ROADMAP TO CONSTRAIN COMMERCIAL HEALTH CARE COSTS

CT HEALTHCARE DRIVERS INFORMATIONAL SESSION

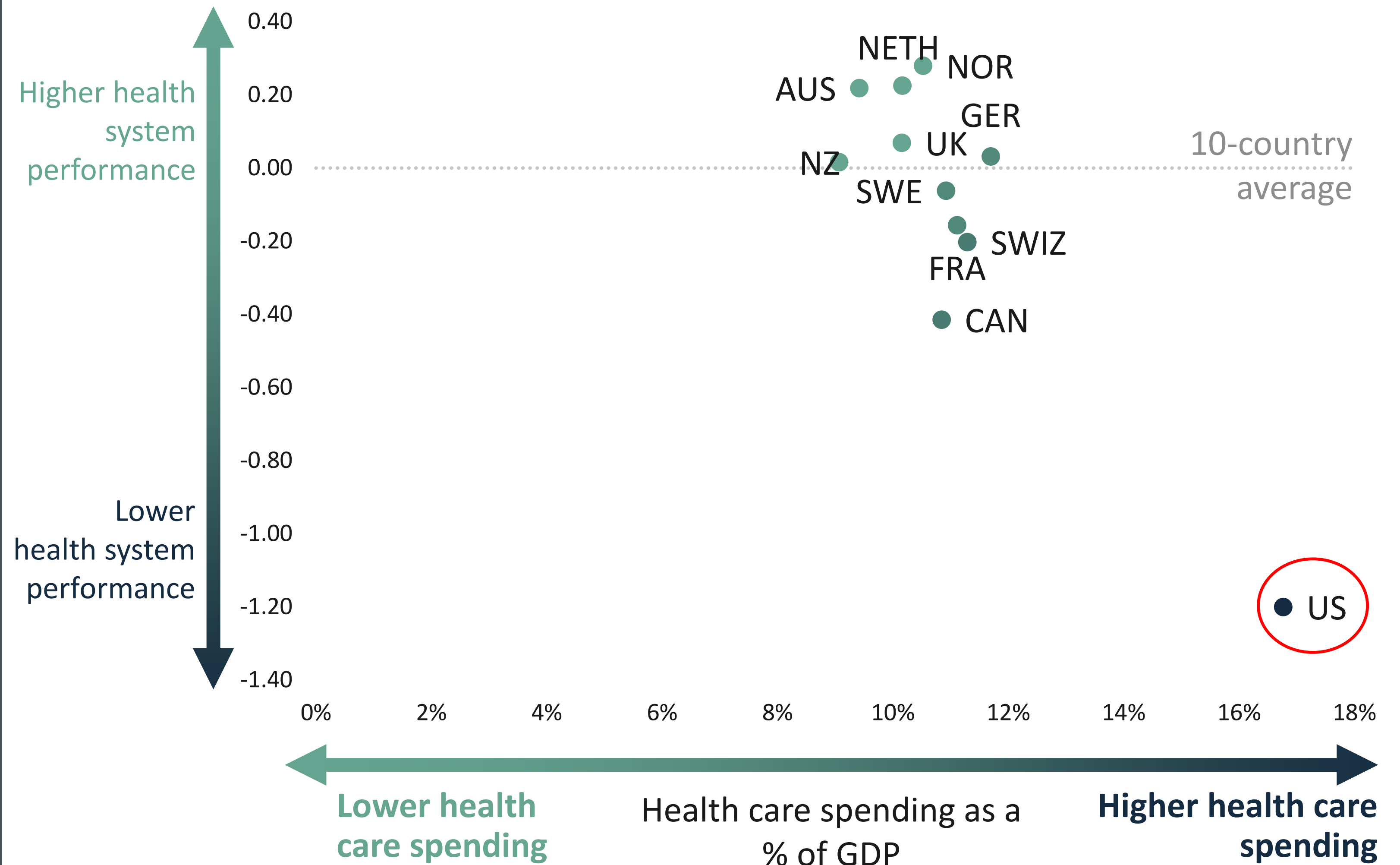
February 3, 2023

Katie Gudiksen

THE SOURCE
ON HEALTHCARE PRICE & COMPETITION

UC Law San Francisco

IS THE US HEALTHCARE "SYSTEM" WORKING?

