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Policy Recommendation: Retail Clinics and the FTC

Executive Summary

Retail clinics (RCs) have emerged as a new delivery method for primary care within the United States (US) health care system. They offer consumers an alternative to traditional methods such as physician’s offices and emergency departments. RCs address the growing need for basic care that is both affordable and accessible to the greater population. Although some states have begun to apply legislation, specific regulations are not in place to guide their operations. This lack of oversight has led to a questioning of the role of RCs and how to regulate them; some states have implemented policies that limit the scope of RCs, while others have left them to participate freely in the market. The role RCs will only continue to grow in the future, it is critical that the health care industry adopt policies that embrace the growth of RCs.

Background

RCs are a relatively new innovation in the field of health care delivery; providing consumers with low-cost basic care in convenient locations such as pharmacies, grocery stores and big-box merchandisers. RCs primarily utilize Nurse Practitioners (NPs) to provide patients with basic health services that are typically reserved for primary care physicians.

Supporters praise the RC model as an innovative approach to addressing the rising costs plaguing the US health care system; calling attention to high customer satisfaction rates, low prices and increased access to care. Alternatively, critics raise concerns over the quality of care (QOC) due to lack of physician oversight, disruption of continuity of care or the “medical home,” and the potential conflicts of interest that may arise in clinics operating within pharmacies.

RCs are a new phenomenon and therefore face a high level of uncertainty in terms of accompanying legislation. Currently, specific federal legislation does not exist regarding RCs, however a few states have begun to implement their own regulations and licensing regarding RCs. These state regulations serve to promote, structure or even limit the operation of RCs and attempt to address issues of QOC, continuity of care, access to care, patient safety and conflicts of interest. Often based on existing legislation, these regulations are often inappropriate and in violation of Federal Trade Commission (FTC) standards for competition. This paper will outline several policy options to guide the future regulation of RCs to ensure consumer benefits and uphold fair competition.

Evidence

To support my policy analysis I utilized Google Scholar and PubMed databases. Specifically, my searches utilized terms such as retail clinics, retail clinic regulations, retail clinics and the private market, the FTC, and scope of practice laws. I consulted the work of government agencies such as the FTC as well as the RAND Corporation, the National Center for Policy Analysis, the National Center for Biotechnology Information, Health Affairs, the Institute of Medicine, Deloitte, and the California Healthcare Foundation.

Problem

The US health care market faces a scarcity of supply as increased specialization among medical students has begun a national shortage of primary care physicians. The current strain on primary care that has been steadily growing in the US has widened the gap in access to care, a gap that retail clinics have begun to fill. As more Americans become insured through the Affordable Care Act (ACA) and demand care, the national capacity to provide basic services will be further strained. RCs have the potential to serve as a necessary and cost-effective innovation in the future of health care delivery systems. The use of RC for basic care and acute conditions will alleviate the pressure felt by overcrowded physician offices and lessen the costs of unnecessary emergency room visits.

It is clear that RCs will play an important role in expanding access to care, however legislation has not yet caught up to the private market and RCs remain unregulated at the federal level. Existing legislation has been appropriated or adjusted to address RCs in a few states, however these regulations, specifically scope of practice (SOP) regulations often place RCs at a competitive disadvantage. As RCs continue to grow in the market for health care, public policy must secure their future role in the industry.

Policy Options

Option 1: Expand state regulations regarding scope of practice

Scope of practice (SOP) regulations vary across states and can range from allowing NPs to practice independently to requiring physician oversight of all NP provided care. In limiting the role of NPs, who primarily staff RCs, SOP laws constrict the RC model and limit their ability to provide low cost, convenient care to the consumer. Eliminating excessively restrictive regulations and expanding the legal SOP for NPs would have significant cost-saving implications and allow RCs to further expand, filling a clear market need for basic care.

Federal action will be required in order to transform state measures, specifically the FTC would serve as the federal body responsible for justifying an expansion of SOP practices. The FTC can legally challenge laws it deems to be anticompetitive, giving it oversight in the state legislative process. The FTC would dispute regulations that limiting SOP as they clearly put RCs at a competitive disadvantage in the health care market and have adverse effect on consumer benefits.

Of course, expanding SOP laws has consequences; specifically concerns will be raised over the quality of care delivered by NPs. It is my belief that these concerns are unwarranted, as RCs have thus far seen high consumer satisfaction rates regarding quality of care received. Furthermore, the majority of QOC concerns have been raised by physician's organizations, which have a perverse incentive to keep RC out of the market for basic care.

