



Federal Agencies Recommend Policies to Increase Healthcare Competition

On December 3, 2018, the *U.S. Department of Health and Human Services* (HHS), as well as the Departments of *Treasury* and *Labor*, issued a report entitled, “*Reforming America’s Healthcare System Through Choice and Competition*,” resulting from an executive order that President Donald Trump issued over a year ago.¹ This 119-page report comprises more than 50 policy recommendations in an attempt to increase quality and decrease costs in healthcare.² In order to achieve the aims of increased competition and consumer choice, the agencies’ recommendations center on free market principles and deregulation of the healthcare industry.³ As stated in the forward of the report, although there have been numerous efforts to address regulations that limit these aims, there are still areas that largely inhibit choice and competition and thus require modification.⁴

The report asserts that healthcare competition has been suppressed due to the limited supply of providers and the restriction of the scope of services provided by non-physician clinicians.⁵ In order to combat this lack of competition, which leads to higher healthcare prices and reduced choices,⁶ the report endorses broadening the scope of practice for *advanced practice registered nurses* (APRNs), *physician assistants* (PAs), pharmacists, optometrists, and other highly trained professionals.⁷ Recommendations include urging states to change their scope-of practice statutes to allow all healthcare providers to practice to the top of their license (i.e., to the full extent of their abilities, given their education, training, skills, and experience) and consider proposals to allow non-physician (e.g., APRNs and PAs) and non-dentist (e.g., hygienists and dental therapists) providers to independently treat patients.⁸ In addition, the 2019 President’s Budget proposed streamlining federal government funding toward a single graduate medical education grant program to address physician supply shortages, with the HHS Secretary having the authority to modify amounts to effectively allocate to hospitals based on the proportion of residents training in priority specialties.⁹

Currently, the supply of physicians in the U.S. has not kept pace with the demand for healthcare services. The gap may continue to increase as: the number of new entrants to the physician workforce remain insufficient to replace the number of physicians retiring; and, the drivers of demand (e.g., the aging *Baby Boomer* population) intensify.¹⁰ The impact of broadening the scope of healthcare providers addressing physician supply

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shortages will impact business of healthcare organizations by increasing competition as more providers enter the market or increase their scope-of-practice, but also allowing these organizations to keep up with demand as the *Baby Boomer* generation ages. In reference to allowing non-physicians to practice independently, the *American Nurses Association* (ANA) commends the broader scope-of-practice statutes as APRNs tend to deliver high quality care with positive patient outcomes.¹¹ However, healthcare organizations may want to consider how increased competition and an influx of new providers may affect their service line(s).

In addition to the shortage of providers that may stymie competition, the report also addresses state policies that restrict entry into healthcare provider markets, and create a barrier to choice and competition, leaving few incentives for providers to improve quality.¹² The report’s primary recommendation is to encourage entry into markets through the repeal of restrictive *certificate of need* (CON) laws, which would affect the 35 states that currently maintain some form of CON program.¹³ State CON laws generally require permission from a state (or state-authorized agency) before healthcare providers may construct new healthcare facilities, expand existing facilities, or offer certain healthcare services.¹⁴ The report urges states to repeal or scale back CON laws, such as ensuring that competitors of CON applicants cannot weigh in or otherwise influence the application process.¹⁵ These changes to CON laws are intended to encourage competition, as these policies: can restrict investments that may potentially benefit consumers and lower costs in the long term;¹⁶ include a lengthy approval process; and, face third-party challenges, all of which increase costs to the government and providers, and serve as a significant barrier to entry in certain healthcare markets.¹⁷ This deregulation would allow greater, and quicker, investments in needed healthcare services.

The *Patient Protection and Affordable Care Act* (ACA) continued restrictions on physician-owned hospitals by closing a loophole in the Stark Law’s “*whole hospital*” exception, which had allowed physicians to refer to hospitals in which they had ownership interest as long as it was the whole hospital rather than just one service line or department.¹⁸ In order to address the potential financial conflicts of interest with physicians referring patients to their own hospitals or only referring those who are healthy to their hospitals, the ACA limited the expansion of existing facilities without HHS Secretary approval and