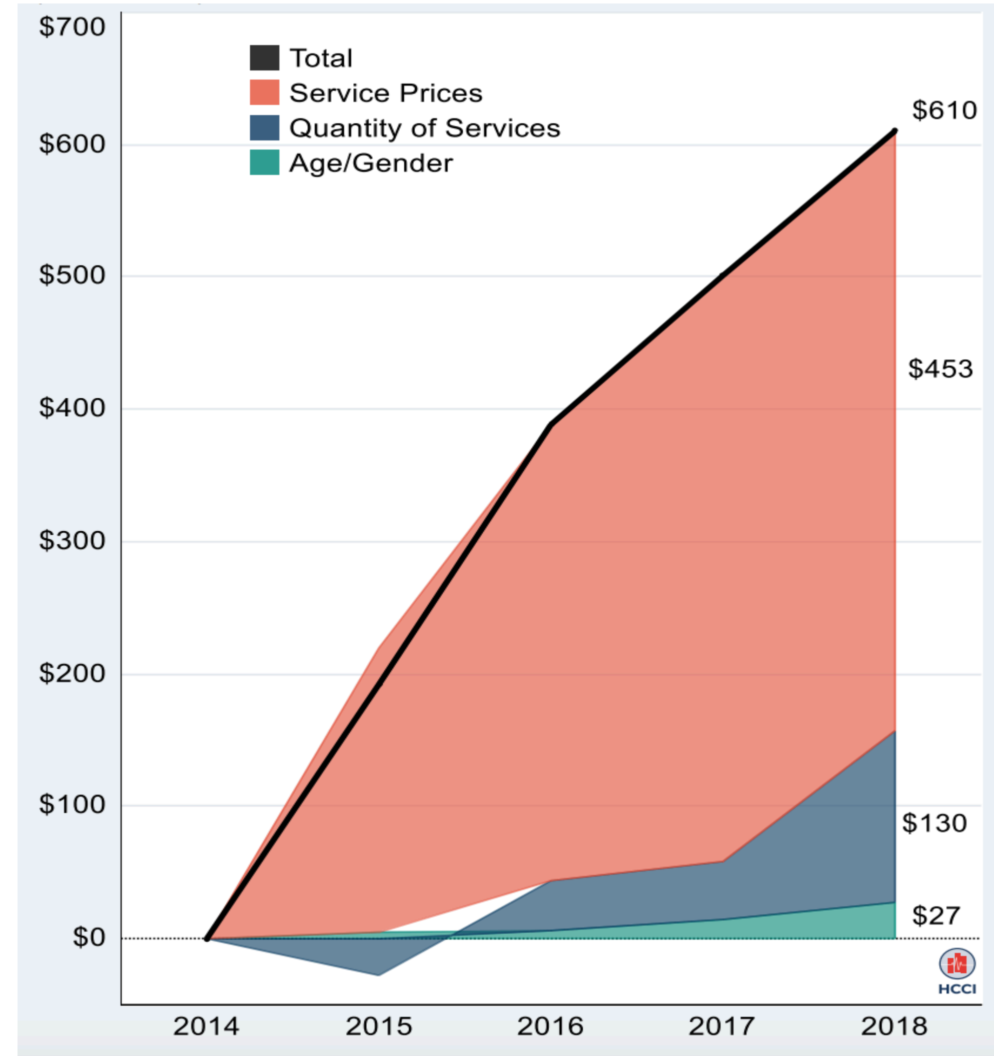


Source: Eric C. Schneider et al., *Mirror, Mirror 2021- Reflecting Poorly: Health Care in the U.S. Compared to Other High-Income Countries* (Commonwealth Fund, Aug. 2021)

“PRICES ARE THE PRIMARY REASON WHY US SPENDS MORE ON HEALTH CARE THAN ANY OTHER COUNTRY”

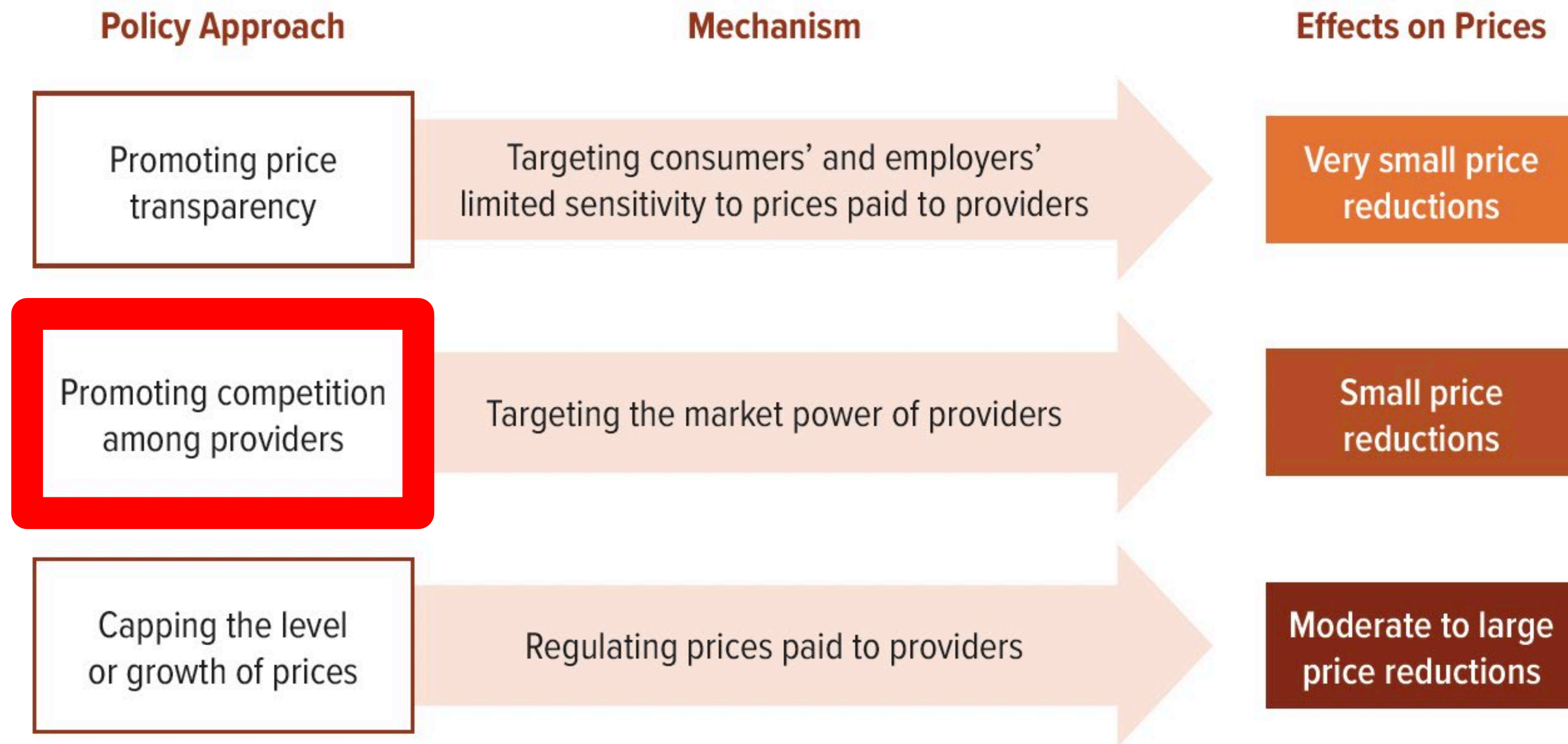
Gerard Anderson et al. *It’s Still The Prices, Stupid: Why The US Spends So Much On Health Care.* Health Affairs 38:1 (2019)

Growth in Health Care Spending per Person (2018 dollars)



Source: Health Care Cost Institute, 2018 HEALTH CARE COST AND UTILIZATION REPORT, https://healthcostinstitute.org/images/pdfs/HCCI_2018_Health_Care_Cost_and_Utilization_Report.pdf.

