

CONSOLIDATION OF HEALTH CARE PROVIDERS

Connecticut Office of Health Strategy
Physician Practice Workgroup
February 10, 2022

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THE SOURCE
ON HEALTHCARE PRICE & COMPETITION





\$60



\$69



\$170

Source: Institute of Medicine, Best Care at Lower Cost: The Path to Continuously Learning Health Care in America (2013) updated to 2021 dollars with the Federal Reserve Bank Consumer Price Index Inflation Calculator.

WHAT IF THE PRICE OF FOOD INCREASED LIKE THE PRICE OF HEALTH CARE?

TheUpshot

Hospitals and Insurers Didn't Want You to See These Prices. Here's Why.

By [Sarah Kliff](#) and [Josh Katz](#) Produced by [Rumsey Taylor](#)

Aug. 22, 2021

At Memorial Regional Hospital, in Florida, an **M.R.I.** costs ...

\$1,827

with a Cigna plan.

\$2,148

with a Humana plan.

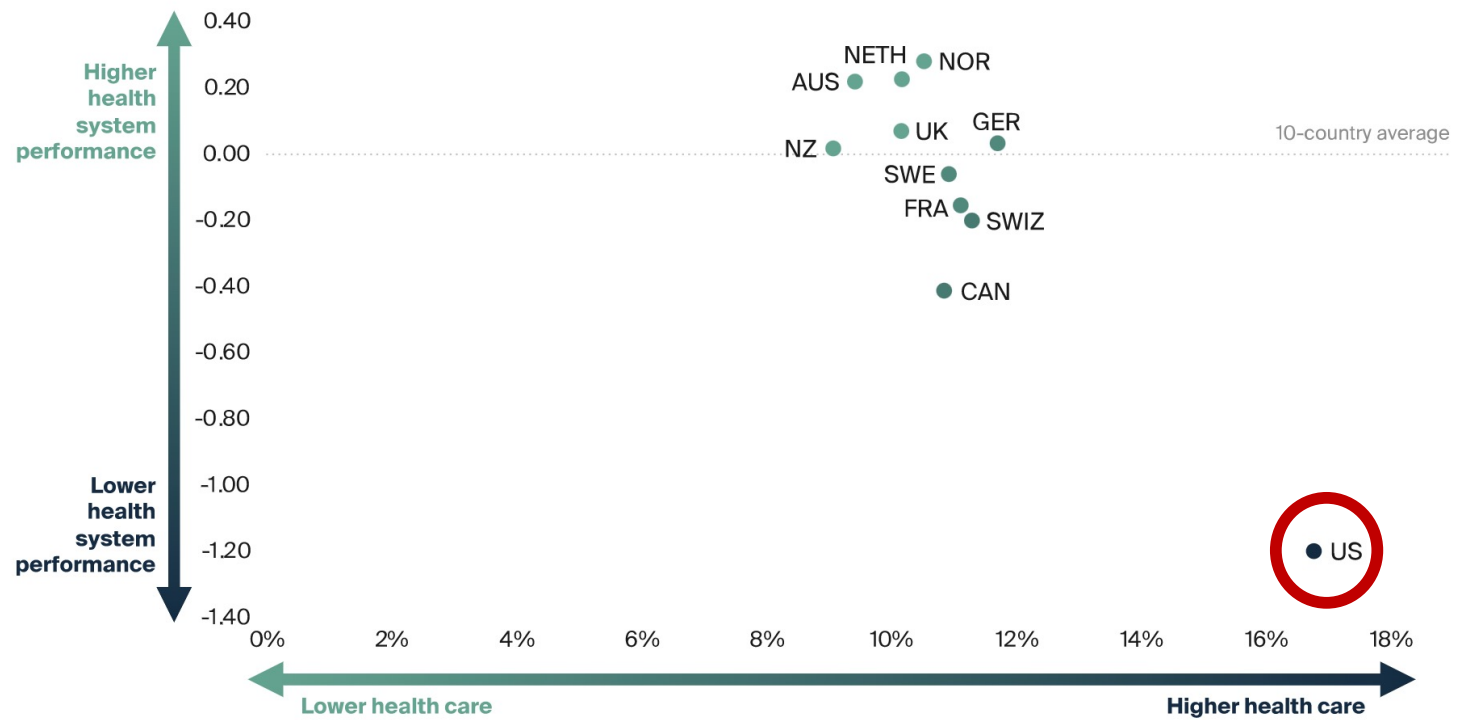
\$2,455

with a Blue Cross plan.

\$262

with a Medicare plan.

Nation Health Care System Performance and Spending



Source: Eric C. Schneider et al., *Mirror, Mirror 2021 – Reflecting Poorly: Health Care in the U.S. Compared to Other High-Income Countries* (Commonwealth Fund, Aug. 2021).