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prohibited new physician-owned hospitals from participating in Medicare or Medicaid, a major source of revenue.¹⁹ Previous research by Congress's independent *Medicare Payment Advisory Commission* (MedPAC) found evidence that physician-owned hospitals tend to take lower acuity and higher revenue cases.²⁰ However, a more recent study by the *British Medical Journal* contradicts that initial research, finding that “*although [physician-owned hospitals] POHs may treat slightly healthier patients, they do not seem to systematically select more profitable or less disadvantaged patients or provide lower value care.*”²¹ Supplementing this conclusion, a study by the *Journal of the American College of Surgeons* found that many physician-owned hospitals actually provide higher quality care.²² Additionally, the *Centers for Medicare and Medicaid Services* (CMS) reported that approximately 40% of physician-owned hospitals as of 2015 had a 5-star rating on the *Five-Star Quality Rating System*, which is a tool to help consumers select and compare the quality of healthcare organizations.²³ As a recommendation, through the support of these studies, the report urges Congress to consider repealing ACA changes to the Stark Law that limited physician-owned hospitals in order to increase choice for consumers and introduce more competition.²⁴

As discussed in the October 2018 *Health Capital Topics* article entitled, “*DOJ Approves CVS-Aetna Merger,*” healthcare consolidation is an ongoing trend and is changing the healthcare competitive landscape.²⁵ The agencies’ report calls for improvements to the current *value-based reimbursement* (VBR) payment system, which system tends to increase consolidation within the industry.²⁶ *Accountable care organizations* (ACOs) and other *alternative payment models* (APMs) often encourage provider consolidation, as hospitals acquire physician practices (or merge with other hospitals) in order to amass the requisite resources to provide a full continuum of care, consequently raising healthcare prices and decreasing competition.²⁷ Increased consolidation is partly thought to be a response to the threat of new payment models in which larger health systems are better able to resist payor pressures to enter into risk-based contracts.²⁸ In addition, small practices or solo practitioners may accept buy-outs by hospitals and health systems in order to alleviate the financial and administrative demands of delivery reform, thereby limiting competition.²⁹ In May 2018, the *National Bureau of Economic Research* found that healthcare prices were 12.5% higher at hospitals without local competition than at those hospitals that have four or more competitors.³⁰ As a result, the report urges the delivery system to not harm smaller practices that often consolidate due to financial pressures of VBR models.³¹ Further, the report recommends that these delivery system models foster collaboration (not consolidation), which could affect the future of some delivery models such as ACOs.³²

The report also made certain recommendations related to health insurance, including measures to shift toward consumer-driven healthcare through the expanded

utilization of *health savings accounts* (HSAs) and *health reimbursement arrangements* (HRAs). The expansion of HSAs and HRAs, according to the report, would improve consumer control and enable patients to shop for lower-cost healthcare.³³ The *Employers Council on Flexible Compensation* (ECFC), a nonprofit organization that promotes choice and benefit solutions, notes that it is a “*positive step for employers and American workers and advances healthcare consumerism offering additional choices,*”³⁴ and the *Council for Affordable Health Coverage* (CAHC) believes that HSA and HRA flexibility will improve cost transparency.³⁵ To supplement more consumer-driven healthcare, the report calls for an increase in price and quality transparency in order for consumers to make well-informed decisions.³⁶ Recommendations for facilitating price transparency include eliminating any federal policies that create unnecessary barriers to sector initiatives at various levels that provide price transparency.³⁷ The report elaborates that Congress, federal agencies, and state governments should be incentivizing providers to compete on price through reference pricing models in order to facilitate price transparency for consumers.³⁸

In addition to these above recommendations, the report made a number of other policy suggestions, including:

- (1) Loosening insurance rules and mandates;
- (2) Reimbursing for telehealth services;
- (3) Permitting interstate medical licenses;
- (4) Implementing site-neutral payment policies;
- (5) Facilitating price transparency;
- (6) Standardizing and streamlining quality measures across programs;
- (7) Relaxing network adequacy standards for Medicare Advantage; and,
- (8) Scrutinizing any willing provider (AWP) laws.³⁹

Overall, this report focuses on improving the U.S. healthcare delivery system by increasing healthcare competition and choice, which recommendations would have a significant impact on the operation of healthcare organizations. These recommendations address the physician manpower shortage, the impact of certain laws, and the purported harmful effects of consolidation. In addition, the report pushes consumer-driven healthcare through the employment of HRAs and HSAs. Although these recommendations could significantly change the healthcare landscape, when these recommendations might take effect, or if they will at all, remains unclear.

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