POLICY APPROACHES TO ADDRESS WHAT COMMERCIAL INSURERS PAY



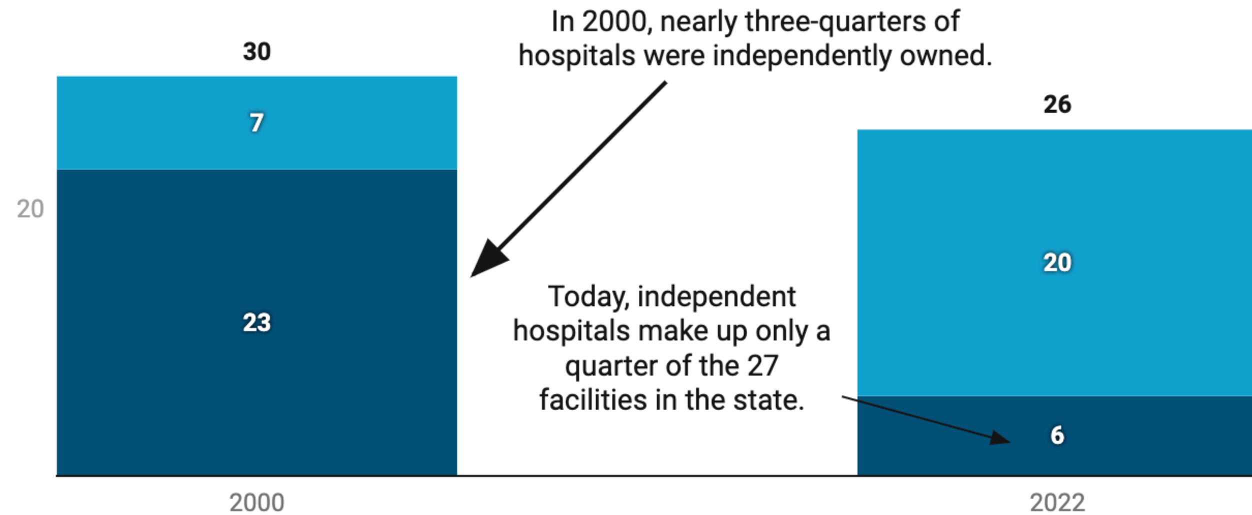
Source: Congressional Budget Office, *Policy Approaches to Reduce What Commercial Insurers Pay for Hospitals' and Physicians' Services*, September 2022

CONSOLIDATION IS A PRIMARY DRIVER OF INCREASED PRICES AND CAN ALSO REDUCE ACCESS AND EXACERBATE EQUITY CONCERNS

- 5 Hospitals in CT have cut service lines, mostly in low-income and minority communities

As hospital systems grow in CT, rural patients lose services

Health care systems have closed labor and delivery units, ICUs, and surgical services at hospitals across the state.



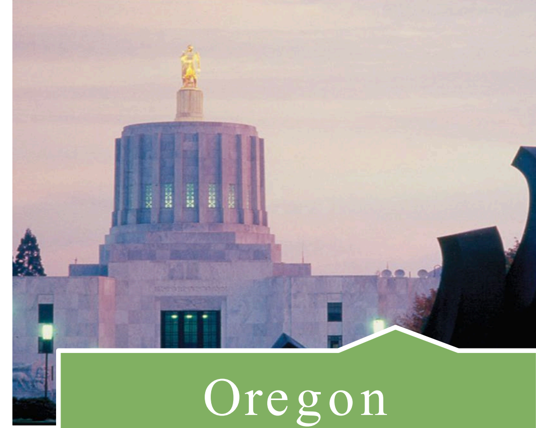
Source: Katy Golvala, *As hospital systems grow in CT, rural patients lose services,* CT Mirror May 8, 2022

