AB 1132 Health Care Consolidation & Contracting Fairness Act of 2021
Assemblymember Jim Wood

THE PROBLEM

The most recent data available for California indicate that health care spending in the state totaled $292 billion in 2014. According to the January 2020 California Health Care Foundation (CHCF) report entitled *"*Getting to Affordability: Spending Trends and Waste in California's Health Care System," per capita spending has grown steadily over time for all sources of coverage, employer-sponsored insurance, Medi-Cal, Medicare, and private health insurance. Private health insurance coverage faced the highest growth rates at 4% per year. Most of the spending comes from inpatient hospital stays and office-based medical provider services ($60 billion each) followed by prescription drugs ($45.6 billion).

Increasing access to health care is a goal that cannot be accomplished without controlling health care costs and certain practices within the health care marketplace are contributing to these increases.

EXISTING LAW

Establishes the state Department of Justice and the Attorney General (AG) to bring civil and criminal legal actions against individuals and businesses acting in restraint of trade under the Cartwright Act, which is the state's antitrust law prohibiting anti-competitive activity, mirroring the federal Sherman Antitrust **Act** and the Clayton Antitrust Act. Current law also requires any **nonprofit corporation** that operates or controls a health facility, regardless of whether it is currently operating or providing health care services or has a suspended license, to provide written notice to, and obtain the written consent of, the AG prior to entering into any agreement or transaction to sell, transfer, lease, exchange, option, convey, or otherwise dispose of, its assets to a for-profit corporation or entity, or another nonprofit corporation, or transfer control, responsibility, or governance of a material amount of the assets or operations of the non-profit corporation to any for-profit corporation or entity, or another nonprofit corporation.

BACKGROUND

The AG filed a lawsuit in March 2018 that followed an investigation into the practices of the state's health care systems due to the wide disparities between Northern and Southern California health care costs. The lawsuit was meant to address allegations of anti-competitive behavior by Sutter Health, a large hospital system in Northern California. A UC Berkeley report found evidence that the consolidated market in Northern California has led to higher prices for consumers, finding that the average hospital inpatient procedure cost was $131,586 in Southern California and $223,278 in Northern California.

In December 2019, Sutter Health agreed to pay $575 million to settle claims of anti-competitive behavior brought by the AG, as well as unions and employers. The settlement will be used to compensate employers, unions and the state and federal governments. Sutter Health will also be prohibited from engaging in several practices that the AG said the hospital system used to ensure its market power. Sutter will be barred from "all or nothing" agreements, which the AG said required insurers to include all of Sutter's medical facilities if they wanted to include some of the system's hospitals in their provider networks. The settlement also limits what Sutter Health can charge patients for out-of-network services, which will prevent people from facing surprise medical bills.

BILL SUMMARY

AB 1132 expands the Attorney General's existing authority to approve or deny a change in ownership of a nonprofit health facility to include oversight and approval or denial of for-profit changes in ownership and control. The bill also prohibits health care providers, insurers, health plans and health care facilities from engaging in unfair contracting practices, many brought to light by the Sutter settlement discussed above, which impede competition and raise health care prices.

Prohibited contracting practices in AB 1132 are:

Most Favored Nation (MFN) Clauses: a guarantee that a buyer of goods or services (i.e., an insurer)

receives terms from a seller (i.e., a hospital or provider) that are at least as favorable as those provided to any other buyer, also known as price parity clause or prudent buyer clause.

All-or-nothing Clauses: a requirement that an insurer contract with all facilities in a health system if it wants to include any facilities in the plan. Provider organizations typically use all-or-nothing provisions to leverage the status of their must-have facilities.

Anti-tiering/Anti-steering Clause: a contractual requirement that an insurer place all physicians, hospitals, and other facilities associated with a hospital system in the most favorable tier of providers (i.e., anti-tiering) or at the lowest cost-sharing rate to avoid steering patients away from that network (i.e., anti-steering), also known as anti-incentive clause.

Gag Clauses (Price Secrecy Provision): a contractual agreement in which providers and insurers prevent patients or employers from knowing the negotiated rates and other costs of health care services.

Exclusive Contracting Clause: a contractual agreement in which a provider prevents the insurer from contracting with other competitive providers. Under the umbrella of exclusive contracting are exclusive dealing provisions and tying arrangements.

Finally, AB 1132 expands regulatory oversight over certain health plan transactions, including when a health plan merges or acquires other entities, like a provider group.

SUPPORT

FOR MORE INFORMATION

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