

# PROMOTING AND PROTECTING COMPETITION IN HEALTHCARE MARKETS

November 6, 2023

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Oregon Senate Health Briefing

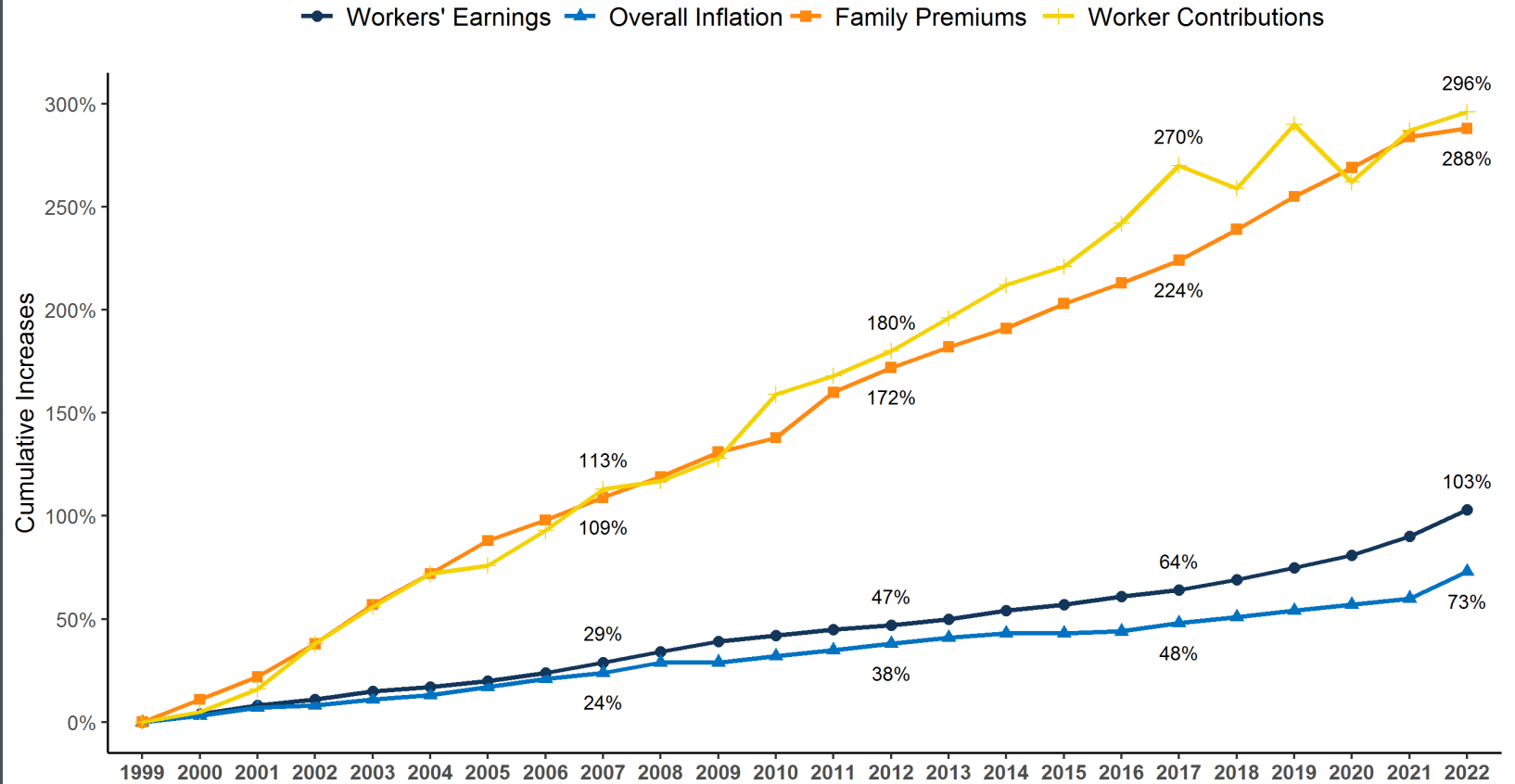
THE SOURCE  
ON HEALTHCARE PRICE & COMPETITION



