



Health Care Provider Consolidation and Reform

FORUM SESSION ANNOUNCEMENT

A DISCUSSION FEATURING:

Thomas Greaney, JD

Chester A. Myers Professor and Director

Center for Health Law Studies

School of Law

Saint Louis University

Dianne Kiehl

Executive Director

Business Health Care Group (Milwaukee, Wisconsin)

Ruth W. Brinkley

West Ministry Market Leader

Ascension Health

President and Chief Executive Officer

Carondelet Health Network (Tucson, Arizona)

FRIDAY, NOVEMBER 13, 2009

11:45AM–12:15PM—Lunch

12:15PM–2:15PM—Discussion

LOCATION

Reserve Officers Association

One Constitution Avenue, NE

Congressional Hall of Honor

Fifth Floor

(Across from the Dirksen

Senate Office Building)

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OVERVIEW

Many blame our fragmented delivery system for high and rising health care spending, so some proposals to address the cost problem have focused on increasing care coordination and improving collaboration among providers. Related payment reforms that reward providers for accepting more financial risk in caring for patients or for meeting the needs of a defined population aim at encouraging care coordination and provider collaboration. To respond to these initiatives, independent providers may find they need to affiliate with larger organizations. Increased provider affiliations, however, raise other concerns about greater consolidation of market power and its effect on quality and prices. This Forum session will focus on health care provider consolidation, including efforts to limit provider monopolies, the ramifications of a consolidated provider community, and ways to balance provider and payer interests.

Consolidation has been occurring for years on both the payer and provider sides of the health care market.¹ In a number of states, mergers and acquisitions have consolidated the insurance industry to one or two dominant firms. Providers likewise have become more consolidated, starting in the 1990s with the rapid growth in managed care penetration. Provider consolidation is most visible in the hospital sector. Many urban areas are now dominated by two or three large hospital systems. In fact, by 2003, the hospital market was "highly concentrated" in almost 90 percent of large urban areas according to Department of Justice (DOJ) and the Federal Trade Commission (FTC) criteria.²

The DOJ and FTC are responsible for monitoring consolidation in a market to ensure that consumers are protected from anticompetitive activities. Other laws also protect consumers by limiting certain arrangements between hospitals and physicians, such as paying for referrals or self-referrals that may inappropriately affect service use and costs. The DOJ and FTC have just announced that they are going to re-examine their 17-year old guidance on mergers in light of changes in economic theory.³ Providers have also asked for guidance on collaborative arrangements that may be subject to review. They claim that ambiguities in anti-trust and other laws may limit innovations in care delivery.⁴

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There are many reasons hospitals pursue mergers, including attempts to match the market power of a dominant insurer. Mergers may eliminate redundant capabilities and support efficiencies, thereby reducing the providers' costs. Consolidating clinical expertise may improve quality of care and allow investment in quality improvement programs. In addition to accelerating hospital consolidations, the number and size of single-specialty physician practices have grown. Such arrangements allow the aggregation of capital needed to expand the services that can be delivered by the practice. Vertically integrated organizations that employ physicians for affiliated hospitals and other sites of care likewise continue to emerge.

Studies indicate that efficiencies resulting from hospital mergers may not be passed on to consumers in the form of lower prices.⁵ Most demonstrate that the mergers can tip the balance of power in a market, resulting in higher post-consolidation prices. Although the estimates vary considerably, evaluations of hospital prices before and after mergers have found increases of 10 percent and more. Studies of changes in the quality of care are less numerous and robust, but there is minimal evidence that increased hospital concentration improves quality. Even though hospital mergers are the most extreme of possible collaborative arrangements, information from these studies raises questions about potential unintended consequences of some proposed market reforms.

Searching for ways to "bend the health care cost curve," policymakers have looked to integrated delivery systems like Geisinger Health System or multi-specialty group practices for clues.⁶ These types of provider organizations seem to excel at coordinating care across episodes and collaborating among caregivers to provide health care more efficiently than the norm. To replicate such efficiencies, policymakers have proposed testing delivery system or payment policy changes in the Medicare program to reward provider coordination or collaboration. These proposals include financial incentives for organizations to become patient-centered medical homes or accountable care organizations (ACO) or payment approaches like bundled payments or pay for performance. Independent providers would probably have more difficulty than larger groups in meeting the organizational requirements of the medical home or ACO. The financial risk associated with accepting bundled payments or the information needs of pay-for-performance approaches would be more easily handled by financially or clinically integrated organizations. To the extent that health reform promotes these market changes, the provider consolidation that started in the 1990s is likely to continue.

