The Source Roundup: June 2020 Edition

The Source continues to extend wishes of safety and good health to you and your loved ones during this uniquely challenging time. Despite the reality that much of the healthcare industry suffers financial catastrophe due to the pandemic, experts note improvements in some areas. Authors this month expect some advancements to last and suggest how the U.S. should use them to diminish costs.

Changes in Telehealth Will Likely Outlast the Pandemic

In JAMA's Implications for Telehealth in a Postpandemic Future, Carmel Shachar and co-authors affirm positive outcomes that the pandemic-induced increase in telehealth services caused in some areas of healthcare. They expect some state cost regulations on telehealth services during the COVID-19 crisis will remain after the pandemic because payment and reimbursement parity are essential in making telehealth economical for small and rural practices. In addition, before the pandemic, regulations on privacy and licensing usually constrain telehealth expansion. As states relax these restrictions during COVID-19, they help health care markets and state lawmakers learn which privacy regulations and inter-state licensure requirements states would need to relax to maintain broad, long-term telehealth use. The authors believe that the U.S. healthcare system and federal lawmakers could learn from states' pandemic-related emergency HIPAA waivers, price protections, and licensing shifts to develop lasting telehealth deregulation.

In Removing regulatory barriers to telehealth before and after COVID-19, published by the Brookings Institution, Nicol Turner

Lee and colleagues argue that federal and state lawmakers should continue to relax limits on telehealth as it proves to be successful during the coronavirus crisis. They highlight disparities in telehealth laws between states, including reimbursement policies, licensing constraints, and access disparities between communities. The authors argue these dissimilarities prevented universal use of telehealth before the pandemic because they restricted healthcare providers' abilities to relocate or administer care across state lines. They recommend several policy actions: lawmakers should analyze COVID-19 telehealth data, implement consistent federal telehealth regulations, allow telehealth for all primary care purposes, and make telehealth services cheaper than in-person visits to reduce costs for patients and providers.

Antitrust Issues Persist in Healthcare Markets

In Antitrust & COVID-19 in the U.S.: Four Key Issues for Healthcare Providers, published in the May edition of the *CPI Antitrust Chronicle*, John Carroll and Alexis Gilman find healthcare providers face several antitrust issues during the current pandemic. They emphasize the Federal Trade Commission (FTC) will not relax its legal standards for antitrust enforcement, even if processes may change. Although temporary collaboration efforts between organizations to provide personal protective equipment may not raise antitrust concerns due to their limited duration and scope, any merger and acquisition will be scrutinized as strictly as they would have pre-pandemic. In addition, during the pandemic, the FTC will use its power against "unfair or deceptive acts or practices" that constitute price gouging, which lacks any federal prohibition. Carroll and Gilman caution that the FTC and Department of Justice could struggle in evaluating the validity of "failing firm" defenses since many healthcare organizations suffer financial declines with unclear outlook and duration as a result of the coronavirus crisis. However,

because of the pandemic, healthcare markets will want to avoid losing any hospital to consolidation now more than ever. As such, the authors caution healthcare providers during this worldwide challenge to beware of antitrust considerations.

Also in *CPI Antitrust Chronicle* this month, Drs. Paul Wong and colleagues offer a unique view of non-compete agreements in healthcare contracts in Non-Compete Agreements: Might They Be Procompetitive in Healthcare*?*. They consider non-compete agreements valuable solutions to investment hold-ups. Sometimes, an investor will withhold an investment if they are unable to rely on an employee's cooperation with a non-compete agreement. The authors worry that state bans on physician non-compete agreements focus too narrowly on wages and employment turnover and fail to account for important investments that could otherwise improve access and quality of healthcare. They propose a balanced approach to enforcement of non-compete agreements that will promote healthcare worker mobility and capital investment interests.

Healthcare Prices Continue to Increase and Vary Between States

In a new *Health Affairs* article, Wide State-Level Variation In Commercial Health Care Prices Suggests Uneven Impact Of Price Regulation, Michael E. Chernew and scholars researched the potential to match commercial insurance rates to Medicare rates to curb health care service cost increase. They found that lifting Medicaid rates to match Medicare prices could mitigate the loss in revenue hospitals will endure. In general, however, implementing regulation of rates too quickly could disrupt market structures. Additionally, as commercial insurance and market rates vary widely by state, states would experience the effects of the potential change disparately. This poses another challenge and provides a catalyst that incentivizes the need to narrow the gap between Medicare and commercial payments.

Also in *Health Affairs* this month, Mark A. Unruh et al. analyzed the relationship between Physician Prices and the Cost and Quality of Care for Commercially Insured Patients. Unruh et al. found physician payment varied over two hundred percent between the highest and lowest price general internal medicine physicians. At the same time, patient costs varied by about twenty percent between the highest and lowest price physicians. Interestingly, however, these variations in prices did not impact quality or outcome. There was no correlation between prices and patients' hospital readmittance rates nor ambulatory care rates. As a result, the authors suggest that policy makers should determine root causes for such puzzling price disparities that are not explained by differences in care quality and outcome.

Progress and Considerations of Price Transparency Efforts

This month, The Source on Healthcare Price and Competition and Catalyst for Payment Reform jointly released the 2020 Report Card on State Price Transparency Laws, which assesses how each state has advanced healthcare price transparency to help consumers access health care price information since the previous Report Card released in 2017. Using the Database of State Laws Impacting Healthcare Cost and Quality (SLIHCQ) available on The Source, Roslyn Murray et al. gave sixteen states passing grades. The transparency grading was determined by factors including the depth of healthcare price data, such as the scope of prices, services, and providers covered by the data, and its accessibility to the public. The highest-scoring states, including Maine and New Hampshire, maintained powerful transparency laws and favorable consumer resources, such as free, user-friendly websites on healthcare price information. The authors also note that twenty-one states implement All-Payer Claims Databases (APCDs) and urge the thirty-eight failing states to establish accessible and affordable APCD data to expose the variation in health care

prices and costs.

In the May *CPI Antitrust Chronicle*'s Price Transparency: Friend or Foe? How Price Transparency May Impact Competition in the Healthcare Industry, Dionne Lomax and Sophia Sun argue that price transparency alone cannot repress health care cost escalation. While consumers increasingly demand transparency, this article exposes its potential adverse impacts, particularly related to recent rules issued by the Centers for Medicare and Medicaid Services (CMS). The CMS rules require all U.S. hospitals publicly avail standard charges, which the authors suggest would place burdens on hospitals that would better fall on insurers. In addition, Lomax and Sun remind readers that standard charges often reveal little about consumers' out-of-pocket costs. They fear that full disclosure of prices will harm competition in health care markets by allowing providers to see their competitors' prices. Instead, they recommend future rules and disclosures tailor information to maximize wise consumer decision-making while limiting data to respect antitrust boundaries.

If you find additional articles that you would like to see included in the monthly roundup, please send them our way! The Source team hopes you stay safe and healthy in the upcoming month.