San Francisco  
**UC Law**

HEALTH CARE COSTS ARE INCREASING MUCH FASTER THAN INFLATION OR WAGES

**Cumulative Increases in Family Premiums, Worker Contributions to Family Premiums, Inflation, and Workers' Earnings, 1999-2022**

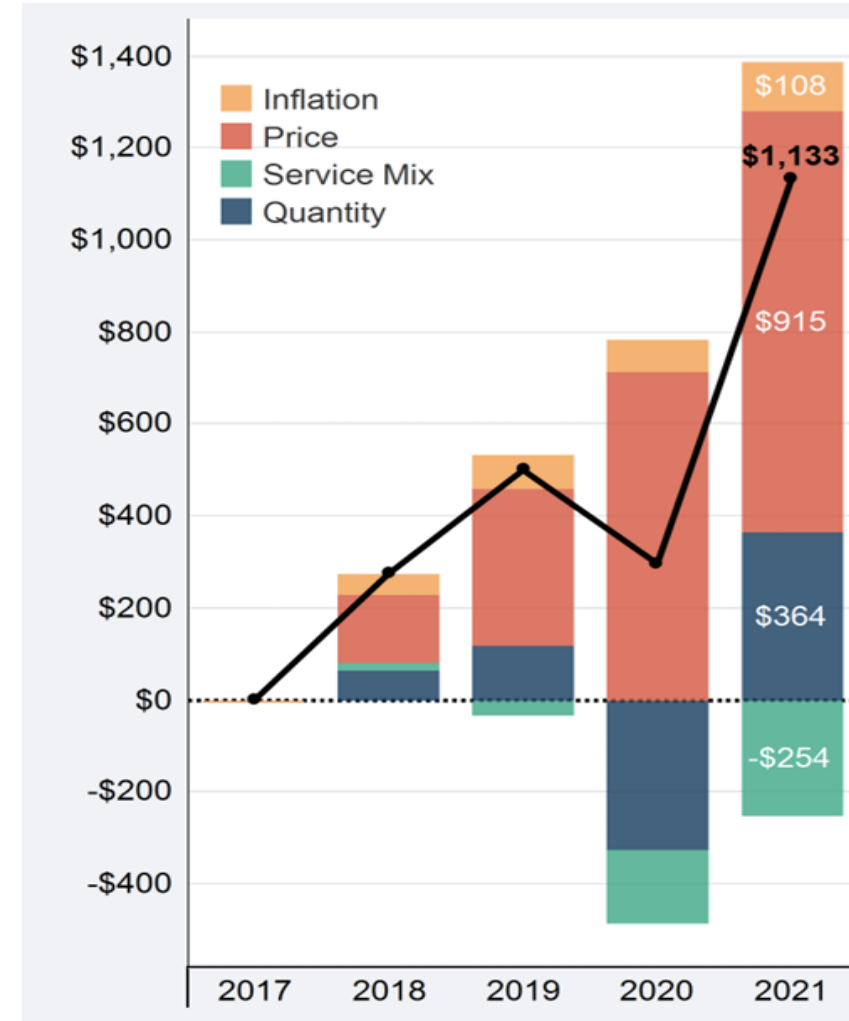


SOURCE: KFF Employer Health Benefits Survey, 2018-2022; Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 1999-2017. Bureau of Labor Statistics, Consumer Price Index, U.S. City Average of Annual Inflation, 1999-2022; Bureau of Labor Statistics, Seasonally Adjusted Data from Current Employment Statistics Survey 1999-2022.

“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)