Connecticut

Office of Health Strategy

Massachusetts

Health Policy Commission



Oregon

Oregon Health Authority

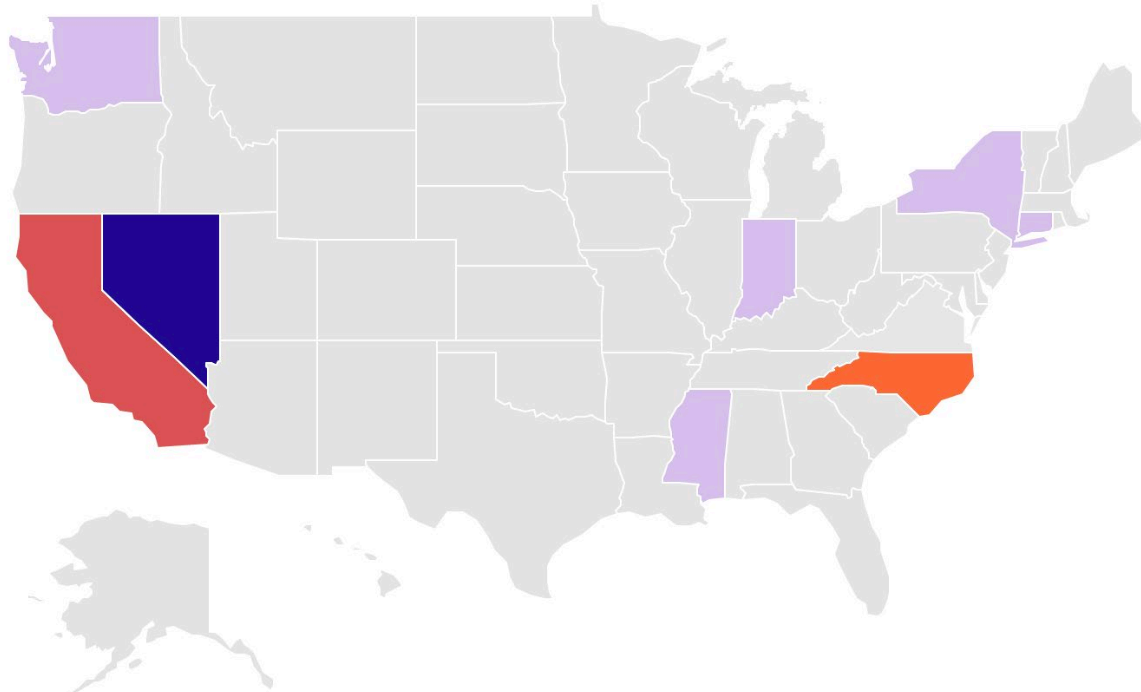
California

Office of Health Care Affordability

STATE AGENCIES OVERSEEING FUTURE CONSOLIDATION

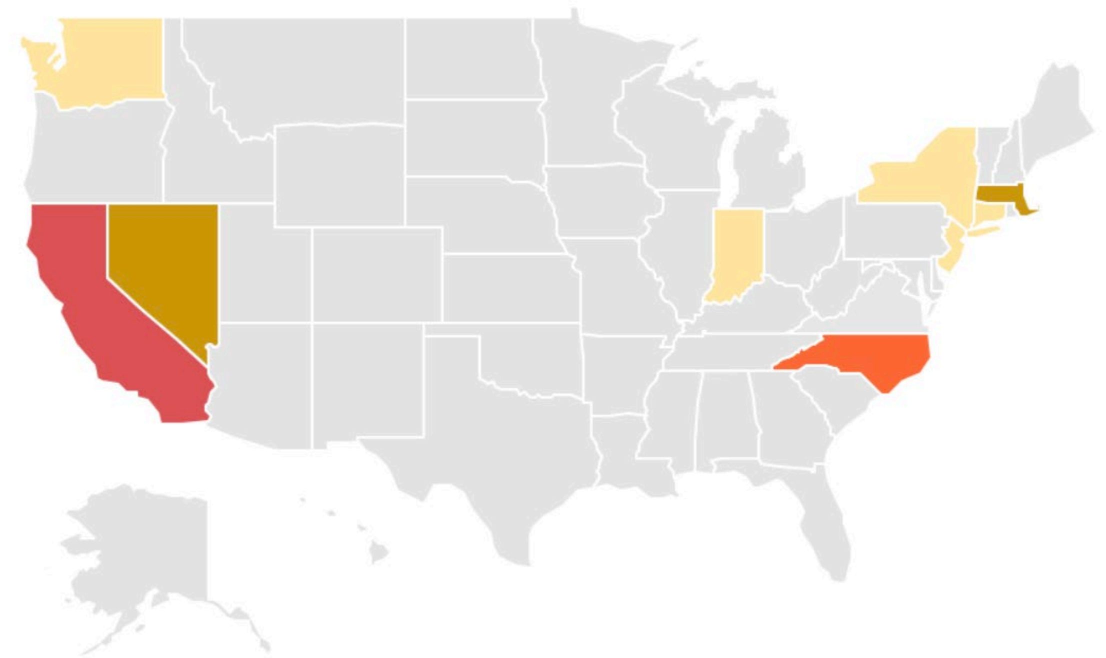
STATES WITH LAWS RESTRICTING USE OF SPECIFIC CONTRACT TERMS