Option 2: Do nothing; allow the market to regulate retail clinics

The market for health care today is characterized by high costs and a supply shortage, which has resulted a market need for affordable, convenient care. The proliferation of RCs has responded to this need by providing consumers with low-cost, transparent care at convenient hours and locations nationwide. The RC model is the latest innovation in the decentralization of the health care system, moving certain forms of basic from physician's offices and placing them in a retail environment where they face direct competition. Economic theory would suggest that this competition fosters consumer benefits as retail clinics compete with primary care providers, producing an effective distribution of services at the highest benefit to the consumer.

In theory, this is an efficient market in which services are being supplied in response to demand, however, when it comes to public policy, we have to ask if what is best for the market is actually best for the consumer. While provider competition in favor of the consumer is appealing in terms of theory, in reality the market is not so predictable. Consumers, driven by cost considerations, see clear benefits from the use of RCs as opposed to primary care physicians. However, in the scramble to provide care at the lowest cost concerns over quality of care become legitimized. Furthermore, subscribing to a free market ideology brings up the potential for conflicts of interest, specifically with regard to the business component of RCs. The majority of RCs are owned and operated by retailers, giving a direct incentive to encourage patients to utilize on-site facilities for their health care needs.

Option 3: Adopt new legislation specific to RCs

In addressing the lack of regulations specific to RCs, the most obvious solution would be to create a specific regulatory mechanism at the federal level that is tailored to the complexities of the RC model. This federal regulation could then serve as a guide for state regulations and avoid anti-competitive legislation that limits the scope of RCs and places them at a competitive disadvantage in the health care market. The FTC would play a leading role in developing these standards to ensure that they do not violate Stark and anti-kickback laws at the federal level or corporate practice, scope of practice and licensing laws at the state level.

As appealing as a federal policy regarding RCs would be, these clinics are still young operators in the health care industry. It would be wise for federal policymakers to allow RCs to develop and settle within the industry before oversight regulations are put in place. Researchers should take the time to gather more expansive evidence in order to effectively develop an appropriate response to RCs as major players in the future of health care delivery.

Recommendation

Option 1: Expand state regulations regarding scope of practice

The RC model relies on NPs to autonomously deliver basic care to patients because, with lower salaries than physicians, they allow RCs to provide patients with more affordable care. State regulations vary in terms of SOP and the degree of physician oversight required, therefore the services provided by NPs are not determined by their education or training, but rather by the specific state laws under which they work. Allowing NPs to practice to the full extent of their qualifications is not only in the best interest of consumers, but also the entire health care industry. Restrictive SOP regulations would eliminate cost-saving for the health care industry as costs would be driven up by unnecessary physician oversight as well as supplemental care required for treatments that fall outside the scope of NPs.

There are drawbacks to expanding SOP, specifically concerns over QOC and continuity of care which can negatively impact patient health as well as have legal ramifications such as malpractice suits. SOP regulations are often supported based on the argument that they protect patients from receiving substandard care; however, research studies have consistently indicated that NPs are able to provide primary care equal to that of a physician's office and often slightly better than emergency departments. Regarding continuity of care, there is evidence of some fragmentation, however this can be mitigated through new developments in medical technology such as the proliferation of electronic medical records, which would facilitate more successful communication between providers.

The biggest supporters of scope of practice regulations are physician organizations such as the American Medical Association (AMA) and the American Academy of Family Physicians (AAFP); it is my opinion that these organizations have perverse incentives to restrict the practice of NPs. By keeping the supply of non-physician practitioners low, physicians ensure that prices remain high thus insuring their incomes remain high. This rent-seeking behavior, which has more to do with financial incentives than quality of care, could be the driving factor behind some SOP regulations and would support calls for federal reform of state SOP legislation.

Reform of SOP regulations will be implemented by the federal government, specifically the FTC which has the jurisdiction to recommend best practices for the health care industry. The FTC, responsible for consumer protection and fair competition in the market, would target SOP laws on the grounds that they are anti-competitive. Specifically, SOP laws restrict the business practices of RCs by limiting the services they can provide. Furthermore, SOP laws are anti-competitive as they act as a barrier to RCs a new actor in the market for basic care. The FTC would work with state legislatures to ensure that any existing SOP laws are expanded so that consumer benefits are upheld and RCs are not put at a competitive disadvantage.

The health care industry will see an estimated shortage of 40,000 primary care physicians by 2025, this gap in access to basic care is undeniable. It would be irresponsible for the US health care industry to ignore the potential for RCs to fill this gap and support patients who face difficulties accessing basic services. RCs have emerged as an answer to a clear market need for a new delivery method and the health care industry should encourage, not hinder, their development.

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