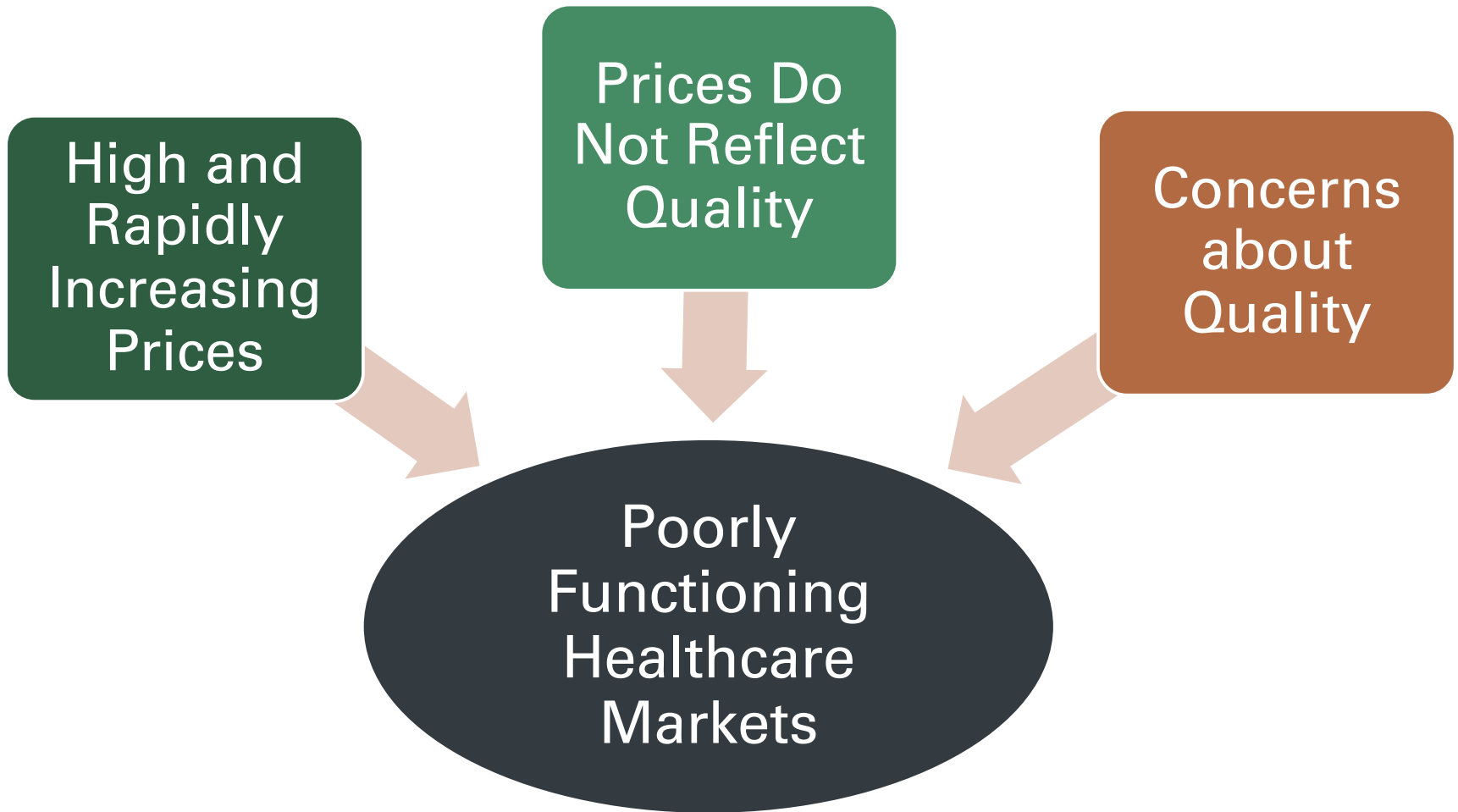
<https://doi.org/10.26099/01DV-H208>

High and
Rapidly
Increasing
Prices

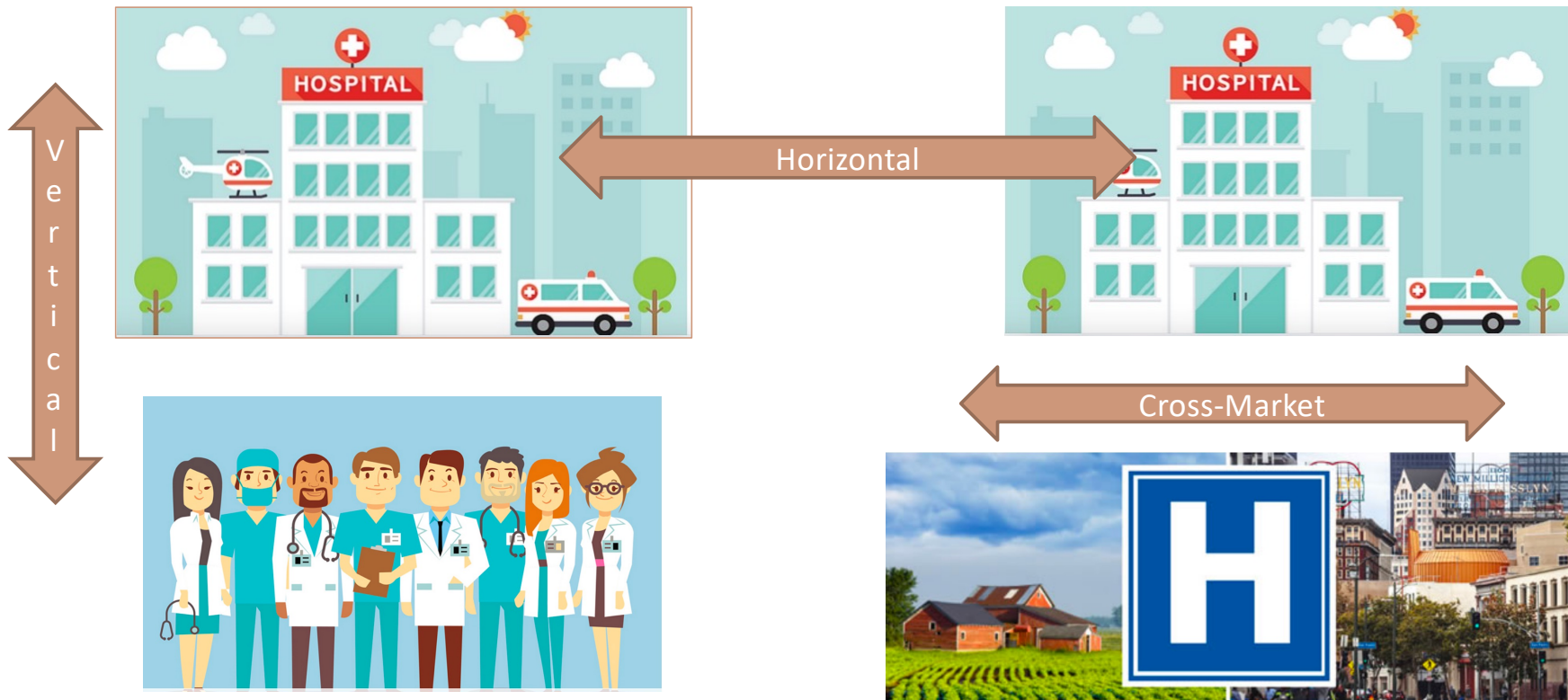
Prices Do
Not Reflect
Quality

Concerns
about
Quality

Poorly
Functioning
Healthcare
Markets

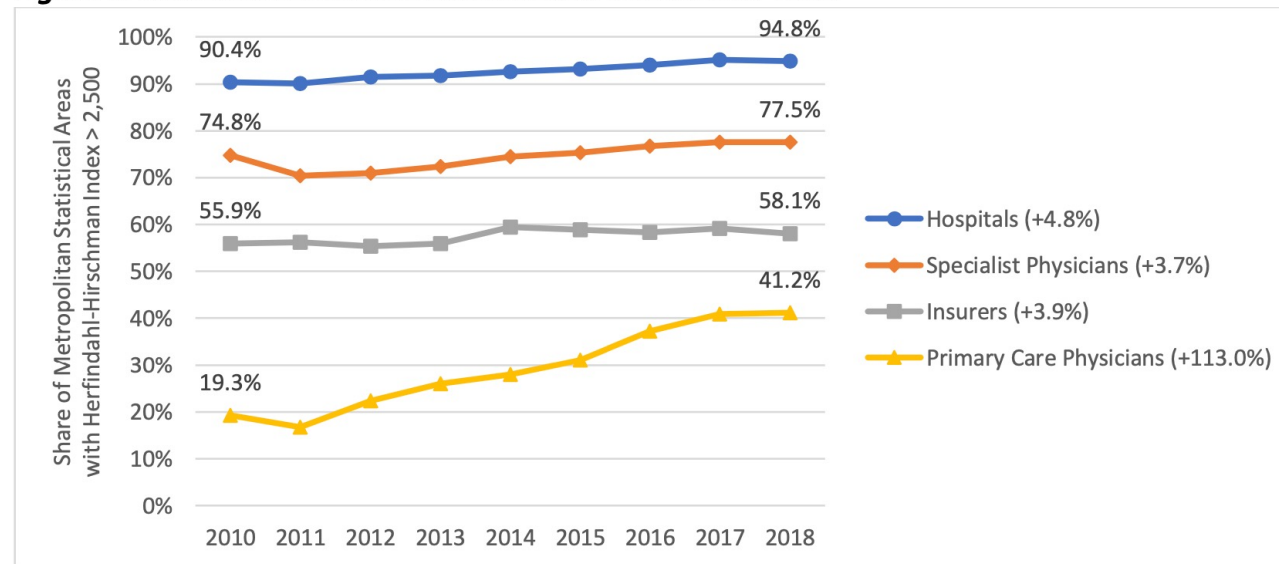


HEALTHCARE MERGER MANIA



CONSOLIDATION IS INDUSTRY-WIDE

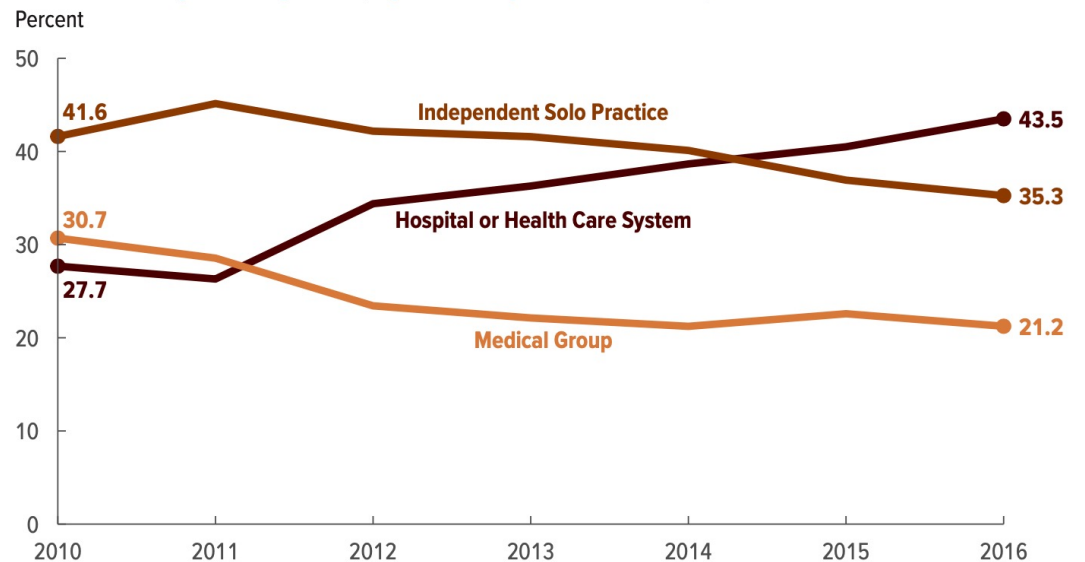
Figure 1: Healthcare Market Concentration Levels 2010-2018



Source: Nicholas C. Petris Center on Health Care Markets and Consumer Welfare (petris.org), University of