THE HILL

What the government doesn't understand about health care — over-regulation kills

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With excellence in medical research, innovation and bio-medical technology, America's hospitals attract patients from across the globe. Yet with spending surpassing 3.4 trillion dollars last year, access to quality healthcare for all Americans remains painfully elusive.

In fact, the IOM reports that medical errors continue to cost the lives of Americans, despite healthcare remaining one of the most regulated industries in the country.

At my alma mater Johns Hopkins University, we proudly raised both our hands and pledged, "with these hands I will do no harm." Medicine is a field most of us choose based on a motivation to help people, yet I've observed countless patient safety failures, with preventable medical errors the third leading cause of death in the U.S.

It's clear our government's attempts to regulate health care have had the opposite effect of "do no harm" on patient outcomes. With a surplus of regulations, codes, and penalties on the books, health care professionals are unable to adequately service the patients they've devoted their careers to.

As a result, patients are subjected to escalating costs and increasingly inadequate treatment across the board.

It is something of a paradox: what begins as a well-meaning regulation spirals into more and more medical codes, which have resulted in a massive compliance industry more complicated than the IRS code. The paradox is that this ‘solution’ has constrained medical institutions and professionals, created perverse incentives, and made existing problems worse, from cost to quality of care.

In the Commonwealth Fund, consultant Stuart Guterman wrote that “too much regulation, or the wrong kind, can impede the ability of market forces to do the heavy lifting in determining the amount, mix, and distribution of health care resources.” In other words, regulation gets in the way of the laws of supply and demand, which should keep quality high and prices low.

According to the Mises Institute, U.S. regulations have restricted the supply of physicians, hospitals, insurance and pharmaceuticals while subsidizing demand since the 1980s, thanks in part to the lobbying of special interest groups.

Regulations that seek to lower costs, too, often end up limiting care instead. They create shortages “by making it unprofitable to treat certain patients or to provide the services they need,” the Heritage Foundation explains.

Moreover, regulations severely limit physicians. In an article published by the Cato Institute, general surgeon Jeffrey A. Singer describes how government involvement in health care hurts medical professionals’ ability to do their jobs. It began with the coding system, which “gave doctors and hospitals an incentive to find ways of describing procedures and services with the cluster of codes that would yield the biggest payment”, followed by increasingly tight guidelines, protocols, and requirements. “Being pressured into following a pre-determined set of protocols inhibits clinical judgment,” he writes, “especially when it comes to atypical problems.”

Indeed, such rules override doctors’ instincts to treat patients aggressively or creatively in favor of “systems” that prioritize the bureaucratic directives over real medical knowledge.

Regulations also waste time and resources. According to MGMA (Medical Group Management Association), health-care entities spend a minimum of $40,000 per health-care provider just to stay in compliance with the myriad of regulations.

Physicians spend a large portion of time that could otherwise be spent on patients interacting with insurers on claims, billing, credentialing, pre-authorizations, and more.

More recently, an AHA analysis found that an average-sized hospital dedicates “59 full-time equivalents (FTEs) to regulatory compliance,” one-quarter of which are physicians, nurses and other health-care professionals who would otherwise be caring for patients. An average-sized hospital spends $7.6 million annually on administrative costs alone.

Regulations can also lead establishments or health-care providers to malpractice by creating perverse incentives for doctors and medical institutions alike.

Here’s an example: At Johns Hopkins Hospital a recent lawsuit alleged that the facility prioritized out-of-state patients over Maryland residents. The employee’s lawyer alleged, “Maryland residents aren't profitable for them, so they are filling appointment slots and beds with as many out-of-state residents as possible to meet their revenue goals."

Regulatory measures had capped the revenue that JHH could acquire from Maryland patients, while also prohibiting in-state patients from seeking help elsewhere. So the hospital worked around this to maximize their gains to the detriment of patients.

With malpractice suits on the rise, health-care providers are buying more insurance which raises the cost of their services. Unnecessary testing or treatment (called defensive medicine) serves as a safeguard from litigation.

According to a national physicians' survey by Jackson Healthcare, "75 percent of doctors say that they order more tests, procedures and medicines than are medically necessary in an attempt to avoid lawsuits." Surveys found that roughly 1 in 4 medical dollars are spent on defensive medicine, costing about $650 billion annually.

Last but not least, regulations reinforce industry monopolies. "Studies by experts representing the whole spectrum of political persuasion….have confirmed that regulatory agencies reduce competition at the expense of the public," think tank Cato explains.

Indeed, the current regulatory environment has proven challenging for small medical practices and insurers, resulting in increased consolidation among powerful organizations with powerful counterparts in Washington.

To truly help and not just line the pockets of its partners, the government needs to simplify some regulations and eliminate others entirely. A balance can be struck and we are nowhere close now; with 18 percent of the country's GDP tied to the health-care industry, some would say we're too far gone.

If the government won't budge, and nor will special interests, what can be done? While Democratic-Socialist Bernie Sanders hopes his universal health-care plan would eliminate profit-driven health care, private companies like Amazon, Berkshire Hathaway, and JP Morgan are looking to circumvent this system by taking matters into their own hands.

If only this mindset would extend to more of our elected leaders, we could begin to rectify our broken system and truly do no harm.