure Data for 2012](#) in August. CMS has published this data every year since 1960, and it is a treasure trove of information on the growth of healthcare costs over the years. The Report provides information on U.S. expenditures for healthcare goods and services, public health activities, government administration, the net cost of health insurance, and investment related to healthcare. The data are presented by type of service, by source of funding, and by type of sponsor. There are also great charts and graphs depicting where our healthcare dollars came from and how they were spent. I always start my Health Law class each year with slides and information from this report.

Thanks for reading this end of summer edition of the Articles and Reports Roundup!