California, Berkeley, analysis of data from the American Hospital Association Annual Survey, SK&A Office Based Physicians Database from IQVIA, and Managed Market Surveyor File from HealthLeaders InterStudy (Decision Resources Group).

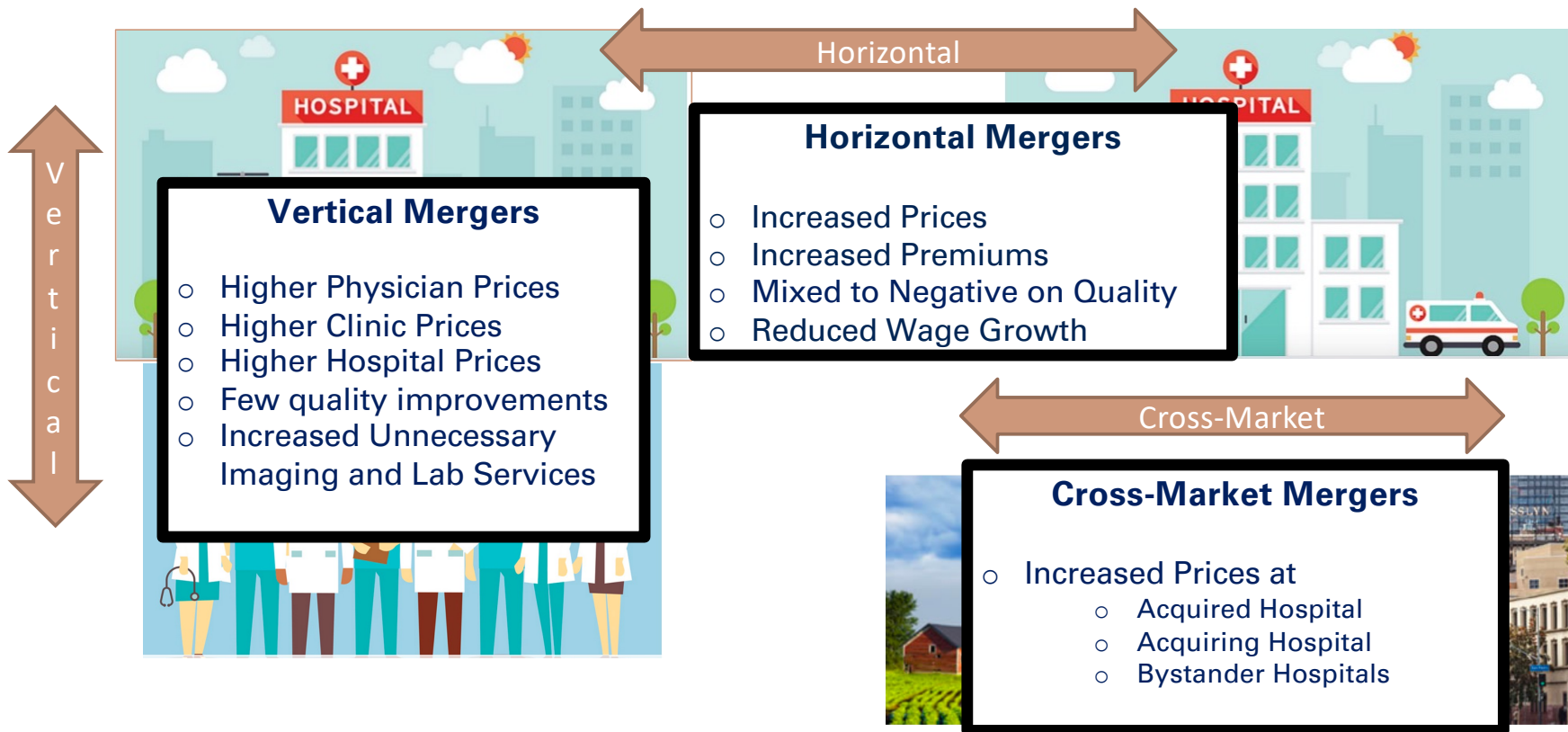
HORIZONTAL AND VERTICAL CONSOLIDATION OF PHYSICIAN GROUPS

Share of Primary Care Physicians, by Ownership of Their Practice, 2010 to 2016



Source: CBO "The Prices That Commercial Health Insurers and Medicare Pay for Hospitals' and Physicians' Services," Jan. 2022 www.cbo.gov/publication/57422.

