The Source Roundup: September 2022 Edition

In this month's Source Roundup, we start out with the latest articles and reports that examine consolidation and lack of competition in the healthcare markets, specifically 1) the impact of certificate of public advantage legislation and 2) the impact of dialysis consolidation on Medicare Advantage beneficiaries. We also highlight a few articles discussing healthcare prices and costs, including 3) the impact of inflation on the healthcare sector, 4) the divergence in cost growth between Medicare and the private insurance sector, and 5) factors that cause health spending to rise in states with cost growth targets. Finally, we note another report of 6) widespread noncompliance with the federal hospital price transparency rule that went into effect in 2021.

Healthcare Consolidation and Competition

Certificate of public advantage (COPA) laws allow healthcare entities such as hospitals to consolidate under limited state oversight and avoid federal antitrust scrutiny or challenges. Many states have enacted COPA legislation since the 1990s, however, the Federal Trade Commission (FTC) recently released the FTC Policy Perspectives on Certificates of Public Advantage and warns policymakers and states against adopting COPA laws. According to the FTC paper, multiple studies found hospital mergers subject to COPAs have actually resulted in higher costs and reduced quality of care despite limited state regulatory oversight. The paper discusses its key findings in several COPA case studies. Specifically, the FTC is aware of nine states—North Carolina, South Carolina, Montana, Maine, Minnesota, West Virginia, Tennessee, Virginia, and Texas—that have approved hospital mergers pursuant to COPA legislation. Some of these states have repealed the underlying COPA legislation, which consequentially eliminated the states' regulatory oversight of the previously approved transactions under the COPA laws. Thus, these previously approved systems are allowed to exercise their market power without any oversight. The paper outlines several compelling reasons against states adopting COPA legislation, including increases in prices for patients, extreme difficulty in implementing the necessary regulatory monitoring, and consequences of later repeal of COPA laws, and highly cautions that COPA laws stifle competition and result in a multitude of negative anticompetitive consequences in the healthcare market.

Just as consolidation pursuant to COPA laws can impact consumers with higher prices and decreased quality of care, consolidation of dialysis facilities has proven similarly negative for Medicare Advantage beneficiaries. Prior to 2021, Medicare Advantage enrollment was prohibited for patients already using and requiring dialysis. However, due to the 21st Century Cures Act of 2016, the regulation prohibiting enrollment in Medicare Advantage was lifted. In a recent *Health Affairs* article, [Medicare Advantage Plans Pay Large Markups To Consolidated Dialysis Organizations](), authors Eugene Lin, Bich Ly, Erin Duffy, and Erin Trish explore the impact of the increased shift of dialysis patients into Medicare Advantage since 2021 coupled with the consolidated dialysis market. The authors explain that the larger shift from fee-for-service Medicare into Medicare Advantage could cause the already highly consolidated dialysis industry to leverage their existing market power and negotiate higher payments from Medicare Advantage than fee-for-service Medicare patients. In the study, the authors did in fact find that Medicare Advantage plans paid 27% more than fee-for-service

Medicare, and that the highest markups were found among the larger dialysis chain centers. The authors attribute this difference in prices to consolidation in the dialysis industry and urge policymakers to consider ways to limit market consolidation of dialysis providers and other reforms to increase competition and address these significant cost disparities impacting Medicare Advantage beneficiaries.

Healthcare Prices and Costs

Historically, medical prices and healthcare costs have generally outpaced the growth of the rest of the economy. However, as the U.S. experience significant economy-wide price inflation, the health sector has not felt the same effects. In a recent article from Peterson Center on Healthcare and Kaiser Family Foundation, Overall inflation has not yet flowed through to the health sector, authors Emma Wager, et al. analyze recent Bureau of Labor Statistics data, including the consumer price index and producer price index, to compare healthcare prices to other goods and services. In summary, the authors found that overall prices grew by 8.5% from last year, while medical care costs increased by only 4.8%. Though health consumers may not feel the same economic impact currently, the authors caution that the high rate of inflation seen in all other sectors may nevertheless later translate to higher health costs, which may lead to future increased premiums.

In a recent Altarum report, Medicare and Private Insurance Health Care Prices Diverge Substantially in 2022, author Corwin (Corey) Rhyan confirms that the overall inflation in the health sector has remained within a modest range as compared to all other sectors of the economy, but notes that a divergence in price growth between Medicare and private insurance has developed. Specifically, while Medicare prices have fallen slightly by 0.5%, private insurance prices have rose by 5.4% since January 2021. Rhyan explains that declining Medicare prices are due to two major factors: 1) low to no increase in statutory reimbursement rates for hospital care and physician services and 2) mandatory cuts for Medicare provider payments initiated in 2022. Rhyan notes that not only are private sector prices increasing, but they may continue to rise throughout 2023 as new contracts and updated rates slowly take effect. In summary, though healthcare prices have not felt the same economic inflation as has other sectors, private insurance prices are on the rise and may continue to grow.

Prior to the increased costs and inflation seen this year, a handful of states have already adopted cost growth target goals to alleviate healthcare spending growth. Despite the intended goal of stifling healthcare cost growth with these cost targets, a recent *Health Affairs* article examines What Is Driving Health Care Spending Upward In States With Cost Growth Targets? Author Michael Bailit explores the statistics and analyses, provided through the Peterson-Milbank Program for Sustainable Health Care Costs, of six states with established per capita cost growth targets (Connecticut, New Jersey, Nevada, Oregon, Rhode Island, and Washington). Importantly, the data shows that despite the cost growth targets, an overall health cost growth in some these states is likely caused by spending growth in the commercial insurance market. Additionally, hospital and pharmacy care experience the highest growth in both public and private markets, which the author attributes to increases in the prices paid for hospital and physician services, particularly by commercial payers, rather than increased use. Bailit points to overall consolidation and limited market competition in provider and pharmacy services as a cause for continued high prices. He concludes that these findings can help policymakers better navigate future dynamics between legislative efforts, such as cost growth targets, and outside market forces.

Price Transparency

Effective January 2021, a federal price transparency rule requires hospitals to post all prices online in the form of (1) a single machine-readable standard charges file for all items and services and (2) a standard charges display with actual prices for 300 of the most common shoppable services. In the Third Semi-Annual Hospital Price Transparency Report, Patients Rights Advocate reported that despite the rule, only a mere 16% of hospitals, or 319 hospitals out of 2,000 hospitals, were in compliance. The report also noted that in June, two hospitals were fined (Northside Hospital Atlanta was fined $883,180 and Northside Hospital Cherokee was fined $214,320) for noncompliance with the rule. Since then, both hospitals are now in full compliance, suggesting that levying heavy monetary fines could substantially improve compliance. Based on the findings, it is clear the intended goal of full transparency has not come to fruition as hospitals are still withholding crucial information from consumers. Thus, the report advocates for stronger HHS enforcement of the federal rule to ensure consumers have broad access to pricing.

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.