POLICY
PRESCRIPTIONS

SPILLOVER OF MANDATED BENEFITS

The power to regulate health insurance companies rests with the States, with important exceptions. Federal health programs and ERISA plans are exempt from state regulation.

The authors of this study utilize a set of natural experiments enabling them to compare the likelihood of inpatient versus outpatient breast cancer surgery between states that implemented laws which mandate inpatient coverage for such procedures and states without mandates. Instead of looking at the direct effects on patients covered by insurance plans subject to the mandate, the current study explores the indirect effect state mandates have on patients whose insurance plans are exempt from regulation (Medicare patients). It can be assumed that similar indirect effects might exist for patients covered by other insurance types such as ERISA plans (n.b. ERISA, the Employee Retirement Income Security Act, permits "self insured" health insurance plan to be exempt from state regulation. Such exemption often complicates reform efforts at the state level).

The authors selected the time period from 1993-2002 because during this time period many states adopted regulations which forced insurance companies to cover inpatient stays for breast cancer surgery (mastectomy and breast conserving surgery with lymph node dissection) in order to counter a movement towards less costly outpatient surgery led by managed care companies.

Cedric Dark, MD, MPH
is founder and executive editor of Policy Prescriptions. A summa cum laude graduate of Morehouse College, where he received a B.S. in biology, Dr. Dark earned his medical degree from New York University School of Medicine. He holds a master's degree from the Mailman School of Public Health at Columbia University. He is completing his Emergency Medicine residency training at George Washington University and serves as Chief Resident in the 2009-2010 academic year.

POLICY PRESCRIPTIONS

The data sources came from the Surveillance, Epidemiology, and End Results cancer registries of nine states, Medicare-SEER registries, and Lexis-Nexis (for legal statutes).

Trends in the proportion of breast cancer surgeries performed on an outpatient basis showed stagnation in Connecticut and New Mexico which implemented mandates while states without mandates showed a steady and continuous rise in outpatient mastectomies. In California and Georgia, state laws appear to have decreased the proportion of outpatient mastectomy compared to control states.

Several other factors which significantly affect the decision to perform inpatient or outpatient surgery were noted. Sicker patients and those with higher stage cancer were more likely to have inpatient procedures. HMO penetration encouraged breast cancer surgeries to be performed as an outpatient.

Key Points

- Mastectomies and breast conserving surgery can be inpatient or outpatient procedures
- States can indirectly influence care delivery by imposing regulation

Inquiry. 2009/2010; 46: 433-447.

Commentary

A serious flaw of this and most other natural experiments is that while trends are noted, many other reasons might actually account for the apparent difference between states with and without regulations on the site (inpatient versus outpatient) of breast cancer surgery.

For instance, a federal law known as the Women's Health and Cancer Rights Act of 1999 required reconstructive surgery after mastectomy. This would be expected to increase inpatient surgery rates (albeit such expectations should be equal in all states).

Regardless of the flaw of confounding which negates the ability to assume causation, the evidence would suggest that state authorities can effectively change the landscape of health care even for those whose health insurance plans fall outside of state regulatory authority. The strength of this spillover effect in comparison to direct effects of regulation remain unknown.

One theory to explain the mechanism of spillover effects is that in light of such regulations, physicians may adjust their behavior and apply those principles to all patients regardless of insurance status.

Regulation of the health insurance industry is predominantly a state based policy level, however, with the recent passage of the Patient Protection and Affordable Care Act the federal government has exerted a powerful force to promote continuity of coverage by forbidding risk-selection and guaranteeing renewability of policies. The next step for federal regulation will be the battle of defining "minimal creditable coverage." One can anticipate a fierce debate balancing priorities of interest groups with the reality of the cost of regulation on insurance premiums.