Researchers call for better laws covering patient incentives to improve care

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Current federal anti-kickback laws prohibit pharmaceutical companies and providers from bribing patients to seek their goods and services. Unfortunately, the laws also prevent hospitals from offering services that could potentially benefit patients, such as free rides to elderly or disabled patients to help them get to their appointments. In an essay published today in the *New England Journal of Medicine*, researchers from the Perelman School of Medicine at the University of Pennsylvania call for a recrafting of these laws to permit more sensible health-promoting initiatives.

"The current sweeping prohibitions against patient inducements are well intentioned but no longer make sense - sometimes it's good to get patients to seek care," said lead author Krisda H. Chaiyachati, MD, MPH, a fellow in the VA Robert Wood Johnson Clinical Scholars Program at Penn Medicine.

The authors propose that laws restricting patient inducements should put more emphasis on the value of the services that patients are being nudged to seek.

"We believe that if inducements encourage patients to seek high-value services, they shouldn't be viewed negatively," Chaiyachati said.

Anti-kickback laws are considered necessary in the American healthcare system because Americans seldom face the actual costs of their prescription drugs or healthcare services - typically government or

private insurers share the costs. Thus, even a small inducement may be enough to persuade a patient to seek an expensive drug or healthcare service, even when the actual value is low, because others are footing the bill. One important law, the federal Anti-Kickback Statute, is designed to block such practices, at least among providers receiving federal dollars, by outlawing financial inducements (beyond a nominal value of $15) that may increase referrals for publicly or privately insured patients.

The problem is that laws with such broad prohibitions may end up throwing the baby out with the bathwater. As the authors of the essay note, recent changes in health insurer practices in America, such as the penalizing of providers for care failures resulting in hospital re-admission, ought to shift our thinking. "Encouraging patients to get low value and expensive care is a problem," says David A. Asch, MD, MBA, a professor of Medicine at the Perelman School and of Healthcare Management at the Wharton School at the University of Pennsylvania, and a co-author on the report. "But encouraging patients to get care means something entirely different when that care aims to prevent something bad and even more expensive."

"Services that would never have been considered under traditional payment models, such as providing low-salt food parcels for patients with heart failure, are now seen as potential ways to avert re-admissions and associated penalties," Chaiyachati said.

As an example, the researchers suggest a rideshare program in collaboration with Uber or Lyft could help get Penn Medicine patients to their primary care appointments, but some of the higher end services could be viewed as prohibited inducements under the Anti-Kickback Statute.

The team suggests that such laws be altered to better distinguish

inducements for high-value services that provide medical benefits at reasonable prices from inducements for low-value services that mostly benefit providers' profit margins. "We are judging these inducements based on what they cost, not on what they deliver," says David Grande, MD, MPA, an assistant professor of Medicine at the Perelman School of Medicine, director of Policy at Penn's Leonard Davis Institute of Health Economics, and the third of the essay's authors.

Specifically the laws could, for example, treat inducements according to who pays for them. "Graft is less likely when inducements come from parties with greater risk sharing," Chaiyachati said. The laws also could treat inducements according to the type of care they promote, such as standard forms of preventive care. "Probably any of these approaches would be better than what we have now," he added. "In general, we should start thinking of some of the inducements that are currently prohibited as positive tools for driving high-value care."

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