Confronting Consolidation as Key Driver of High Health Costs

AB 2080 (Wood) & AB 1130 (Wood)

As Californians clamor for more affordable health care, we must confront the underlying costs drivers of our care. A growing number of academic studies are showing that a key cause of high health care costs is the increasing consolidation of the health care industry, particularly among health care providers, including doctors and hospitals. Research shows that **mergers and takeovers do not improve quality or equity**, but instead **drive higher prices**. Health care prices have less to do with the cost of providing the care, the quality of care, or the health outcomes than with the relative size and market power of health providers to be able to charge what they can. **In health care, bigger is often not better, just more expensive.**

California legislators have the opportunity in 2022 to help control the high cost of health care through bold efforts to address consolidation. Two bills by Assembly Health Committee chair Dr. Jim Wood would increase state oversight on mergers and acquisitions that are transforming our health system and address the existing consolidation that has already led to high health costs by preventing anti-competitive contracting provisions (in AB 2080) and setting enforceable targets for cost growth (in AB 1130).

The California Health Care Market is Highly Consolidated

Academic research suggests the California market is already highly concentrated and getting more so. Without much scrutiny, the health system has been changing and getting even more consolidated.

Physicians: More and more physician practices are being bought up, with consolidation only accelerating. As of 2018 in California, 52% of specialists and 42% of primary care doctors were in practices owned by a hospital or health system.[i] This problem is particularly acute in the Bay Area and the greater Sacramento area, where physician concentration ranged from 78% of specialists and 70% of primary care doctors in Sacramento to 47% of specialists and 58% of primary care doctors in Alameda.

Still more doctors are in practices owned by health insurers, like Optum[ii], which has 3,700 primary care doctors and 11,000 specialists in Southern California. Others are affiliated with large groups like Vituity[iii] (over 5,000 doctors), TeamHealth[iv], Envision[v] and more.

Hospitals: Across California hospitals are highly consolidated, at twice the level used by the Federal Trade Commission and federal Department of Justice to measure "highly concentrated" markets.[vi] The Sutter settlement of over half billion dollars was based directly on the question of that hospital chain's use of its size and market power to drive up prices. Sutter is not the only growing hospital chain in the state. Many health plans and insurers in California also exceed the threshold for "highly concentrated" markets.[vii]

Market Consolidation = Higher Prices, Lower Quality, Reduced Access

Academic research and past experience shows these mergers lead to higher prices, with post-merger prices increasing 20% to 40% for hospitals and 10% to 20% for physician practices.[viii] As one study concluded, "A growing body of scholarship demonstrates harm to competition from passive joint ownership of relatively small stakes in multiple competitors in a single market...even small, passive investments in multiple companies in the same industry can have a significant anticompetitive effect, driving up prices."[ix]

In particular, research shows little improvement in quality, or even negative effects, from these mergers.[x] "The bulk of the research evidence, however, finds that these efficiencies are not consistently borne out and that quality suffers in highly concentrated markets, and multiple studies find higher patient mortality for some conditions."

Finally, many mergers result in reduced access to care:

- In merger after merger involving non-profit hospitals, these hospitals have proposed to close services or even entire hospitals, sometimes the only source of that service in a community, post-merger. In several cases, California's Attorney General has had to step in to prevent this.
- For almost 30 years, California Attorneys General have imposed conditions on non-profit hospital mergers to protect emergency rooms, labor and delivery, access to reproductive health, and many other hospital services.
- There is also no clear evidence of improvements in health equity due to mergers. Little or none of the literature on health care consolidation directly examines the impacts on health equity but if prices are higher, quality is lower and access to care is reduced, it seems logical to conclude that health disparities would be worsened.

Policy Solutions to Control Health Costs

AB 2080 (Wood): Health Care Consolidation and Contracting Fairness Act

First, AB 2080 would prohibit specific anti-competitive behaviors by:

- physicians, other health professionals
- hospitals,
- health plans and health insurers.

AB 2080 would curb anti-competitive behavior by prohibiting practices such as "tying," or "exclusive dealing," anti-competitive practices that required health plans to contract with an entire hospital network and associated medical groups, regardless of the cost or quality. The bill would also prohibit contract provisions that prevented disclosure of provider-specific cost or quality information by doctors, hospitals, health professionals or health plans and insurers about doctors, physician groups, hospitals, or health systems.

Second, AB 2080 would strengthen and expand the existing authority of the Attorney General and the Department of Managed Health Care to review mergers and acquisitions.

For almost thirty years, California Attorneys General of both parties have stepped into non-profit hospital mergers to assure communities that:

- Their hospital would remain open.
- Important services like emergency rooms, labor and delivery, reproductive health, LGBTQ services, and more would continue to be provided to the community. This was authority used by Attorneys General from Republican Dan Lungren to Bill Lockyer, Kamala Harris, Xavier Becerra and Rob Bonta.
- In recent years, Attorneys General Becerra and Bonta have also imposed conditions aimed at preventing anti-competitive behavior and excessive price increases post-merger.