THE EFFECTS OF MERGER MANIA



THE EFFECTS OF MERGERS: HORIZONTAL MERGERS



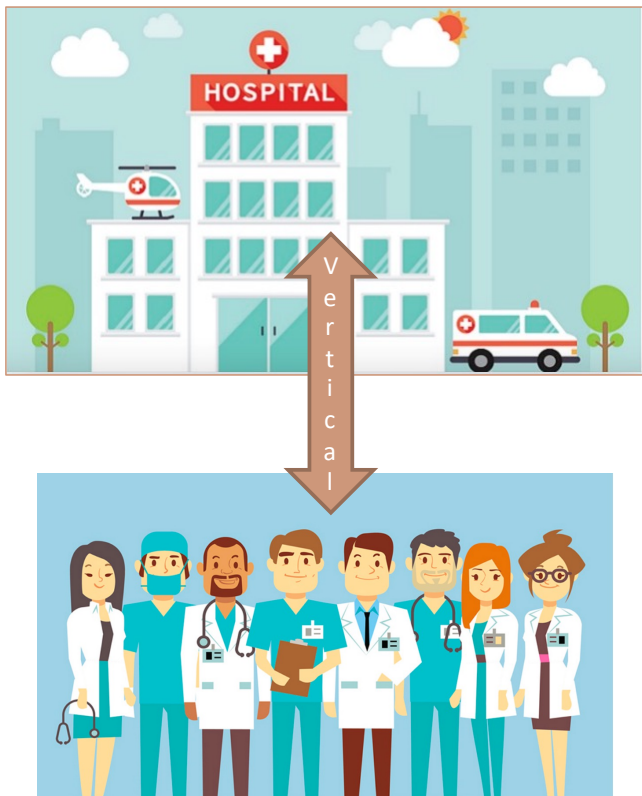
Hospitals

- **Increased Prices:** Post-merger hospital prices increased 20-44%
(Dafny, 2009; Haas-Wilson & Garmon, 2011; Tenn, 2011; Gaynor & Town, 2012)
- **Mixed to Negative on Quality**
(Gaynor et al. 2013; Koch et al. 2018; Short and Ho, 2019; Beaulieu, Dafny, et al., 2020)
- **Decreased Wage Growth for Nurses and Pharmacists**
(Prager and Schmitt, 2019)

Physicians

- **Physicians in most concentrated markets have prices 14-30% higher**
(Baker et al 2014; Dunn and Shapiro 2014; Koch, Wendling, and Wilson 2018)
- **Following a merger of orthopedists in Pennsylvania, prices increased 10-20%**
(Koch and Ulrick 2020)

THE EFFECTS OF MERGERS: VERTICAL MERGERS



- **Higher Physician Prices:** Physician prices increase post-merger by an average of 14% (Capps, Dranove, & Ody, 2018)
 - Cardiologist prices increased by 33.5% (Capps, Dranove, & Ody, 2018)
 - Orthopedist prices increased by 12-20% (Koch and Ulrick, 2017)
- **Higher Clinic Prices:** Hospital-acquired clinic prices increased 32–47% within four years (Carlin, Feldman & Dowd, 2017)
- **Higher Hospital Prices** (Baker, Bundorf, Kessler, 2014)
- **Little to no quality improvements** (McWilliams et al. 2013; Neprash et al. 2015; Short and Ho, 2019)
- **Increased Imaging and Lab Services** (Whaley et al. 2021; Young et al. 2021)

THE EFFECTS OF MERGERS: CROSS-MARKET MERGERS

Hospitals

Increased Prices at:

- Acquired Hospital
- Acquiring Hospital
- Hospitals not involved in the transaction

(Lewis & Pflum, 2016; Dafny, Ho, & Lee 2019)

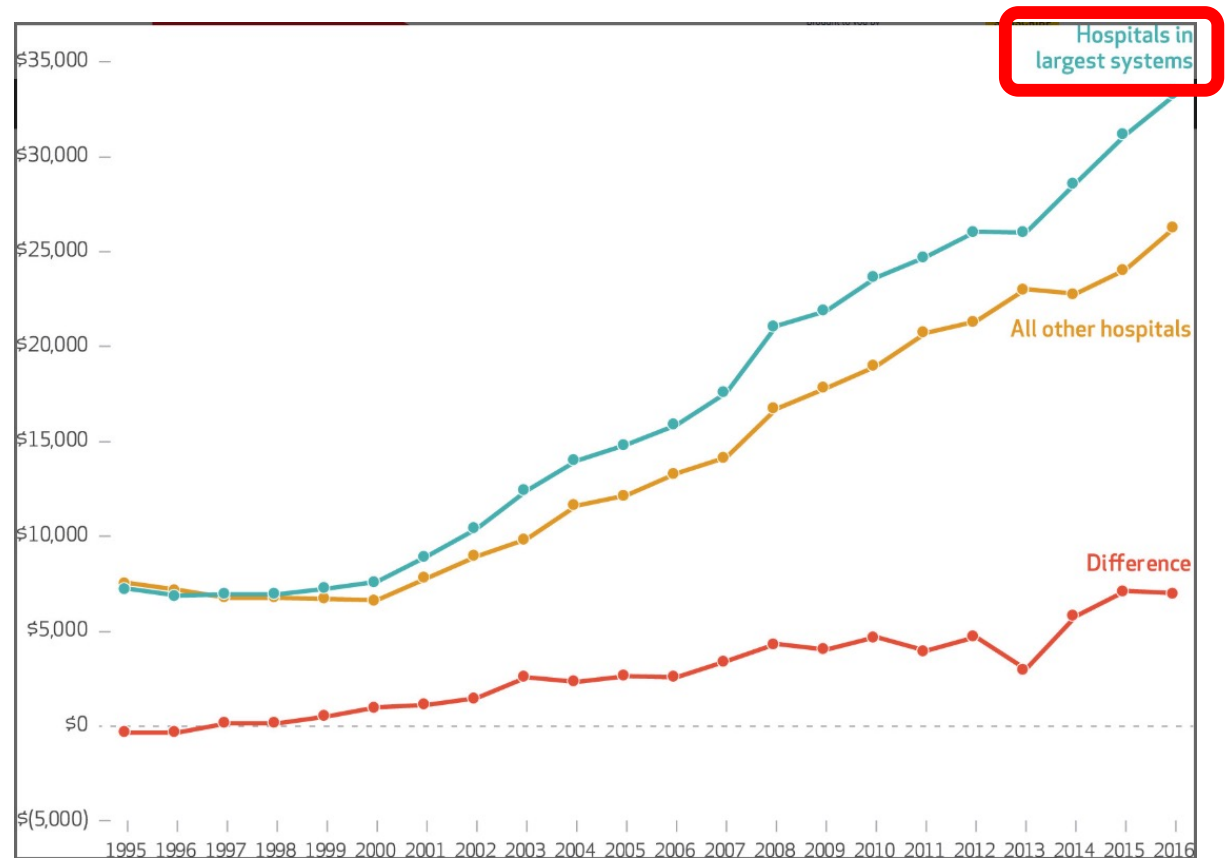
Physicians

- **Increased prices** even after merger of unrelated specialists
(Baker, Bundorf, and Kessler 2020)



LARGE
SYSTEMS
HAVE HIGHER
PRICES

Hospital Prices in California



Source: Glenn A. Melnick, Katya Fonkych, and Jack Zwanziger, The California Competitive Model: How Has It Fared, And What's Next?, 37 Health Affairs 1417 (Sept. 2018)



