How to fix our hospital pricing problem (and how not to)

***By Guest Blogger*: Erin C. Fuse Brown, JD, MPH**

We are pleased to publish another excellent post by Professor Fuse Brown, originally published here by the Center for Law, Health & Society!

The post:

Last month, *Slate* columnist Reihan Salam wrote a provocative article about outrageous hospital prices that are driven, according to Salam, by greed, avarice, and market power. Salam gets a few things dead right, namely his diagnosis that we have a massive hospital pricing problem that is bleeding us dry and that the problem is largely caused by growing hospital market power. However, he misses the mark when laying out policy recommendations to curb monopoly-driven hospital prices.

The solutions

Antitrust: Salam favors using antitrust enforcement to prevent health care consolidation and to reduce barriers to entry for competition. The biggest problem with antitrust enforcement is that it can do little to reverse or break up existing monopolies. Antitrust laws will be unable to help the vast majority of hospital markets that are already concentrated. Second, even with its improving success rate in court, the FTC simply cannot prevent or police the ongoing wave of hospital mergers, resulting in price increases up to 40% price increases in some areas. To be sure, increased antitrust

enforcement is a necessary element of the strategy to control hospital prices to stem the tide of consolidation that is driving prices upward. But antitrust is no silver bullet, especially for hospital markets that have already become noncompetitive.

Market solutions: Market solutions such as price transparency, consumer-directed health care, reference pricing, or narrow networks are popular approaches to control prices among health policymakers. Market solutions to the hospital pricing problem are intuitively pleasing—they attempt to restore market forces to a failed market. The biggest problem with market approaches is that they fundamentally will not work in concentrated markets where there is little choice or competition between hospitals. This is because all market solutions rely on consumers being able to exert competitive pressure on hospitals, a scenario impossible if there are few choices. Moreover, the stressful nature of most hospital encounters make it unlikely for patients to overcome the substantial cognitive and behavioral barriers to rational consumer-behavior in acute care contexts.

Rate regulation: There are two policy alternatives to counter monopolies: antitrust laws and rate regulation. As noted above, antitrust enforcement has limited force against extant monopolies, so rate regulation is the only hospital pricing solution capable of addressing the problem of provider market power. Rate regulation can take many forms, such as Maryland's all-payer rate setting system, caps on negotiated prices, or a single payer system like Medicare. A predictable criticism is that rate regulation is inefficient and the regulators are subject to political capture. These concerns point to the importance of institutional design to counteract inefficiency and capture, but they do not let us off the hook from considering rate regulation seriously. The current system

of unregulated prices is bloated with enormous administrative costs from the fragmented payer landscape, far exceeding other countries' single or regulated payment systems. Like it or not, rate regulation may be the only option that has any hope of disciplining outrageous hospital prices in concentrated markets.

The bottom line

The story of our unchecked health care spending in the U.S. is a story about high and undisciplined prices. Our health care pricing problem is driven at its core by a growing provider monopoly problem. For the increasing preponderance of noncompetitive health care provider markets, the only policy capable of addressing the market power of providers is direct rate regulation. Antitrust enforcement cannot restore competition to already concentrated markets and no amount of competitive pressure will create choices for consumers where none exist. For the vast majority of jurisdictions with concentrated provider markets, health care rate regulation must be a central part of any policy strategy to control health care spending.