

ANOTHER HEALTH-CARE CRISIS: MEDICAL THEFT STINGS

Vast sums of money are stolen from what we spend to delay death, treat pain and overcome disability

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Drug makers AstraZeneca and TAP recently paid \$1.2 billion in Medicare fraud settlements. They were accused of encouraging and helping doctors to methodically overbill for prostate cancer drugs.

The nation's second-largest for-profit hospital chain, Tenet, faces accusations of providing unnecessary heart surgery, systematically overcharging and paying kickbacks to physicians for referring patients to its hospitals.

Officials of Maryland's nonprofit Blue Cross plan supported its sale to a for-profit insurer that bid a lower price but promised them big personal payments.

Theft of scarce health dollars is pervasive and deprives many patients of care today. Cutting health care theft will make it much easier to cover all Americans tomorrow. Today's designers of reforms in Medicare and other programs should therefore incorporate theft-reduction provisions whenever possible. They should, at least, carefully scrutinize policies like Medicare privatization which, in the absence of a free market, may expand opportunities for theft, other things equal.

U.S. health care spending will reach \$1.7 trillion this year, or nearly \$6,000 for each American. That is more than four times the estimated cost of defense spending and double education spending - enough that no American should suffer or die for lack of medical care.

But people do suffer and die unnecessarily. And Americans endure eroding insurance coverage, soaring premium increases and continued worry about quality of care - with little prospect for improvement. A big reason is that theft plus administrative and clinical waste combine to siphon off about half our health spending, slashing the sum available to finance vital care. There is no one, quick, surgical cure-all to these problems. Instead, making health care durably affordable for all Americans will require cutting paperwork, squeezing out unnecessary and incompetent care and shrinking theft. Powerful political forces now block reforms in each area. In time, we will all demand removal of these roadblocks.

Current cases show that theft alone is a grievous problem. Vast sums are stolen from what we spend to delay death, overcome disability and relieve pain. The result is that theft kills - in several ways. Stolen dollars are not available to hospitals or nursing homes to meet patient needs. Thievery distracts attention from ensuring high-quality care. Theft raises health insurance costs, forcing employers or workers to reduce coverage.

Health care theft is increasingly visible today, partly because the federal government recently expanded its enforcement powers and activity. Many of the new tools came in the 1996 Kennedy- Kassebaum bill and the 1997 Balanced Budget Act. These defined new violations, increased penalties for health care fraud and added money for enforcement. Even so, the scale of theft in health care dwarfs efforts to control it, as Malcolm Sparrow, Harvard government professor and former British police investigator, documented in his book "License to Steal." It is suspected that at least \$1 in \$20 spent on health care is stolen. That would be \$83 billion this year, up from \$57 billion only five years ago, as health spending soars.

Convicted and alleged bad actors include large and small firms, and individuals. Theft takes place in hospitals, home health, medical equipment, prescription drugs, nursing homes, insurers, HMOs and all other sectors. Motives range from blatant greed to desperate maneuvers to survive.

There is theft in many forms:

At HealthSouth, a nationwide provider of rehabilitation, outpatient diagnostics and outpatient surgery, top managers were recently indicted or pleaded guilty to various types of fraud;

Bristol-Myers Squibb is paying \$670 million to settle charges that it illegally prevented competitors from marketing generic versions of two of its drugs;

The nation's largest for-profit hospital chain, HCA (formerly Columbia/HCA), has agreed to pay the federal government \$1.7 billion in fines and restitution for fraud and kickback charges;

Fictitious home-health companies bill Medicare for services never provided.

Furthermore, some activity could be outlawed immediately to save wasted health care dollars and stop harming sick people:

Many hospitals and doctors "balance bill" patients far beyond what insurers pay, violating their contracts with insurers;

Many drug makers use patent monopolies to set prices not justified by their products' therapeutic value or by free-market forces;

Many hospital supply companies and pharmaceutical benefits managers allegedly profit from

deals helping their suppliers, thereby betraying their customers.

Together, these illegal and other wasteful acts divert dollars needed to finance care for desperately ill patients - indeed, enough dollars to cover the 40-million-plus Americans who now lack health insurance.

