Assessing Provider Consolidation and Effects on Prices

State Policy Seminar: Levers to Address Health Costs
June 6, 2022
○ Assessing Provider Consolidation and Effects on Prices
  • Erin Fuse Brown, JD, MPH, Georgia State University College of Law
○ Give and Get Conversation
○ Large Group Share Out
Assessing Commercial Health Care Prices

- Cost growth benchmarks
- Value-based payment arrangements
- Price transparency
- Premium rate review
- Public option plans
- Consolidation oversight and provider-insurer contracting

HEALTH

Addressing Commercial Health Care Prices

POLICY SNAPSHOT
Assessing Provider Consolidation and Effects on Prices

Erin C. Fuse Brown, JD, MPH
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When Hospitals Merge to Save Money, Patients Often Pay More

By Reed Abelson
Nov. 14, 2018

Jennifer Lamptey, a radiologic technologist, adjusting a CT scan at the Saint Raphael campus of Yale New Haven Hospital, part of a bigger system set to control a quarter of Connecticut's hospital beds. Christopher Capozziello for The New York Times
Consolidation drives prices higher

- It all comes down to **market power**
- Market power is amassed through **consolidation** (horizontal mergers, vertical consolidation, joint ventures)
- Higher priced providers are **not** higher quality
Health care consolidation trends

% of markets that are highly concentrated:
- 90% of hospital markets
- 65% of specialty physician markets
- 57% of insurer markets
- 39% of primary care markets

Types of consolidation

- **Horizontal, vertical, cross-market**
- **Buyers:** other providers, payers, private equity
- **Types of transactions:** mergers, acquisitions, affiliation agreements, joint contracting, joint ventures
Hospital consolidation

• 1,629 hospital mergers from 1993-2017

• 90% of hospital markets are highly concentrated

• In most markets a single hospital controls >50% of market share

Vertical consolidation on the rise

From 2010-2018, hospital ownership of physician practices increased 89% (from 24%-46%)

Most transactions are too small to receive antitrust review

Evidence of the impact of consolidation

Clear evidence that provider consolidation significantly ↑ prices

- Horizontal hospital consolidation increases prices 20-60% (Cooper et al. 2020)
- Horizontal physician consolidation increases prices 8-26% (Austin & Baker 2015)
- Vertical consolidation associated with 14.1% increase in physician prices (Capps, Dranove, Ody 2019)

Mixed evidence on consolidation’s impact on quality

- Hospital mergers did not affect patient outcomes, readmissions, or mortality, but patient satisfaction declined (Beaulieu et al. 2020)
- Hospital ownership of physician practices led to higher readmission rates and no better quality measures (McWilliams et al. 2013, Neprash et al. 2015)
### What can states do to address provider consolidation?

<table>
<thead>
<tr>
<th>Policy Approach</th>
<th>Tools</th>
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| 1. Gather data                       | • All-payer claims databases  
• Enhanced hospital financial reporting and hospital cost analysis                                                                  |
| 2. Active state purchasing           | • Reference-based pricing for state employee health plan  
• Renegotiate/Re-procure state employee PBM contract                                                                                 |
| 3. Mitigate consolidation and abuses of market power | • Pre-transaction review and approval  
• State AG action against anticompetitive conduct  
• Banning anticompetitive health insurance contract terms                                                                           |
| 4. Oversee health care cost growth   | • Health care cost growth benchmarks                                                                                                |
| 5. Regulate provider rates           | • Health insurance rate review – affordability standards  
• Limit outpatient facility fees  
• Public option  
• Out-of-network price caps  
• All-payer model, global hospital budgets                                                                                   |
Pre-transaction notice, review, approval

**Authority granted:** Require prior notice, review, approval of health care transactions by State Attorney General and/or health agency. Review should include impact on competition, costs, access, public interest. Authorize conditional approvals, consent decrees, and post-transaction oversight.

**Scope:** Can apply to a range of provider types (including physicians), purchasers (including private equity), nonprofit and for-profit, and transactions (change of control, other material changes). Can include smaller transactions that “fly under the radar” below Hart-Scott-Rodino reporting threshold ($101 million in 2022).

**Examples:**
- Oregon HB 2362 (2021) enacted
- California AB 2080 (2022) passed Assembly, moved to Senate
- MASS. GEN. LAWS ch. 6D § 13
- CONN. GEN. STAT. § 19a-639f

**Resources:**
- NASHP model law and policy brief on health care transaction review and approval
Ban anti-competitive health plan contract terms

Authority granted: Legislatively ban use of anticompetitive health plan contracting terms. Makes the use of these terms presumptively unlawful under state consumer protection and antitrust laws.

Anticompetitive terms: All-or-nothing contracting; Anti-tiering or anti-steering clauses; gag clauses; most-favored nation clauses; exclusive contracting.

Examples:
- Nevada SB 329 (2021) – enacted
- Indiana HB 1117 (2022) - introduced
- California AB 2080 (2022) – passed Assembly, moved to Senate

Resources:
- NASHP Model law and policy brief to prohibit anticompetitive health plan contracting
Attorney General Action: Challenging Anticompetitive Conduct

• State AG uses parallel antitrust enforcement authority to challenge anticompetitive conduct (e.g., all-or-nothing contracts, MFNs, anti-steering, raising prices)

• Resource-intensive, would be supported by legislation making anticompetitive contract terms presumptively unlawful

• Examples:
  • Becerra v. Sutter Health (CA)
  • United States v. Charlotte-Mecklenburg Hosp. (Atrium case) (NC)
  • State of Washington v. Franciscan Health System (WA)
Thank you!

Erin C. Fuse Brown, JD, MPH
In groups of 2-3 people...

**Give:** Share a strategy your state has pursued, or something you are considering doing, related to provider consolidation and health care prices.

- E.g., Indiana established a legislative committee to study health care market concentration.

**Get:** Ask a question or seek advice over some aspect of provider consolidation and health care prices.

- E.g., What state agencies or industry stakeholders should I collaborate with on this topic?

Give and Get Conversation
NCSL Resources

- Health Costs, Coverage and Delivery State Legislation
- Assessing Commercial Health Care Prices (June 2022)
- Health Care Costs 101: What’s a State to Do? (May 2022)

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