OPINIONCOMMENTARY   Follow

End ObamaCare's Ban on Physician-Owned Hospitals

A little-known Affordable Care Act provision stifles competition and drives Medicare costs up.

kford and Brian J. Miller

09 pm ET

PHOTO: GETTY IMAGES/ISTOCKPHOTO

What if lawyers weren't allowed to own law firms or chefs weren't allowed to own restaurants? Sounds absurd, but it's a reality for one profession: doctors.

A tiny paragraph in the enormous Affordable Care Act prohibits physicians from building or owning hospitals. Any existing physician-owned hospital built before 2010 is prohibited from growing beyond the size it was when the bill passed. This law limits competition, defies common sense and is likely contributing to higher prices for Medicare and reduced access to treatment for millions of Americans.

For more than 50 years, Medicare has been a presence and source of support for the disabled and elderly. But Medicare is going insolvent. Recent projections estimate that the trust fund supporting Medicare's hospital financing will be unable to pay full benefits in six years.

Government price controls for Medicare have failed to keep costs down, as program costs have grown 5.9% a year over the past decade.

The current political debate has focused on the effects of monopoly power and consolidation across industries, including healthcare. The Biden administration's executive order on competition specifically mentions hospital consolidation and subsequent rising costs. Yet political leaders overlook the most obvious way to increase healthcare options: letting doctor-owned and -managed facilities grow as they did before 2010.

The hospital industry has long argued that physicians cherry-picked healthy patients and preferred those with private insurance as a rationale for supporting the ban on physician-owned hospitals. In response, the Centers for Medicare and Medicare Services in 2007 added an adjustment to hospital payments for sicker patients. Other research shows that physician-owned hospitals had no difference in the number of Medicaid patients compared with hospitals not owned by physicians.

Many for-profit and nonprofit hospitals are saving lives and caring for families. But recent research affirms the power of American entrepreneurship to lower costs and improve quality. Doctors, whether at the bedside or the forefront of scientific innovation, are well-suited to reimagine healthcare operations, lower costs and improve the quality of care.

Specialty physician-owned hospitals focused on cardiology and cardiac surgery were found to deliver higher-quality care than nonprofit hospitals, with lower rates of hospital readmission or mortality for high-risk surgery. Physician-owned specialty hospitals for orthopedic procedures, such as hip and knee replacements, offered lower costs and higher quality than nonprofit counterparts.

CMS sees the value in physician ownership, particularly in high-need areas, as shown through its recent proposed rule on Conditions of Participation for Rural Emergency Hospitals. But the clause relaxing ownership restrictions wasn't finalized owing to vague, unsubstantiated staff unease regarding "program or patient concerns." If it had been, it would have permitted physician ownership of new rural emergency hospitals, which would benefit rural America.

These small hospitals struggle under today's healthcare complexity and costs. Many are forced to sell their operations to larger hospital chains or out-of-state management companies, leaving hospital staff and the communities they serve in the hands of large healthcare companies. Allowing doctors to own and run hospitals would give rural

communities another option to maintain local high-quality care and encourage local investment in existing hospitals.

Existing laws prohibit new physician-owned hospitals from billing Medicare. One of us (Sen. Lankford) is introducing the Patient Access to Higher Quality Health Care Act to solve this problem. This legislation would put patient choice back into hospital markets by allowing doctors to build efficient businesses and better serve patients.

Healthy competition drives job creation, innovation and long-term economic growth. The federal government doesn't prohibit plumbers from owning plumbing companies, radio hosts from owning radio stations or farmers from owning farmers markets. It's time to reopen the free market in healthcare and let the power of competition do its work.

Mr. Lankford, a Republican, is a U.S. senator from Oklahoma. Dr. Miller is an Assistant Professor of Medicine at the Johns Hopkins University School of Medicine and a nonresident fellow at the American Enterprise Institute.