So why is there so much theft in health care? First, because thieves go where the money is - and health care is one-seventh of the economy. The open-ended financing of most health care in the United States creates the illusion that if someone steals, nobody is actually deprived of care, so everyone can keep milking this cash cow.

It doesn't help that payment policies and rates are convoluted, complex and secret. Dozens of different payers pay different prices for thousands of services. Without outside monitoring to keep U.S. health-care financing clean, and without the discipline of free markets to keep health care simple, the mold of thievery thrives in the dark.

But a functioning free market to restrain robbers and to foster efficiency is not achievable because none of its requirements can be met in health care. In a true free market, with many small buyers and sellers, if a company doesn't deliver as promised, or charges high prices, or provides low quality, it loses customers to other sellers. Without that discipline, waste and fraud go unchecked. (Vast theft is one strong indicator that health care is not a free market.)

Even so, many parties pretend that health care is a free market, where those who succeed in enriching themselves must be fulfilling a public need. Drug makers and others are bouncing Adam Smith on his head when they claim that any behavior that boosts their bottom line is evidence that they are doing good by doing well.

Further, while health insurance coverage provides essential protections for sick people, it makes market mechanisms even more unreliable because medical care users are not the main payers. Patients often don't scrutinize their bills, so fraud more easily escapes notice.

Amid pervasive waste and theft, for-profit health-care organizations pose extra risk. Their duty to stockholders is to maximize profits. But to do so, since they're not generally more efficient, the methods available to them are to raise prices, cut quality or steal. Theft seems to be employed frequently. For example, Tenet now faces multiple allegations even though its corporate predecessor paid huge fines in the early 1990s and promised to stay clean. Some nonprofits, also desperate for money, charge for services they don't deliver. The market's financial pressures overwhelm older traditions of charity and service.

One vivid recent experience shows that enforcement can work to save huge sums. A 1997 reform specified harsh penalties on hospitals that overbilled Medicare by exaggerating the severity of patients' illnesses. In response, hospitals have cut bills to Medicare, saving billions of dollars.

Sadly, despite progress, current and contemplated solutions are not remotely commensurate

with the scope of health-care theft or the harm it causes. One reason is that solutions depend on government action, and government is not in fashion. But weak government regulations and weak market forces make for financial anarchy in health care - which allows and even rewards theft.

Slashing theft requires changes in individuals' behavior and morality, and in health-care financing methods. It requires far greater attention and resources to enforce legal standards. It also requires recognition that pathology is remorseless while resources are finite.

Today, using the federal False Claims Act's civil remedies and without having to prove criminal intent, government can negotiate repayment for false Medicare and Medicaid claims - with treble damages plus penalties. One option is to extend the law's civil remedies and whistleblower rewards to theft from private insurers. It might be useful also to offer moderate compensation to patients who report caregivers who bill for services not provided, or who violate insurance contracts by balance billing.

Penalties on individuals or corporations who steal should include serious jail time - not merely tax-deductible fines - because theft kills. But systemic reforms in health care financing will be even more effective than punishment. Several reforms are desirable in themselves and also inherently reduce theft from today's levels - though new opportunities for theft could arise and would need to be forestalled.

Providing coverage for everyone, putting health care on a finite budget and holding organizations responsible for serving groups of patients would raise awareness that stealing harms patients. Rewarding physicians who provide higher quality care will refocus them on their core mission - something most doctors will welcome. Ending financial incentives to under- or overserve will ventilate today's hothouse of phony free market competition.

Simplifying and standardizing financial transactions radically reduces chances to steal. Using simple flexible budgets to pay hospitals, nursing homes and drug makers makes payment transparent. It also means far fewer transactions to manipulate - and to monitor. Another way to simplify: requiring all buyers to pay the same fair price for the same medical service or product, just as happens in a free market, where competition drives prices to converge.

These reforms in health-care payment methods would eliminate many opportunities for theft. Today's health-care spending is enough to finance the care that works for the people who need it. Slashing theft will do much to win for all Americans the competent and compassionate care we require, deserve and already pay for.

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