All-or-nothing or Affiliate Contracting Restrictions

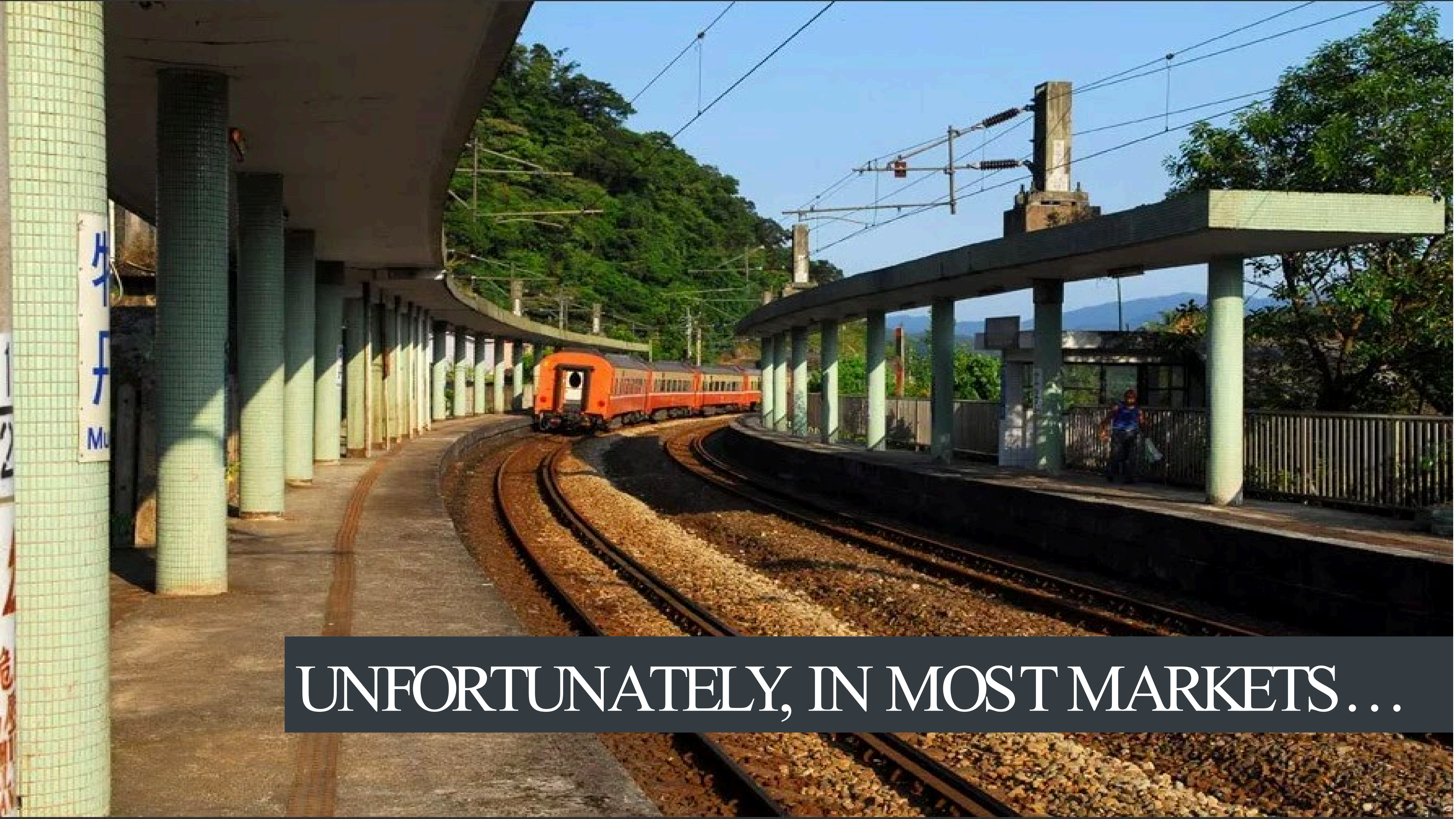


- Legislation restricting all-or-nothing provisions + Major lawsuit
- Major lawsuit alleging anticompetitive contract use
- Law banning all-or-nothing contract provisions
- Current session bill to restrict all-or-nothing contract provisions
- No restrictions on all-or-nothing contract provisions

