



# 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



## Agenda

# 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

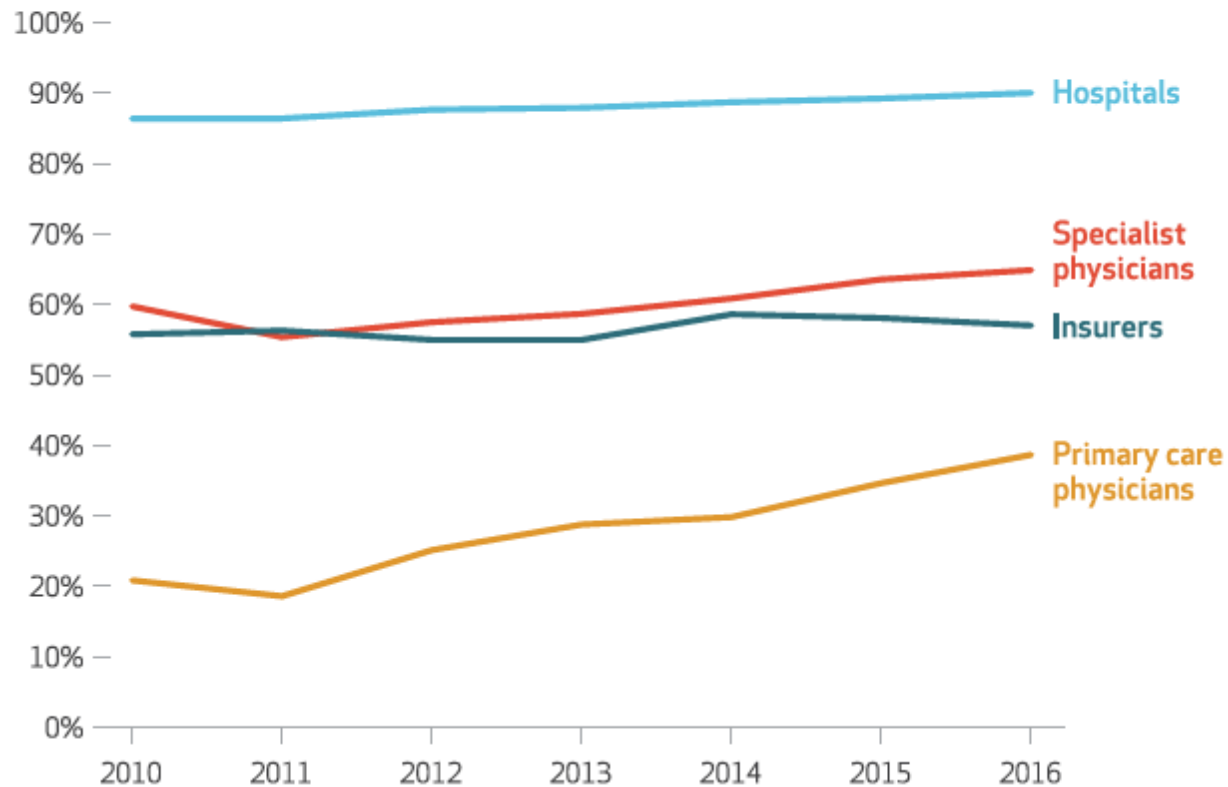
- It all comes down to **market power**
- Market power is amassed through **consolidation** (horizontal mergers, vertical consolidation, joint ventures)
- Higher priced providers are **not higher quality**



# Health care consolidation trends

## EXHIBIT 2

Percentages of Metropolitan Statistical Areas (MSAs) whose Herfindahl-Hirschman Index (HHI) was above 2,500 for hospitals, physician organizations, and health insurers, 2010-16



**% of markets that are highly concentrated:**

90% of hospital markets

65% of specialty physician markets

57% of insurer markets

39% of primary care markets

Source: Fulton, BD. Health Care Market Concentration Trends in the United States: Evidence and Policy Responses. Health Affairs. 2017;36(9):1530-1538.