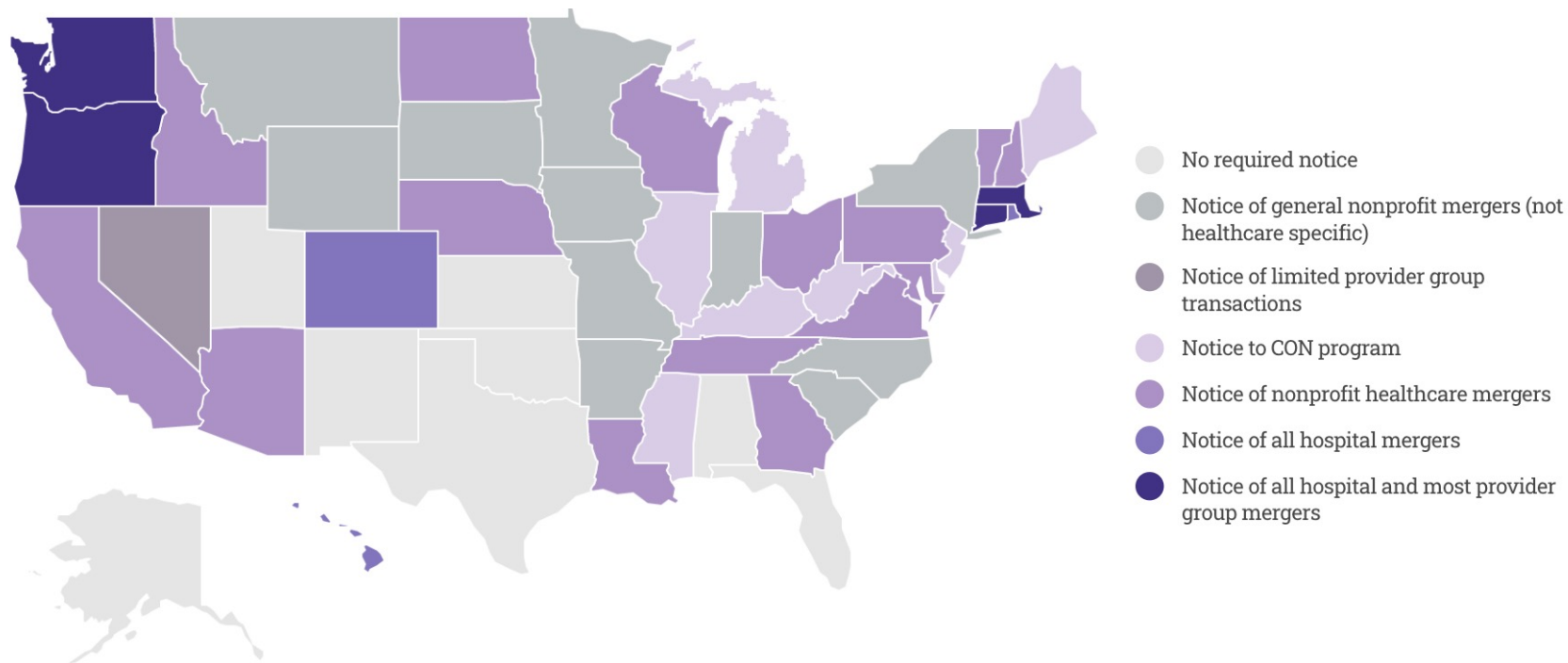
Limit Future
Anticompetitive
Consolidation



Enhance Existing
Competition

WHAT CAN STATES DO TO INCREASE COMPETITION?

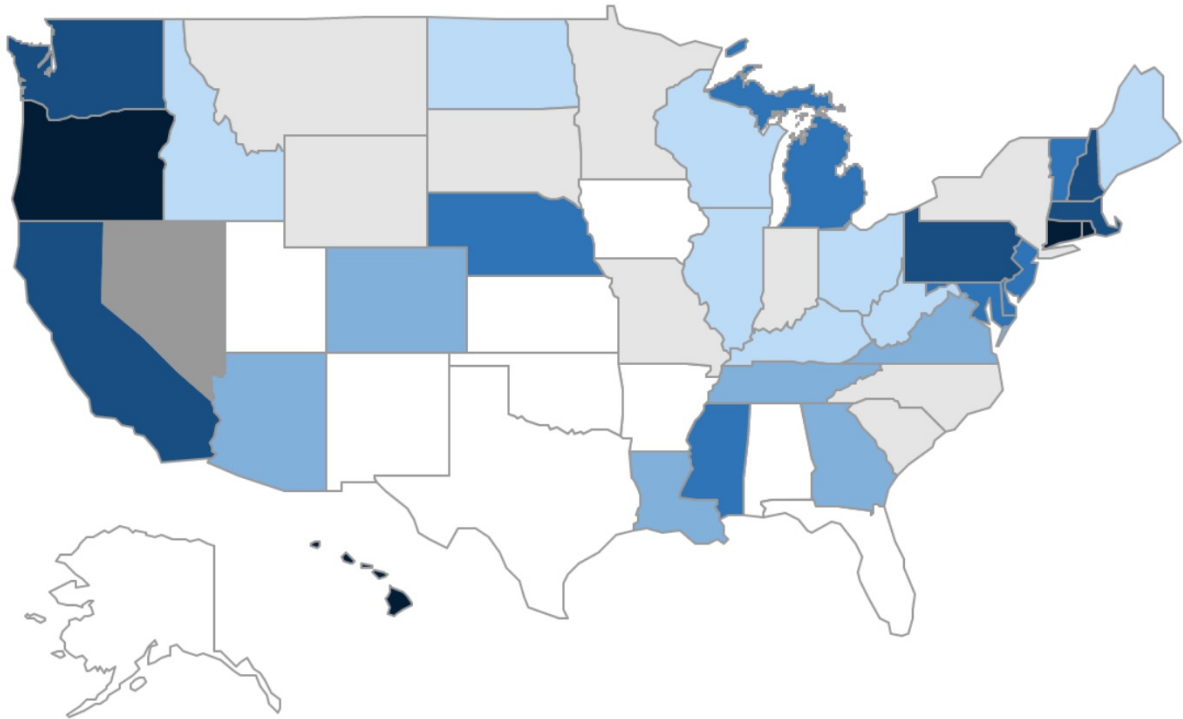
STATE NOTICE REQUIREMENTS FOR PROVIDER MERGERS



Statutes current through 2019

Source: [The State Database of Laws Impacting Healthcare Cost & Quality \(SLIHCQ\)](#) [See Methodology](#)

STATE LAWS ON MERGER REVIEW AUTHORITY



- General nonprofit notice and approval (not healthcare specific)
- Notice of limited provider group transactions with no review or approval.
- Notice, limited review, and no or limited approval of nonprofit healthcare or CON-eligible transactions
- Notice, moderate review, but no approval of nonprofit healthcare transactions
- Notice, moderate review, and approval of nonprofit healthcare or CON-eligible transactions
- Notice, strong review, and approval of nonprofit healthcare transactions
- Notice, strong review, and approval of all hospital transactions

Statutes current through 2021 ([Click to download](#))

Source: [The State Database of Laws Impacting Healthcare Cost & Quality \(SLIHCO\)](#)

OREGON (HB 2362)

16

- Oregon Health Authority reviews transactions (mergers, acquisitions, affiliations, partnerships, joint ventures, etc.) of health care entities above a threshold
- Review includes impacts on
 - Costs to consumers and employers
 - Access
 - Equity
 - Quality

HEALTH PROVIDER CONSOLIDATION AND ITS EFFECTS ON PRICE,
FEBRUARY 10, 2022





IN MANY HEALTH CARE MARKETS...