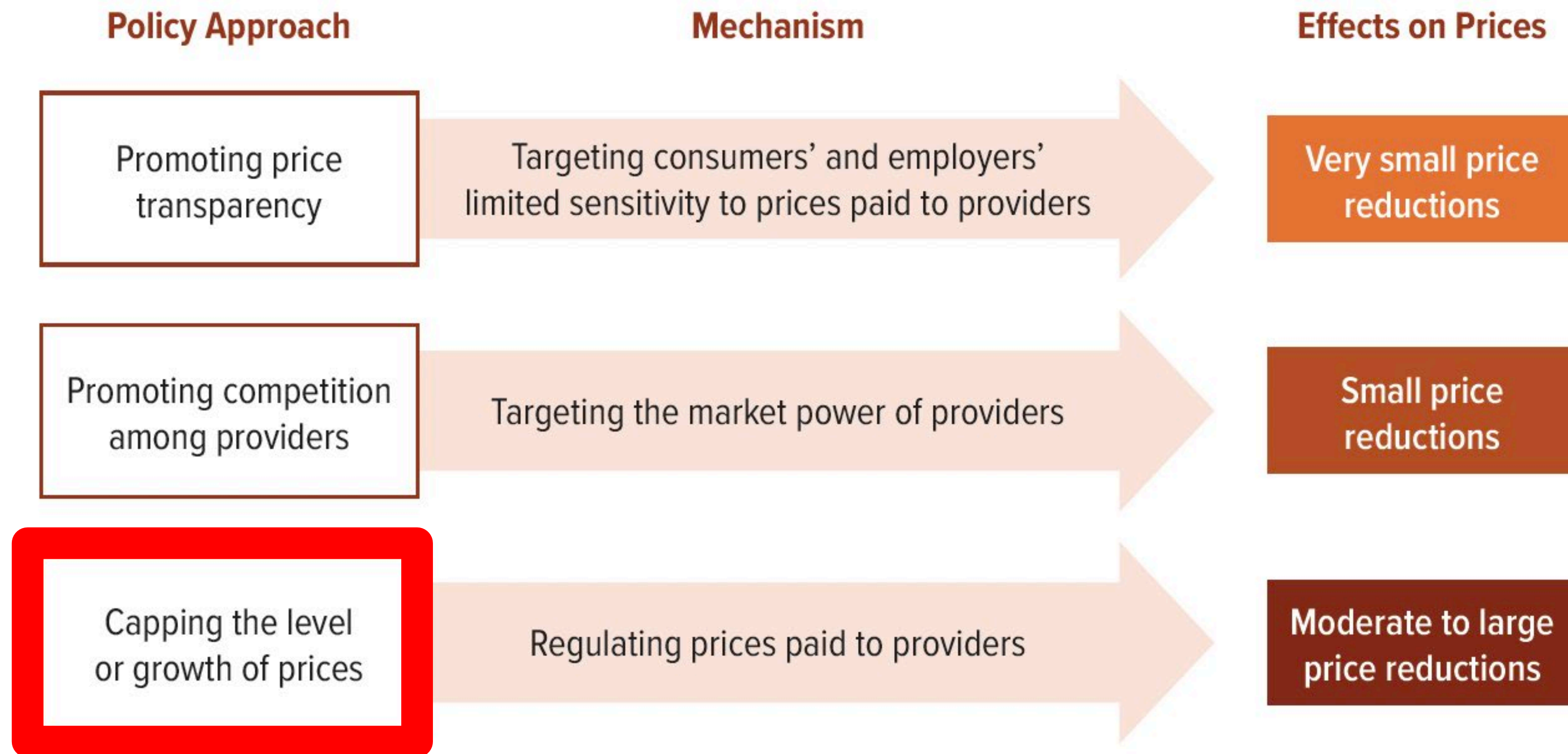
Anti-tiering/anti-steering Restrictions



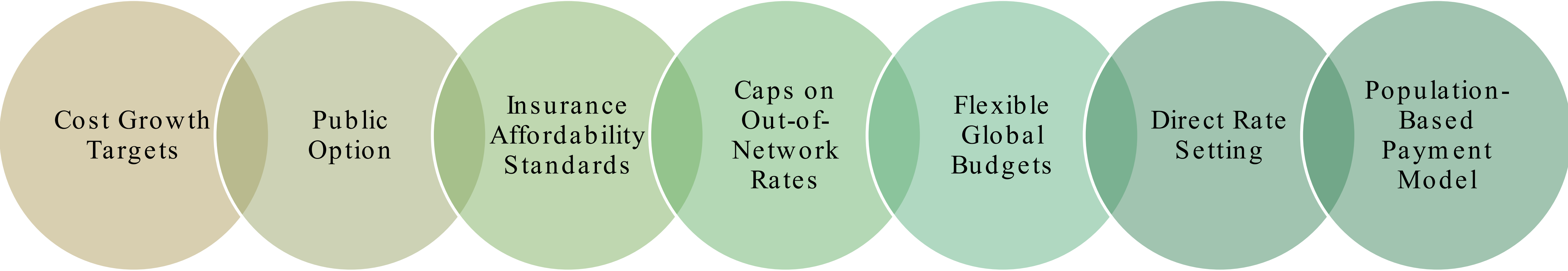
- Legislation restricting anti-tiering/anti-steering provisions + Major lawsuit
- Major lawsuit alleging anticompetitive contract use
- Law restricting anti-tiering or anti-steering contract provisions
- Current session bill to restrict anti-tiering contract provisions
- No restrictions on anti-tiering or anti-steering contract provisions


UNFORTUNATELY, IN MOST MARKETS…

POLICY APPROACHES TO ADDRESS WHAT COMMERCIAL INSURERS PAY



Source: Congressional Budget Office, *Policy Approaches to Reduce What Commercial Insurers Pay for Hospitals' and Physicians' Services*, September 2022