SESSION

This Forum session will discuss provider consolidation, competition, collaboration, and health care prices and quality. **Thomas Greaney, JD**, Chester A. Myers Professor and director, Center for Health Law Studies at Saint Louis University School of Law, will open the session. Professor Greaney will provide an overview of the tools the federal government uses to help ensure a competitive health care market and options to increase provider cooperation and continuity of care without unduly concentrating market power. **Dianne Kiehl**, executive director of the Business Health Care Group in Milwaukee, Wisconsin, will follow. Ms. Kiehl will discuss her experience in negotiating with provider groups in a consolidated market, focusing on the payer-provider negotiation process, and what could be done to ensure that competition promotes efficiency and quality. The final speaker will be **Ruth W. Brinkley**, West Ministry Market Leader for Ascension Health and the president and chief executive officer of the Carondelet Health Network in Tucson, Arizona. She will discuss the advantages of health care systems, the legal and regulatory barriers facing providers trying to integrate service delivery, and the market dynamics for a provider when an insurer has a dominant market share.

KEY QUESTIONS

- What is the federal government's role in ensuring competition among health care providers? How does the government evaluate the effects of market concentration on providers? Consumers? Payers? Does the government interfere with providers' ability to deliver care more efficiently?
- How do payers respond to dominant providers in their market? How do payers negotiate in consolidated markets? In nonconsolidated ones? How does the consumer fare in these different situations?
- How do providers collaborate to improve the efficiency and quality of care? How do these activities differ between highly concentrated markets and more competitive ones?
- What is needed to ensure the benefits of a competitive health care market? How should the benefits of provider competition and provider collaboration be balanced to achieve the best outcomes for consumers?

ENDNOTES

1. Martin Gaynor, "Provider Integration and Impacts on Competition," presentation to the Medicare Payment Advisory Commission, October 2, 2009, available at www.medpac.gov/transcripts/Gaynor%20presentation.pdf (presentation #2); and Emily Berry, "Most metro areas dominated by 1 or 2 health insurers," *American Medical News*, March 16, 2009, available at www.ama-assn.org/amednews/2009/03/09/bisb0309.htm.
2. William B. Vogt and Robert Town, "How has hospital consolidation affected the price and quality of hospital care?" Robert Wood Johnson Foundation, Research Synthesis Report No. 9, February 2006; available at www.rwjf.org/files/research/no9policybrief.pdf.
3. Richard A. Feinstein, "The Importance of Competition and Antitrust Enforcement to Lower-Cost, Higher-Quality Health Care," testimony of the Federal Trade Commission before the Subcommittee on Consumer Protection, Product Safety, and Insurance, Committee on Commerce, Science & Transportation, U.S. Senate, July 16, 2009, available at www.ftc.gov/os/2009/07/090716healthcaretestimony.pdf; and Christine A. Varney, U.S. Department of Justice, "Merger Guidelines Workshops," Third Annual Georgetown Law Global Antitrust Enforcement Symposium, Washington, DC, September 22, 2009, available at www.usdoj.gov/atr/public/speeches/250238.htm.
4. William Petasnick, "Clinical Integration in Health Care: A Check-up," statement of the American Hospital Association before the Federal Trade Commission, May 29, 2008, available at www.aha.org/aha/testimony/2008/080529-tes-ftc.pdf.
5. Vogt and Town, "How has hospital consolidation affected the price and quality of hospital care?"
6. See, for example, Cathy Schoen *et al.*, "Bending the Curve: Options for Achieving Savings and Improving Value in U.S. Health Spending," prepared for The Commonwealth Fund Commission on a High Performance Health System, December 2007, available at www.commonwealthfund.org/~media/Files/Publications/Fund%20Report/2007/Dec/Bending%20the%20Curve%20%20Options%20for%20Achieving%20Savings%20and%20Improving%20Value%20in%20U%20S%20%20Health%20Spending/Schoen_bendingthecurve_1080%20pdf.pdf; and Medicare Payment Advisory Commission, *Report to the Congress: Reforming the Delivery System*, June 2008, available at www.medpac.gov/documents/Jun08_EntireReport.pdf.