HEALTH PROVIDER CONSOLIDATION AND ITS EFFECTS ON PRICE, FEBRUARY 10, 2022



Limit Future
Anticompetitive
Consolidation



Enhance Existing
Competition

WHAT CAN STATES DO TO INCREASE COMPETITION?

CONTRACTING
CLAUSES CAN
INCREASE
COSTS

The Boston Globe

A handshake that made healthcare history

Partners HealthCare was born in 1993, but its powerhouse potential didn't fully hit home until 2000. That's when the emerging giant cut a quiet deal with Blue Cross to ratchet up insurance costs across the state. Nothing in Massachusetts healthcare has been the same since.

THE WALL STREET JOURNAL.

Behind Your Rising Health-Care Bills: Secret Hospital Deals That Squelch Competition

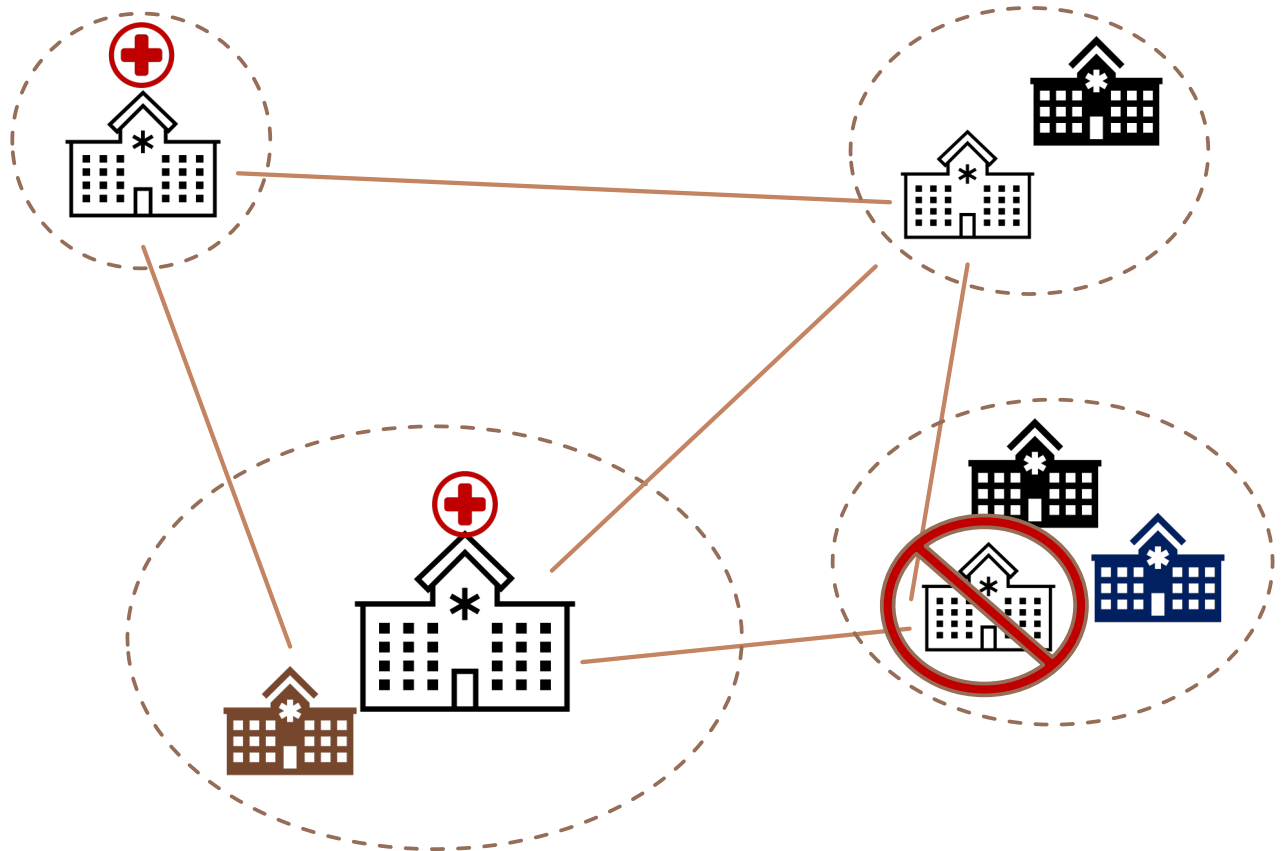
Contracts with insurers allow hospitals to hide prices from consumers, add fees and discourage use of less-expensive rivals

ANTICOMPETITIVE CONTRACT CLAUSES

- All-or-Nothing or Affiliate Contracting
- Anti-Tiering/Anti-Steering Clauses
- Most-Favored-Nation Clauses
- Gag Clauses

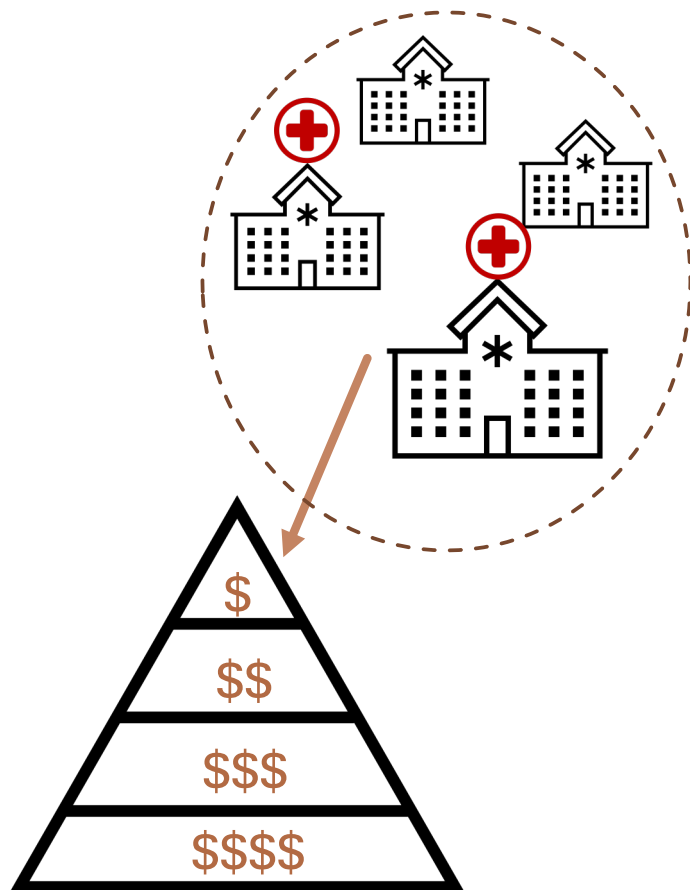
ALL OR NOTHING CONTRACTING (AFFILIATE CONTRACTING)

- ❖ Health system demands an insurer include all facilities in the network



ANTI-TIERING AND ANTI-STEERING CLAUSES

- Agreements in which an insurer agrees to place all hospitals in a health system in the most favorable tier with the lowest cost-sharing tier





MOST-FAVORED-NATION CLAUSES

- Agreements in which a hospital agrees with an insurer to give it the best price or to not to give a lower provider payment rate to any rival

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GAG CLAUSES

- Agreements in which both parties agree to keep the terms of the agreement, including price information, confidential from any person or entity not party to that agreement



A photograph of a large, modern hospital building with a curved facade and many windows. The Sutter Health logo and name are visible on the upper part of the building. The sky is blue with some clouds. There are some trees and a utility pole in the foreground.