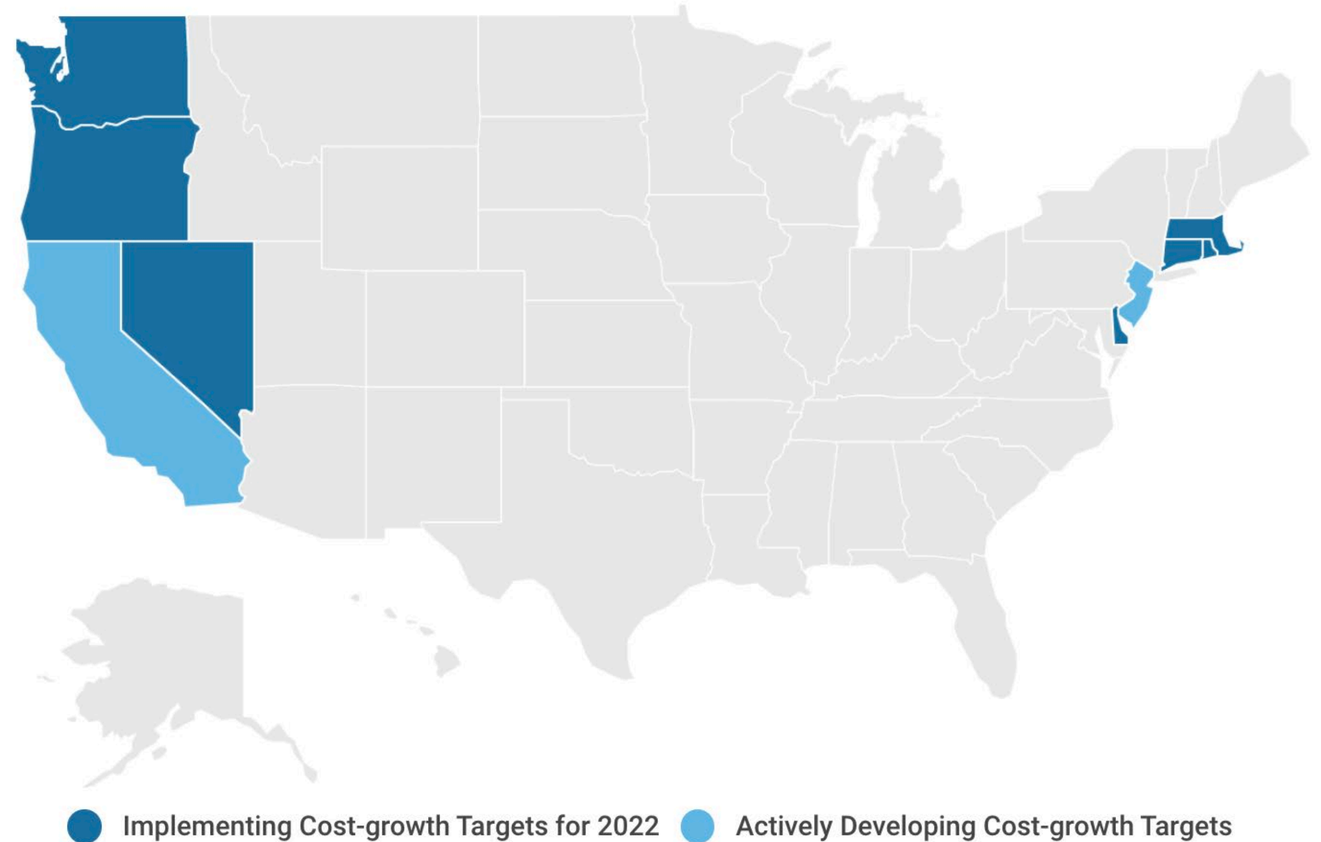


Source: Katherine Gudiksen and Robert Murray, *Options for States to Constrain Pricing Power of Health Care Providers*, Frontiers in Health Services, 2:1020920. October 19, 2022

Spectrum of Options to Constrain Provider Prices

COST-GROWTH TARGETS

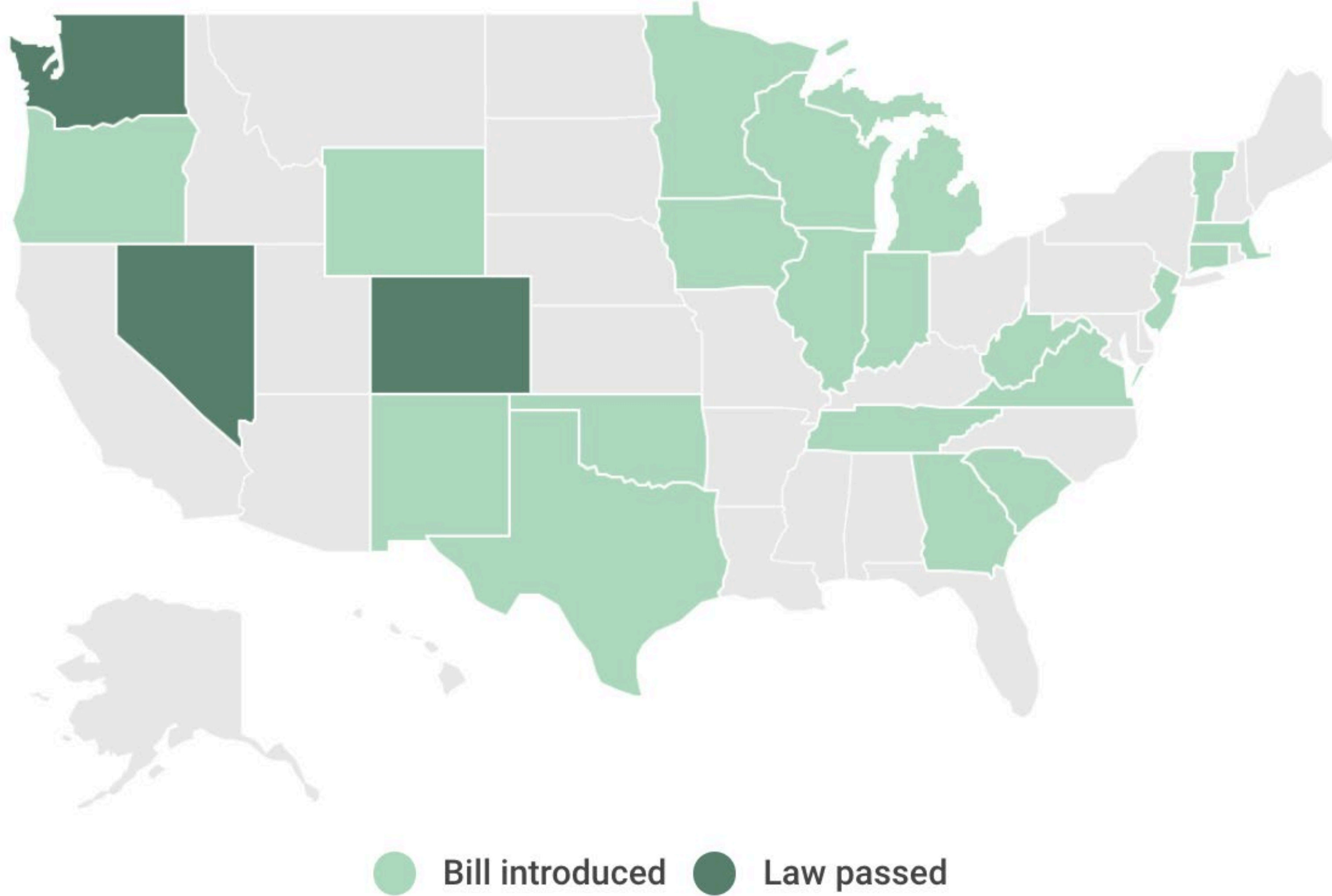
- A target for the rate at which total health care expenditures should increase in a year
- Typically set based on increases in economic growth and/or wages or median income
- May include penalties for providers or plans with excessive cost increases



PUBLIC OPTION PLANS

- A health insurance plan that is created by the government that is sold alongside existing private insurance plans

- May be administered by a government agency or through insurers with constraints determined by the government (e.g., coverage requirements and set provider rates)



AFFORDABILITY STANDARDS IN INSURANCE RATE REVIEW

Rate Review by the Department of Insurance

- Existing Authority
  - "File and Use" or "Prior Approval"
- ACA requires *justification* of excessive increases in individual and small group
- Few states have "prior approval" for large group rates

Affordability standards

- State insurance commissioners are authorized reject "unaffordable rate increases"
- Rate can be tied to inflationary measures or Cost Growth Benchmark

RHODE ISLAND'S AFFORDABILITY STANDARDS

- The Office of the Health Insurance Commissioner (OHIC) may reject premium rate increases that exceed the consumer price index (CPI – Urban)
  - OHIC reviews increases for individual hospital
- Successfully reduced spending on hospital care relatively to a national control cohort
- Limitations with RI model
  - % increase limit exacerbates payment disparities
  - Only applies to hospitals, evidence physician prices have increased more significantly

CAN AFFORDABILITY STANDARDS CONTROL COSTS?