The Attorney General's century-old authority involves broad authority over market conduct, including anti-competitive behavior. It was this authority that allowed Attorneys General to engage in the Sutter litigation about its anti-competitive behavior that drove up costs in Northern California.

AB 2080 would build on these longstanding bodies of law by expanding AG review beyond non-profit hospital mergers to also include mergers, acquisitions and other transactions involving medical groups, health systems, pharmacy benefit managers, health plans, health insurers, and hospitals. This includes oversight over for-profit, district and public hospitals for transactions valued at over $5 million or transactions in which governance, control or responsibility is shifted. It does exempt non-physician health professionals or ambulatory surgery centers from this review.

As with non-profit hospital transactions, the Attorney General could approve, deny or "approve with conditions" any such transaction. AB 2080 requires the Attorney General to look at the impact of the transaction on factors substantially similar to the review of non-profit hospital transactions:

- Market competition or costs for consumers, payers, or purchasers of health coverage
- Whether the transaction will improve the quality of care, including culturally appropriate care
- Whether the transaction will affect access to care or availability of care
- Whether the transaction is in the public interest
- And whether it helps to maintain access in a rural area

The Attorney General would have 90 days to act. Generally, transactions of this magnitude have been in the works for many months or years before the parties approach the Attorney General. The Attorney General is required to hold a public meeting if a transaction is a "major" transaction, an existing definition applied to health care service plan transactions or nonprofit hospital transactions for hospitals and health systems.

AB 2080 also expands the authority of the Department of Managed Health Care to review mergers and acquisitions involving health plans by adding situations in which the health plan is acquiring another entity. Current law, AB 595 (Wood) of 2018, applies only when a health plan is being acquired, not when the plan is acquiring another entity. For example, when United health plan bought Optum and then merged it with several other medical groups to create an entity with almost 15,000 doctors, that was not subject to AB 595. AB 2080 would close that gap.

AB 1130 (Wood)/Budget Trailer Bill: The Office of Health Care Affordability

Since many parts of the California health care market are already consolidated and suffering high prices without demonstrable improvements in access, quality, or equity, the state should seek greater oversight to curb these rising costs. AB 1130 (Wood) would impose enforceable cost growth targets intended to slow

the rate of rising health care costs without undermining quality, equity, access, or workforce stability. AB 1130 would also encourage the use of primary care and behavioral health as well as alternative payment methods such as capitation and global budgets.

Health care entities that pursue the "quadruple aim" of lower costs, higher-quality care, better outcomes, and reduced disparities should be able to achieve all these objectives simultaneously. A concrete example would be reducing emergency room visits for pediatric asthma through diagnosis and care management: a win-win in terms of costs and better care—and happier children and parents when an ER visit is avoided. Penalties for hospital readmissions initially failed to account for the patient mix of hospitals, penalizing urban hospitals serving low-income communities while rewarding for-profit hospitals without emergency rooms in the South serving more affluent communities. Subsequent interventions have corrected this.

Health insurance premiums paid by California employers for worker-only coverage have quadrupled in the past 20 years. This far exceeds the rate of inflation and has contributed to the lack of growth in wages for most workers, particularly those in the bottom 80% of the income distribution. The Office of Health Care Affordability would create a voice for the purchasers of health care, including consumers, workers, employers, and other purchasers. In the current environment, when hospital prices go up or drug prices are hiked or doctors consolidate into large groups, the insurers and health plans just pass on the costs and expect purchasers to pay and workers to do without wage increases.

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[i] The Sky's the Limit: Health Care Prices and Market Consolidation in California (chcf.org), p. 20

[ii] Who We Are | Optum California (optumcare.com)

[iii] Vituity Healthcare & Medical Staffing Services

[iv] Locations - TeamHealth

[v] Sheridan-EmCare (envisionphysicianservices.com)

[vi] The Sky's the Limit: Health Care Prices and Market Consolidation in California (chcf.org), p. 19

[vii] The Sky's the Limit: Health Care Prices and Market Consolidation in California (chcf.org)

[viii] Markets or Monopolies? Considerations for Addressing Health Care Consolidation in California (chcf.org), Dafny, 2009; Haas-Wilson and Garmon 2011; Tenn, 2011; Gaynor and Town 2012; Boozary et al, 2019; Burns et al., 2015; Capps, Dranove and Ody, 2018, Baker, Bundorf et al., 2014; Lewis & Pflum, 2016; Dafny, Ho & Lee 2019,

[ix] "Soaring Private Equity Investment in the HealthCare Sector: Consolidation Accelerated, Competition Undermined and Patients at Risk", Scheffler, Alexander and Godwin, Petris Center, UC Berkeley, 2021.

[x] Markets or Monopolies? Considerations for Addressing Health Care Consolidation in California (chcf.org); Gaynor et al. 2013; Koch et al 2018; Short and Ho 2019; Beaulieu, Dafny, et al., 2020; Hayford, 2011, McWilliamset al. 2013; Neprash et al. 2015; Short and Ho, 2019.