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The Fight for Birth

Jessica E. Brown

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Key Implications

- **States should create the conditions that tamper incentives obstetricians have for over-medicalizing births, and increase incentives for midwives and obstetricians to collaborate. First, states should closely regulate insurance reimbursement rates so that doctors are not reimbursed in a piecemeal or a la cart way.**
- **By paying doctors for labor rather than discrete services, we discourage the over-use of C-sections among other interventions that highly remunerated.**
- **States should incentivize cooperation between doctors and home birth midwives by requiring insurance companies to reimburse doctors who cooperate with midwives in both hospital and home birth settings.**

Background

The United States has the most expensive maternal and infant care system in the world, yet it also has the highest rate of maternal and infant mortality of any wealthy country. This paradox is a direct result of the economics of birth care. Evidence from other developed countries suggests that midwife-assisted childbirth — both in the hospital and at home — is safe and cost-effective. In the United States, however, conditions for childbirth are determined in a marketplace that includes for-profit hospitals and clinics. The vastly different approach to childbirth that exists between these countries poses the question of which policies and regulations is the best available option — private hospitals and birthing centers, public hospitals and clinics, or home births?

Focus of Study

To address these questions, my article in the University of San Francisco Law Review analyzes the history of the state regulation of midwifery as well as legal and policy challenges to these regulations. I begin by discussing the history of midwifery and the current state of midwifery in the United States.

I go on to examine litigation initiated by midwives against statutory limitations and licensing requirements under theories of substantive due process, the right to privacy, and conspiracy in restraint of trade. Then, I explore disparate policy and state regulations — or lack of regulations — for midwives, and how those policies affect consumers. Finally, I offer recommendations for new state regulations.

Statistics

In the United States, childbirth is an industry, but in most countries around the world childbirth is a part of an overall healthcare system. In the United States, obstetricians—who are trained surgeons—provide most prenatal care. Additionally, obstetricians attend the vast majority of births. Fully one-fifth of all health care expenditures in the United States are spent on maternity. Prenatal, childbirth, and newborn care make up a \$111 billion dollar industry. Yet the United States ranks sixtieth in the world overall in maternal mortality deaths, which is below all other developed nations.

In contrast, seventy-percent of European women give birth assisted by midwives in hospital settings and all European countries have lower infant and maternal mortality rates than the United States. Unlike the recommendation by the American College of Obstetricians and Gynecologists (ACOG) for women to give birth in hospitals attended by obstetricians, the agencies that regulate maternity care in the United Kingdom and the Netherlands recommend midwives for uncomplicated pregnancies and home births. The U.K.'s National Institute for Health Care Excellence issued a report that stated, "evidence now shows midwife-led units to be safer than hospital[s] for women having a straightforward (low risk) pregnancy," and "[r]esearch also shows that a home birth is generally safer than hospital[s] for pregnant women at low risk of complications who have given birth before."

The Netherlands medical structure also incorporates midwives in the interest of economic efficiency and because Dutch women prefer home births. Significantly, the Netherlands has a 0.002% neonatal mortality rate, and a 0.007% maternal mortality rate.

In the U.S in 2012, the neonatal and maternal mortality rates in the U.S. for that year were double those of the Netherlands—0.004%, and 0.014%, respectively. What forces drive the United States to maintain a health care industry that is more expensive yet has poorer outcomes than those evident throughout Europe? In contrast to Europe, the U.S. maintains a system that is largely driven by the hospital industry, rather than best health care practices.

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Recommendations

The challenge then for health care policy makers and health care providers is to transform maternity care from an industry beset by competing economic interests in which providers are motivated primarily by a desire to maximize their economic interests to a maternity system in which lowering maternal and fetal mortality rates are the primary goals.

Such radical change is unlikely to be forged in U.S. Courts under due process or right to privacy theories that challenge state regulations. It is also less likely to result from anti-trust suits against hospitals and doctors, or filings with the FTC to break up local provider monopolies. The fastest way to affect such a change would be through comprehensive legislation and regulation.

Learn More About This Brief

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The Study:

University of San Francisco Law Review, Vol 52, 2017-2018, <http://ssrn.com/abstract=3141375>

The Brief:

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