- Demonstrated success in Rhode Island
- Implemented and Enforced by Existing State Agency
- Cap on Insurance Premium Increases so direct benefit to patients and employers
- Lower risk of regulatory failure or capture
  - Market-based savings: commercial insurers gain negotiating leverage
  - Interests of the DOI and the industry being regulated – the insurers – are aligned

WHAT ARE OUT-OF-NETWORK (OON) PRICE CAPS?

- A maximum payment that applies when a patient obtains care from a provider outside their insurance network
  - Similar to surprise billing laws, but OON caps applies in non-emergent
- Currently, providers threaten insurers with exorbitant OON Prices to negotiate higher in-network rates
- OON caps save money by:
  - Truncating very high OON prices
  - Give insurers more bargaining power to negotiate lower in-network rates

CAN OON PRICE CAPS CONTROL COSTS?

In Medicare Advantage, a de facto OON cap appears to have caused INN MA rates to be at or near the cap

California's payment standard for OON surprise bills caused anesthesiologist rates to decrease (both OON and INN)

RAND study estimated an OON cap at 200% of Medicare would save $81 billion in lower *in-network* hospital rates (7% of total commercial spending)

CONSIDERATIONS FOR STATES INTERESTED IN OON PRICE CAPS

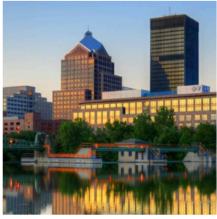
Potential Caveats

- Should be coupled with strong network adequacy protections, but risk of access issues decreases if OON cap is above marginal cost of providing care
- Must-have hospitals may still be able to demand higher INN rates even with OON Price Caps
- Low OON Price Caps may lead to diminished provider networks, but depends on how the rate set
- Medicare Advantage experience may not be generalizable to the commercial market
- OON Price Caps also work best in competitive insurance markets – so that savings from reduced INN rates are passed on to consumers

WHAT ARE HOSPITAL GLOBAL BUDGETS?

- A prospectively determined cap on annual revenues where the total budget is set in advance
- Based on a hospital's historical revenue base and provide predictable revenue flow
- Can be 100% fixed during a performance year or semi-variable (e.g., "Flexible global budgets")
  - Flexible global budgets cover fixed costs but pay hospitals for changes in their variable costs as volumes change
  - 100% Fixed budgets used in Maryland induced hospitals to shift or restrict care leading to increased wait times
  - Flexible budgets neutralizes FFS incentives to increase volumes but allow for payer "shifts" in care from high-cost to low-cost hospitals

COMPARISON OF GLOBAL BUDGET MODELS



Rochester NY

- Applied to all payers
- System regulated at the aggregate budget level and was very "formula-driven"
- Model reduced unnecessary hospital use, significantly constrained hospital total cost growth and improved hospital financial performance

Maryland

- 2014: Maryland moved from a unit rate setting system to hospital global budgets
- 2014-2019 the met its all-payer and Medicare cost growth targets
- In recent years, MD did not meet its Medicare TCOC targets
- Maryland's use of 100% fixed budgets also allowed many hospitals to generate large reserves which were not reinvested in Population-health
- A Flexible budget approach would have avoided this

Pennsylvania

- In 2017, PA obtained CMS waiver implement to implement model for small/rural hospitals
- Wanted to provide improved financial predictability for hospitals and incentivize efforts to improve the health status of community
- PA experienced implementation delays
- The PA model is also a voluntary model

PRICE CAPS AND RATE UPDATES FOR ALL SERVICES

Recently, several prominent economists proposed a system of very high price caps and a cap on the magnitude of annual price updates for health care services

Intended to minimize the level of government intervention, but requires a very elaborate regulatory system

Rate systems that are more complex and interventionist are more challenging to implement and may be vulnerable to regulatory capture/failure

Although the US may one day need to implement more robust rate programs – we believe the use of lower-intensity rate models can be effective and are most feasible presently

WHAT IS A POPULATION-BASED PAYMENT (PBP) SYSTEM?

- A highly integrated finance and delivery system to meet population-level cost and quality targets. It incentivizes delivery of well-coordinated, high-quality, and person-centered care.
- Three features characterize PBP Models:

  1) they are prospective -payments to all providers constrained by a budget and providers are at risk for costs that exceed the budget;

  2) they require patient attribution to a provider organization; and

  3) they allow provider organizations to proactively manage care and costs for the covered population.
- Extend budget-based payment incentives to all providers (not just hospitals)
- Vermont's all-payer ACO model , Kaiser Permanente, The Massachusetts Blue Cross Alternative Quality Contract and the Israeli Health system are examples of PBP models

CONCLUSION

There are an array of options for policymakers to address prices

- Protecting Competition and Improving Merger Review are important, but unlikely to address prices in isolation
- Multiple interventions that more directly target prices are likely most effective

Lower intensity rate methods can be effective

- May be more feasible to pass and implement
- Less likely to be limited by regulatory capture and/or failure

Thoughts for Connecticut

- Cost-growth benchmark provides basis for other interventions
- Consider a combination of the three middle-intensity options:
  - Affordability standards with limited rate setting
  - OON caps
  - Flexible Global budgets

Thank You!

https://sourceonhealthcare.org/

gudiksenkatherine@uchastings.edu

THE SOURCE
ON HEALTHCARE PRICE & COMPETITION

UC Law San Francisco