Sutter Health
Sutter Medical Center

Alleged Abuse of Market Power

- *UEBT and the State of CA v. Sutter Health*
- *Sidibe v. Sutter Health*
- *United States and the State of North Carolina v. Atrium Health*
- *Davis et al. v. HCA Healthcare and Mission Health System*



NEWLY FILED ANTITRUST LAWSUITS: UNFAIR COMPETITION INVOLVING PHYSICIAN ACQUISITIONS

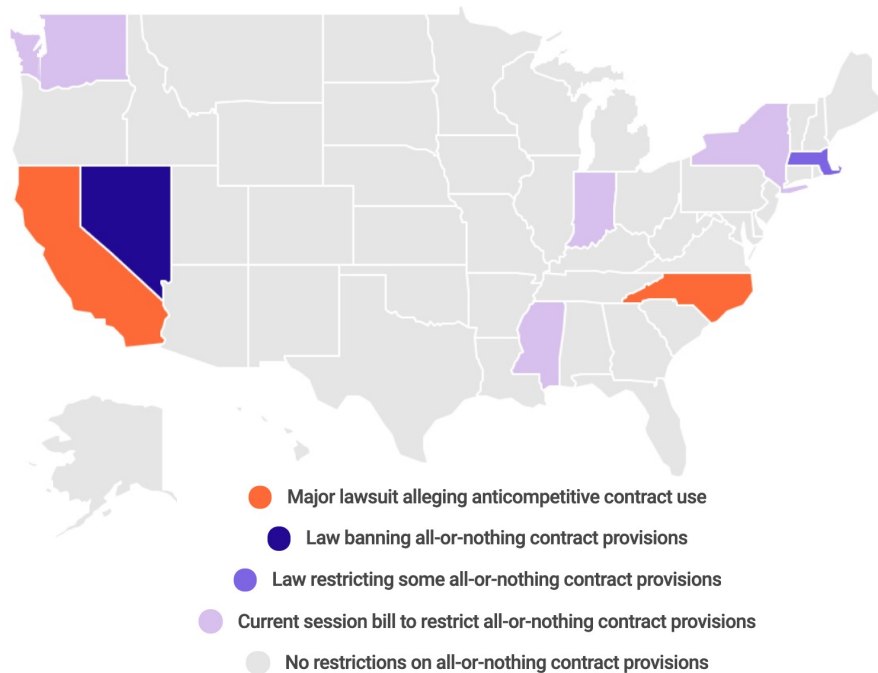
HEALTH PROVIDER CONSOLIDATION AND ITS EFFECTS ON PRICE,
FEBRUARY 10, 2022

A large center pivot irrigation system is shown in a lush green field. The system consists of multiple long metal arms supported by a central pivot point, with numerous smaller wheels and pipes extending from them. The background features rolling hills and mountains under a clear blue sky. The overall scene is bright and sunny.

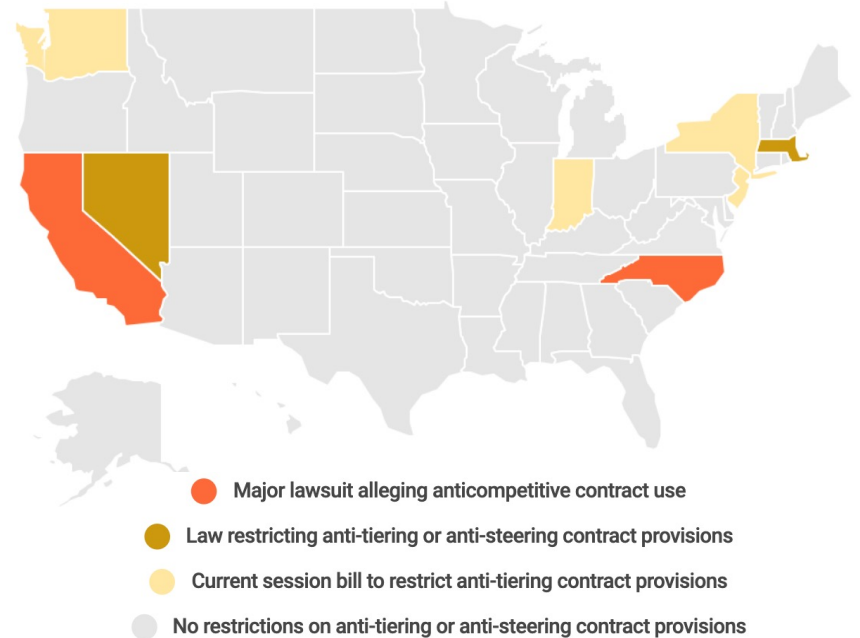
ANTITRUST ENFORCEMENT SEEDS OTHER INTERVENTIONS

STATES WITH LAWS RESTRICTING USE OF SPECIFIC CONTRACT TERMS

All-or-nothing or Affiliate Contracting Restrictions

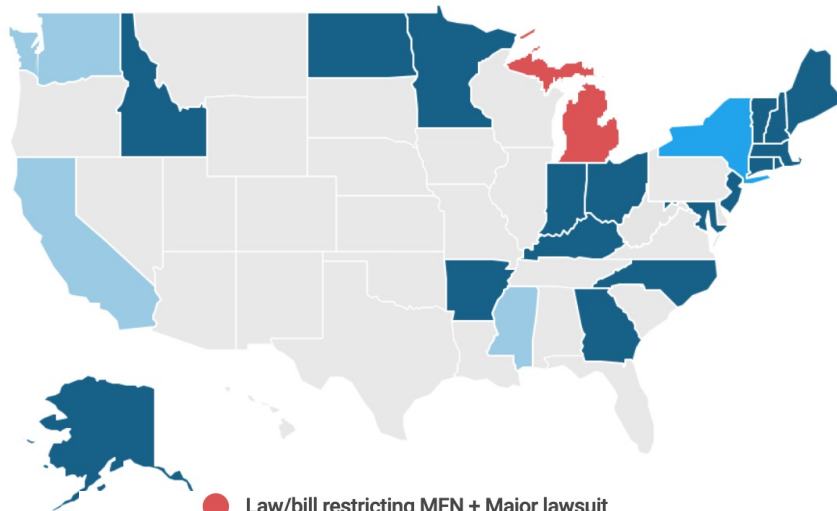


Anti-tiering/anti-steering Restrictions



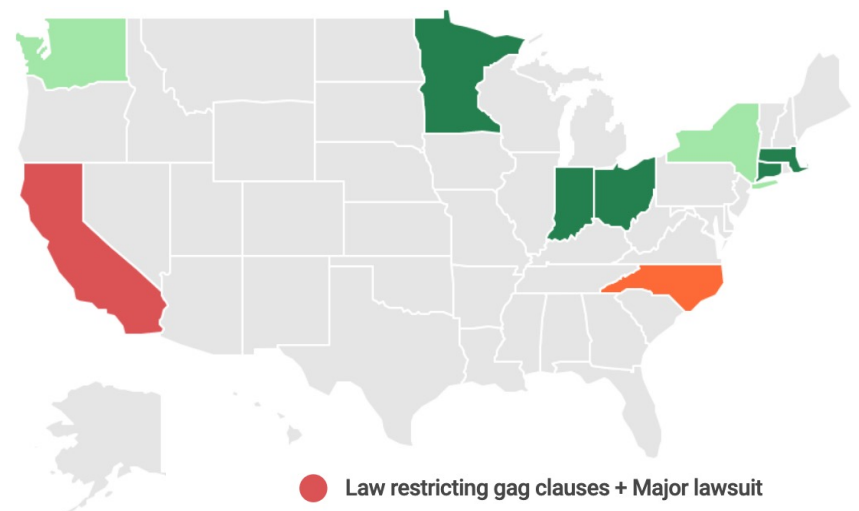
STATES WITH LAWS RESTRICTING USE OF SPECIFIC CONTRACT TERMS

Most-favored Nation Restrictions



- Law/bill restricting MFN + Major lawsuit
- Law restricting MFN contract provisions
- Law discouraging MFNs/Current session bill to restrict MFNs
- Current session bill to restrict MFNs
- No restrictions on MFN contract provisions

