Market Consolidation

Overview

Recent evidence demonstrates that provider and insurer markets in the United States have been highly concentrated for years and have led to increased healthcare prices and insurance premiums without a commensurate increase in quality. Combining the legal expertise of The Source on Healthcare Price and Competition at UC Hastings and the economic analysis and data modeling expertise at the Nicholas C. Petris Center on Health Care Markets and Consumer Welfare in the School of Public Health, UC Berkeley, this project aims to provide policymakers with unbiased, evidence-based, policy-relevant information on the most effective strategies for states to address rapidly consolidating healthcare markets.

Additional resources and reports:

- “Preventing Anticompetitive Healthcare Consolidation: Lessons from Five States” - research report on merger notice, review, approval, conditions and consent decree, and post-transaction oversight, as well as recommended best practices for state policymakers.
- “Rhode Island: Legal and Regulatory Options for Addressing Health System Consolidation” - policy analysis and presentation providing legal and regulatory options for state officials to address the impacts of health system consolidation in Rhode Island.

National Trends
Federal Enforcement Timeline


Key:
- FTC/DOJ Win
- FTC/DOJ Loss
- FTC/DOJ Action
Antitrust Enforcement Challenges
State Statutory Authority

- Provider Merger
- Insurance Merger
- Provider Merger
- Insurance Merger

About the Project

With support from Arnold Ventures, this collaboration between The Source on Healthcare Price and Competition and the Nicholas C. Petris Center on Health Care Markets and Consumer Welfare leverages the latest and most comprehensive data on state laws, healthcare markets, and healthcare prices and quality to determine the most efficient and successful policy levers. This collaborative series will analyze the variation in state laws and subsequent economic impacts in the last ten years (2008-2018), as well as more recent legislative trends to develop recommendations and strategies for states with varied resources and political environments.
This month, our round-up proudly features a new issue brief written by our Source colleagues that discuss what state regulators need to strengthen state antitrust laws and prevent further healthcare provider consolidation. Also highlighted in this month’s round-up are studies on the potential impact of the federal No Surprises Act on healthcare prices, state-level strategies to reduce health care spending, better methods to assess policy-relevant financial information of hospitals, a grassroots push towards the public option, and industry trends and implications in the
pharmacy market.

Market Competition/Consolidation

In a new Milbank Memorial Fund issue brief written by the Source team, Alexandra D. Montague, Katherine L. Gudiksen and Jaime S. King round off the second installment of a three-part series looking at antitrust enforcement. The first brief argues that both state and federal antitrust enforcement is critical to address the rising costs that result from consolidation. The second brief, "State Action to Oversee Consolidation of Health Care Providers," examines the importance of well-designed state merger review...
authority in preventing further consolidation and better oversight of approved transactions. The brief identifies the key elements of a comprehensive merger review framework and analyzes how state regulators and enforcers can use and augment their existing authority to address health care consolidation.

Price Transparency

The federal No Surprises Act, designed to protect consumers from surprise out-of-network medical bills, may be effective at lowering prices for certain services, according to a new report. Published in the JAMA Network,
researchers Ambar La Forgia, Amelia Bond, and Robert Tyler Braun discuss the "Association of Surprise-Billing Legislation with Prices Paid to In-Network and Out-of-Network Anesthesiologists in California, Florida, and New York." In comparing prices paid for anesthesiology services in the three states, all of which had passed surprise-billing legislation, the research team analyzed claims from hospital outpatient departments and ambulatory surgery centers for patients in preferred provider organizations and point-of-service plans from 2014 to 2017. The study found that after the three states passed comprehensive surprise-billing legislation, prices paid...
to anesthesiologists working in hospital outpatient departments and ambulatory surgery centers decreased. These findings illustrate how health care prices could change following the passage of state or federal laws against surprise billing.

Healthcare Market and Costs

Rising health care spending continues to be a concern for state governments and their constituents, who are facing greater out-of-pocket costs and premiums. Researchers Michael E. Chernew, David A. Cutler, and Shivani A. Shah discuss various approaches states can take to control spending growth in "Reducing Health
Care Spending: What Tools Can States Leverage?

The Commonwealth Fund report highlights several potential strategies, ranging from efforts to promote competition, reduce prices, or decrease utilization of low-value care to broader strategies that address overall spending. The report also describes how health policy commissions can play a central role in supporting any of these efforts. Given limits to significant federal action, states are better positioned to take the lead on implementing a variety of cost control reforms, all of which can be tailored in ways that work best for each state. Policymakers need a clear picture of the
health care system's financial health to make consequential policy decisions, but where do they get this information? In a report published by the Journal of Healthcare Finance, researchers argue that policymakers often rely on income statement-related metrics that don't paint the full picture of a hospital's financial health. The study, authored by The Source’s Advisory Board member Robert Berenson, along with Nancy Kane et al., discusses "Why Policymakers Should Use Audited Financial Statements to Assess Health Systems’ Financial Health." It identifies a broader range of policy-relevant financial indicators of hospital financial health than those reported in an
The study calls for regulators to amass audited financial statements in a national database accessible to the public. According to researchers, a national database of these statements would be an important tool for more informed and socially beneficial policymaking.

Health System Reform

President Biden campaigned on a promise to create a federal public health insurance option, but health policy experts predict a legislative stall on the plan in the near term. Given the close division of power in Washington, Biden's public option for healthcare is seemingly off the
but Jacob S. Hacker argues that instead of giving up on it, advocates should recast it through a strategic, self-reinforcing form of advocacy. In his article "Between the Waves: Building Power for a Public Option," published by the Journal of Health Politics, Policy and Law, Hacker describes a path to the public option that involves building power through policy–using the openings that are likely to exist in the near term to reshape the political landscape for the long term. To make this argument, Hacker lays out three interim steps that could advance the public option's prospects: 1) pursue immediate improvements in the ACA that are tangible and traceable yet do
not work against the eventual creation of a public option, 2) build the necessary foundations for a public option within Medicare while encouraging progressive states to experiment with state public plan models, and 3) seed and strengthen movements to press for more fundamental reform. Rather than coming up with new proposals that cannot be passed in the near term, Hacker’s plan seeks to refine the basic vision of the public option and pursue interim steps that can help build the necessary power to pass it.

Pharmaceuticals

Having expanded from traditional hospitals to serve as
medication experts in a broad range of other settings, the pharmacy market plays an increasingly prominent role in the health care system. As such, policymakers working towards containing prescription drug costs should understand the market shifts and their implications for the affordability of prescription drugs.

Writing for the Commonwealth Fund, Elizabeth Seeley and Surya Singh explore trends in the pharmacy market and their impact on drugs prices and spending in "Competition, Consolidation, and Evolution in the Pharmacy Market."

Specifically, their brief identifies and reviews four main aspects of the pharmacy industry
that affect drug spending: 1) increased pharmacy consolidation and vertical integration, 2) rising challenges facing independent pharmacies, 3) growth of specialty pharmacies, and 4) the evolving role of mail-order pharmacies and e-commerce platforms. How policymakers grapple with containing prescription drug costs may depend on their ability to leverage their understanding of these dynamics in the specific market.

That concludes this month's Roundup. If you find articles or reports that you think should be included in the monthly Roundup, please send them our way. Stay safe and healthy!
If you would like to report a possible data discrepancy, please email info@sourceonhealthcare.org or contact The Source here.