

# Want Health Care Info? Get Government *Out of the Way*

By Devon M. Herrick and John C. Goodman

Some transparency advocates argue that doctors, hospitals, and insurers must be compelled to fully disclose prices and quality measures. But the evidence suggests that where markets are competitive, transparency is a natural outcome. In normal competitive markets, the role of government with respect to price and quality is mainly the prosecution of fraud. In health care, the greatest barriers to transparency, innovation, and competition are government laws and regulations. Deregulating health care and equalizing the tax treatment of self-insurance and third-party insurance are important steps in the right direction.

## **NEEDED CHANGE: Remove State Laws Restricting the Practice of Medicine**

The courts have removed many anti-competitive restrictions on medical professionals, such as the prohibition on advertising, but the practices of physicians, physician assistants, nurses, and technicians are still highly regulated. The most widespread limit on health care professionals is the requirement that they must be licensed by each state in which they practice. This means there are 50 state markets for health care, rather than one national market. This creates inefficiencies that increase costs and limit patients' access to care. For example, after Hurricane Katrina in 2005, thousands of

doctors and nurses displaced to Texas were unable to legally treat evacuees until they received limited, emergency licenses from the state of Texas. Conversely, physicians, nurses and military-trained medics could not legally assist victims in Louisiana and Mississippi without special permission.

Insurers face a similar state restriction. Rep. John Shadegg (R-Ariz.) has proposed allowing health insurers licensed in any state to sell policies to the residents of any other state. The creation of a national market for health insurance would increase competition and thereby lower costs. Similarly, if physicians and other medical professionals licensed in any state were allowed to practice in any other state, labor markets for these professions would be more efficient, and patients would have more treatment options.

## **NEEDED CHANGE: Remove Laws Inhibiting Price and Quality Disclosure**

Congress and the Federal Trade Commission should create a safe harbor that would allow providers to share prices with third parties without fear of violating antitrust laws. Though every gas station posts prices, it is not legal for hospitals and doctors to report prices to third parties that have any conceivable tie to a trade group.



Similarly, medical errors and other quality indicators that are reported to regulatory bodies should be freely available on Web sites and distributed to Web-content providers such as Subimo.com and HealthGrades.com. The opposition of hospitals and physicians to public disclosure of this information could be overcome if there were state and/or federal safe harbor laws preventing the use of self-reported medical errors in lawsuits.

While there is widespread agreement on the need for quality indicators in health care, there is much debate on what criteria to use. Proponents of compelling health care providers to disclose prices have suggested that a federal regulatory agency should be established to define quality, collect the necessary data, and audit health care providers to ensure the information is correct. Creating quality indicators that everyone can agree upon is problematic at best. Fortunately, there is an alternative to government-enforced quality standards. There is no reason that health care consumers should not be able to choose among competing standards or quality indicators, as they do in markets for other goods and services. For instance, there are many comparisons of automobile quality by independent, third-party organizations: J.D. Powers rates automobiles on customer satisfaction and breakdowns per unit of measurement (generally number of miles), *Consumer Reports* rates reliability, and the Institute for Highway Safety performs crash tests on automobiles.

### **NEEDED CHANGE: Remove State Laws Restricting the Corporate Practice of Medicine**

The states should also repeal restrictions against the corporate practice of medicine. Ownership is not restricted as much in other industries where very low error rates are required for safety. Take the airline industry.

If airlines were prevented from hiring pilots and owning airplanes, the industry would likely be very different. Rather than numerous carriers flying thousands of large airliners across thousands of regularly scheduled routes, the industry would likely be dominated by charter pilots flying small propeller-driven planes.

Corporate ownership of airlines has not reduced safety. In fact, the health care industry is increasingly looking to quality improvement procedures in the airline industry for insight into ways to improve patient safety. For instance, all flight crews receive training designed to break down the hierarchy that impedes communication by empowering all members of the crew to speak up in the event they feel safety is compromised. Many experts think the lack of communication among surgical staff in operating rooms leads to some preventable medical errors.

Corporate ownership also has the advantage of better access to capital markets, economies of scale, and the ability to integrate the expertise of other professionals (such as industrial engineers).

### **NEEDED CHANGE: Remove Federal Laws Restricting Collaboration Among Health Care Providers**

The federal Stark laws prohibiting self-referral should be modified to allow beneficial arrangements where care is coordinated and provided in a more efficient manner. Currently, a physician practice cannot recommend patients seek care in the most appropriate setting if the referring physician has a financial interest in the arrangement where the patient is being sent. With revised legislation, for instance, a traditional physician practice could offer integrated services, including disease management for chronic conditions, walk-in clinics for minor problems and discounted lab work.

## **NEEDED CHANGE: Make Government Lead by Example**

In markets where government is the primary third-party payer (Medicare, Medicaid, and the Federal Employees Health Benefits Plan), policymakers can use existing technology to give enrollees access to price and quality information. Some modest steps in the right direction are already underway. President Bush gave this effort a boost by signing an executive order requiring the Departments of Health and Human Services, Defense, and Veterans Affairs, and the Office of Personnel Management to make significant strides toward increasing price transparency and encouraging patients to make more informed choices about their health care by January 1, 2007.

The executive order instructs the agencies to do four things: 1) develop and use interoperable technology to share electronic health information, 2) develop quality and efficiency standards for all doctors and hospitals who work with the agencies, 3) provide pricing information for health care services to all beneficiaries of each agency and 4) nurture relationships with providers who can deliver consumer-driven health care options to agency beneficiaries.

Considering that a quarter of Americans with health insurance are covered by the four agencies affected, President Bush is giving more than 60 million people access to information to make better health care choices. This sets an example for the private sector.

## **NEEDED CHANGE: Remove Tax Penalties on Self-Insurance**

Traditionally, the tax law has favored third-party insurance over individual self-insurance. Every dollar an employer pays for employee health insurance premiums avoids income and payroll taxes. For a middle-income employee, this generous tax subsidy means government is effectively paying for almost half the cost

of health insurance. On the other hand, until recently the government taxed away almost half of every dollar employers put into savings accounts for employees to pay their medical expenses directly. The result was a tax law that lavishly subsidized third-party insurance and severely penalized individual self-insurance. This has encouraged consumers to use third-party bureaucracies to pay every medical bill, even though it often makes more sense for patients to manage discretionary expenses themselves.

If the tax laws made it easier for people to self-insure instead of relying on third-party payers, competition would improve the efficiency of the medical marketplace. Currently, Health Savings Accounts (HSAs) are allowing millions of people to partly self-insure. However, congressional tax-writing committees have made decisions about the design of HSAs that more properly should be determined by the market. For instance, the amount of the HSA deposit and the accompanying health insurance deductible are set by law. Instead, the market should be allowed to answer such questions as: *What is the appropriate deductible for which service? Should different amounts be deposited into the accounts of the chronically ill?* In finding answers, markets are smarter than any one of us because they benefit from the best thinking of everyone. Further, as medical science and technology advance, the best answer today may not be the best answer tomorrow.

—Mr. Herrick is a Senior Fellow and Mr. Goodman is President of the National Center for Policy Analysis. This article is excerpted from their paper “*The Market for Medical Care: Why You Don’t Know the Price; Why You Don’t Know about Quality; And What Can Be Done about It,*” NCPA Policy Report No. 296, published February 2007 by the National Center for Policy Analysis.

