



POLICY BRIEF

Fostering Coordination and Integration, While Ensuring Competitive Markets

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The Center for Payment Reform strongly supports payment reforms that encourage coordinated and integrated care delivery. At the same time, we believe that policies that assure there are functioning markets – where informed patients and purchasers can fairly negotiate terms with independent providers – are also essential. The Senate Finance Committee needs to address how policies can be developed to assure there is an appropriate balance between promoting both coordination and competition.

Aligning incentives across providers and sites of care is essential to the appropriate focus on “end-to-end” quality, affordable care. In many markets, providers have formed multi-provider organizations, ostensibly to advance their clinical and financial goals, forming multi-hospital systems, multi-physician organizations, and combined hospital-physician entities. In some cases, these collaborations have resulted in higher quality and lower costs for payers and patients by focusing on generating clinical and financial efficiencies. In some instances, however, these new organizations have leveraged their market power in ways that may increase costs to patients, payers, employers and other health plan sponsors, with ambiguous impacts on quality.

Because of the concerns about potentially anti-competitive impacts of some forms of integration and coordination there are a broad array of laws and regulations governing competition, anti-kickback, self-referral, and related issues. Some argue that portions of existing law and regulations need to be “loosened,” as they inhibit providers’ ability to coordinate care effectively. However, many others suggest that loosening existing laws and regulations is unnecessary to deliver more efficient care and could result in both higher costs and reduced choice for consumers.

Four inter-related issues suggest a need for the development of a comprehensive strategy to promote integration, coordination, and competition in health care:

1. Oversight responsibilities are spread across many actors with different rules and jurisdictions (e.g., the federally among the Department of Justice, Federal Trade Commission and CMS’ Office of the Inspector General; and at the state level with regulatory agencies and Attorney Generals);
2. Applying traditional anti-trust concepts to health care is very complex (defining the “market,” untangling the impact of multiple forms and responsibilities of third-party payers regulated by both state and federal governments, etc.);
3. The health care market place is subject to rapid change; and,
4. Changes in payments for services in both the commercial and public sector markets have the potential to realign dramatically the relationships between providers.

Given the complex inter-relationship between competition and coordination, the Center for Payment Reform urges the Senate Finance Committee to establish a framework that will assure that both goals are promoted. We recommend that legislation call for:

The Secretary of Health and Human Services shall produce or commission a report to Congress that shall examine how policies and payment can best balance the need to

both promote coordination and competition. In doing so, the Secretary shall engage representatives of the Attorney General, the Federal Trade Commission, the Comptroller General, CMS' Office of Inspector General and the Agency for Healthcare Research and Quality as well as representatives of consumers, private purchasers and providers. The report shall be provided within 12 months and should address, at a minimum, the following:

- Are new laws or regulations needed to guard against the provider-based entities having or exercising market power to the detriment of consumers' interest in higher quality, less costly health care? The report should consider issues such as whether there should be limits on the market-share held by these entities, whether payment policies should include explicit cost and/or quality performance targets to assure viable and meaningful competition across entities, and potential limits on entities' ability to impose pricing or contractual structures on private or public payers.
- Do existing anti-trust laws and pro-competitive regulations need to be revised or amended? These laws and guidelines include provisions relating to self-referral, anti-kickback, joint negotiation, and collective bargaining, among others.
- Are there existing state or federal laws that have the affect of creating inappropriate barriers to healthy competition that need to be examined? Such potential barriers include but are not limited to: scope or practice laws that impose barriers to entry for certain healthcare providers; laws that may inhibit providers from offering telemedicine services; laws that may limit providers' ability to move to another state and practice medicine; or ineffectively operated certificate of need laws.
- What is the empirical research on health care markets and market competition that should inform policy development? Little is known about providers' post-integration pricing strategies, payer and consumer responses to those strategies, and the implications for enhancing the quality of care. Similarly, little is known about the competitive affects of relatively small physician groups or regional monopoly hospitals that can demand higher rates from payers.
- What is the role of promoting transparency with respect to quality and price in fostering better market functioning? Transparency initiatives design should be assessed to determine the extent to which they give providers, payers and consumers useful information while at the same time limiting unintended consequences relating to inappropriate price signaling.
- How can the regulatory and legal oversight promoting competition best be structured? There is an array of federal and state agencies involved in promoting competition (e.g., DOJ, FTC, CMS-OIG and state agencies). The report should assess and recommend options for assuring these functions are adequately resourced, better coordinated, served by common or shared research infrastructure and have aligned policy goals.

The Center for Payment Reform (CPR) is a coalition of consumers, purchasers, labor, physicians and other health care providers, payers and policymakers who have come together based on their shared vision that improving quality and affordability in health care requires a transformation in our payment systems.

CPR is supported by foundations and by contributions of employer, consumer, health plan, physician and other provider organizations and is an initiative of the Consumer-Purchaser Disclosure Project. Learn more about the Center for Payment Reform and the Center's Payment Reform Principles at www.centerforpaymentreform.org.