# Types of consolidation

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

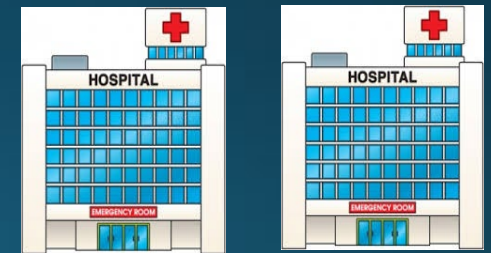
## Horizontal



## Vertical



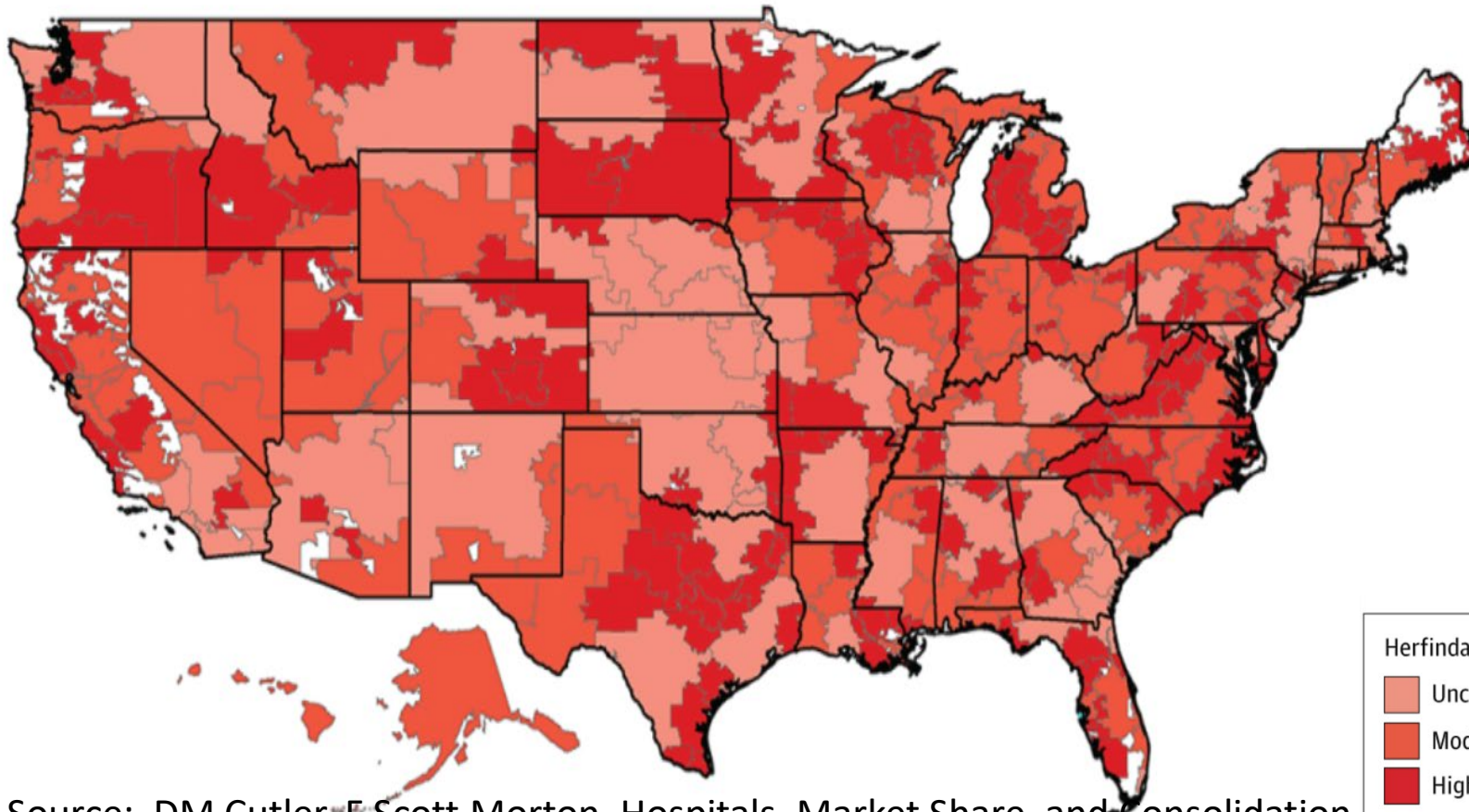
## Cross-Market





# Hospital consolidation

## A Hospital referral regions



- 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

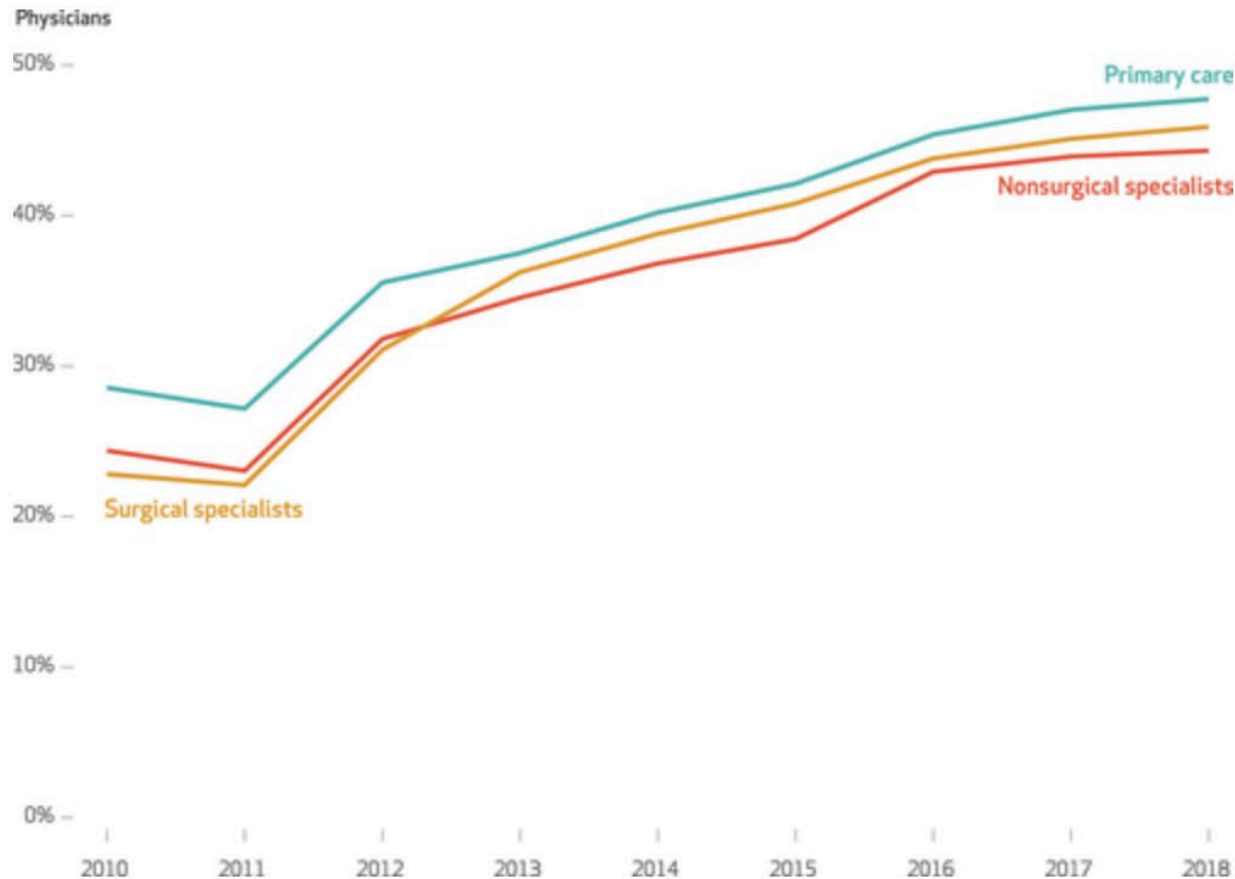
Source: DM Cutler, F Scott Morton, Hospitals, Market Share, and Consolidation, JAMA. 2013;310(18):1964-1970

### Herfindahl-Hirschman Index (HHI) of Market Concentration

- Unconcentrated (HHI 100 to <1500)
- Moderately concentrated (HHI 1500 to <2500)
- Highly concentrated (HHI ≥2500)
- Not located in any hospital referral region

# Vertical consolidation on the rise

**Exhibit 1** Percent of US physicians in practices owned by hospitals or health systems, by specialty group, 2010–18



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?

Policy Approach	Tools
<b>1. Gather data</b>	<ul style="list-style-type: none"><li>• All-payer claims databases</li><li>• Enhanced hospital financial reporting and hospital cost analysis</li></ul>
<b>2. Active state purchasing</b>	<ul style="list-style-type: none"><li>• Reference-based pricing for state employee health plan</li><li>• Renegotiate/Re-procure state employee PBM contract</li></ul>
<b>3. Mitigate consolidation and abuses of market power</b>	<ul style="list-style-type: none"><li>• Pre-transaction review and approval</li><li>• State AG action against anticompetitive conduct</li><li>• Banning anticompetitive health insurance contract terms</li></ul>
<b>4. Oversee health care cost growth</b>	<ul style="list-style-type: none"><li>• Health care cost growth benchmarks</li></ul>
<b>5. Regulate provider rates</b>	<ul style="list-style-type: none"><li>• Health insurance rate review – affordability standards</li><li>• Limit outpatient facility fees</li><li>• Public option</li><li>• Out-of-network price caps</li><li>• All-payer model, global hospital budgets</li></ul>

# 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
- Montague, Gudiksen, King, “[State Action to Oversee Consolidation of Health Care Providers](#),” Milbank Issue Brief (2021)

# 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
- Gudiksen, Montague, King, “[Mitigating the Price Impacts of Health Care Provider Consolidation](#),” Milbank Issue Brief (2021)

# 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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