Gag Clause or Price Secrecy Restrictions



- Law restricting gag clauses + Major lawsuit
- Major lawsuit alleging anticompetitive contract use
- Law restricting gag clauses (price secrecy provisions)
- Current session bill to restrict gag clauses (price secrecy provisions)
- No restrictions on gag clauses (price secrecy provisions)

ADDRESSING ANTICOMPETITIVE CONTRACTING PRACTICES

Litigation

Benefits

- Fact specific determination
- Can be brought by private parties for treble damages

Drawbacks

- Resource intensive and slow
- Marketwide adoption not assured

Legislation

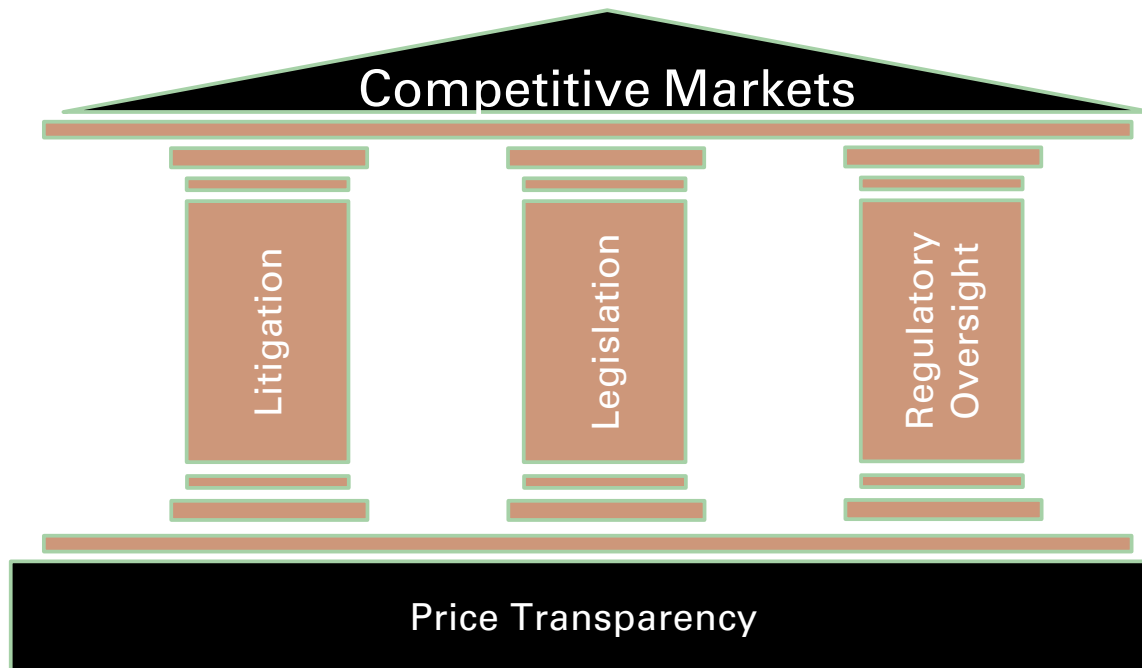
Benefits

- Industry-wide
- Eases enforcement burden
- Does not require detailed fact-specific determination of harm

Drawbacks

- Requires action by legislature
- Procompetitive uses may be stifled
- Hard to prohibit behavior
- Can turn into game of whack-a-mole
- May be more difficult for physician contracting

COMPETITIVE MARKETS NEED SUPPORT

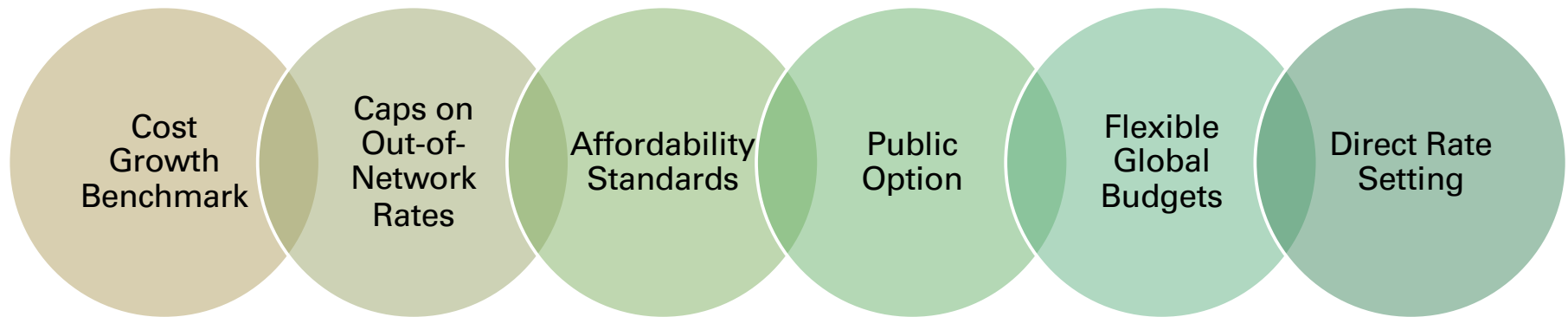




Enhance Existing
Competition

Limit Anticompetitive Contracting Practices

Constrain Provider Pricing Power



Menu of Options to Constrain Provider Pricing Power

KEY QUESTIONS WHEN CONSIDERING FURTHER ACTIONS

- What do the data say about market function?
 - Prices, price increases, price disparities
- What level of administrative oversight and resources does the state want to commit?
- Is limiting future consolidation meaningful?



PROVIDER MARKET POWER: A PROBLEM THAT IS NOT GOING AWAY

- High prices are the result of market failures.
- Increased merger review is critical to protect remaining competition.
- To enhance existing competition, states need multipronged approach:
 - Litigation
 - Legislation
 - Regulatory Oversight

CONSIDERATIONS FOR CONNECTICUT

- Fill any gaps in merger review
 - Receive notice for most provider mergers
 - Consider whether merger is likely to impact costs, quality, access, and equity
 - Allow conditions to remain as long as entity is merged.
- Consider options to limit provider market power
 - Legislation to prohibit specific terms
 - Out-of-network pricing caps
 - Affordability Standards



THANK YOU!

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<https://sourceonhealthcare.org/>

THE SOURCE
ON HEALTHCARE PRICE & COMPETITION