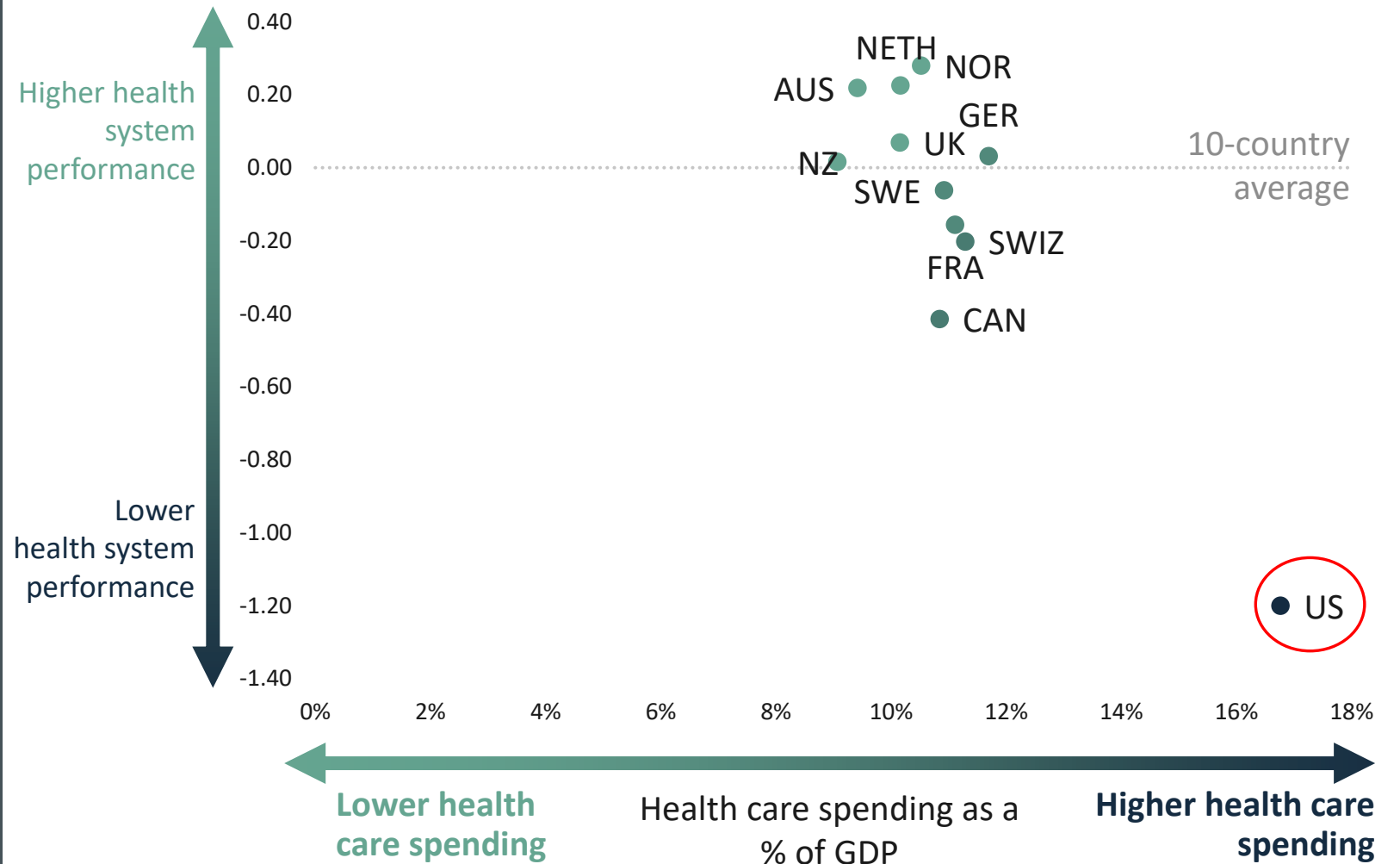
## Cumulative Growth in Health Care Spending per Person



Source: Health Care Cost Institute, 2021 HEALTH CARE COST AND UTILIZATION REPORT, [https://healthcostinstitute.org/images/pdfs/HCCI\\_2021\\_Health\\_Care\\_Cost\\_and\\_Utilization\\_Report.pdf](https://healthcostinstitute.org/images/pdfs/HCCI_2021_Health_Care_Cost_and_Utilization_Report.pdf). November 3, 2023

HIGHER  
SPENDING  
DOES NOT  
LEAD TO  
BETTER  
HEALTH  
OUTCOMES

## Health Care System Performance Compared to Spending



# WHY DOES THE US HAVE SUCH A POOR PERFORMING SYSTEM?



Health care consolidation is the “No. 1 driver of health care spending inflation,”

- David Dranove

Distinguished Professor at  
Northwestern University's Kellogg  
School of Management

# IMPACT OF HOSPITAL MERGERS

## Cost Impacts: Within Market Consolidation

- Hospital price increases of 20-44% (some as high as 55-65%)
- Bystander hospitals also raise prices following a merger

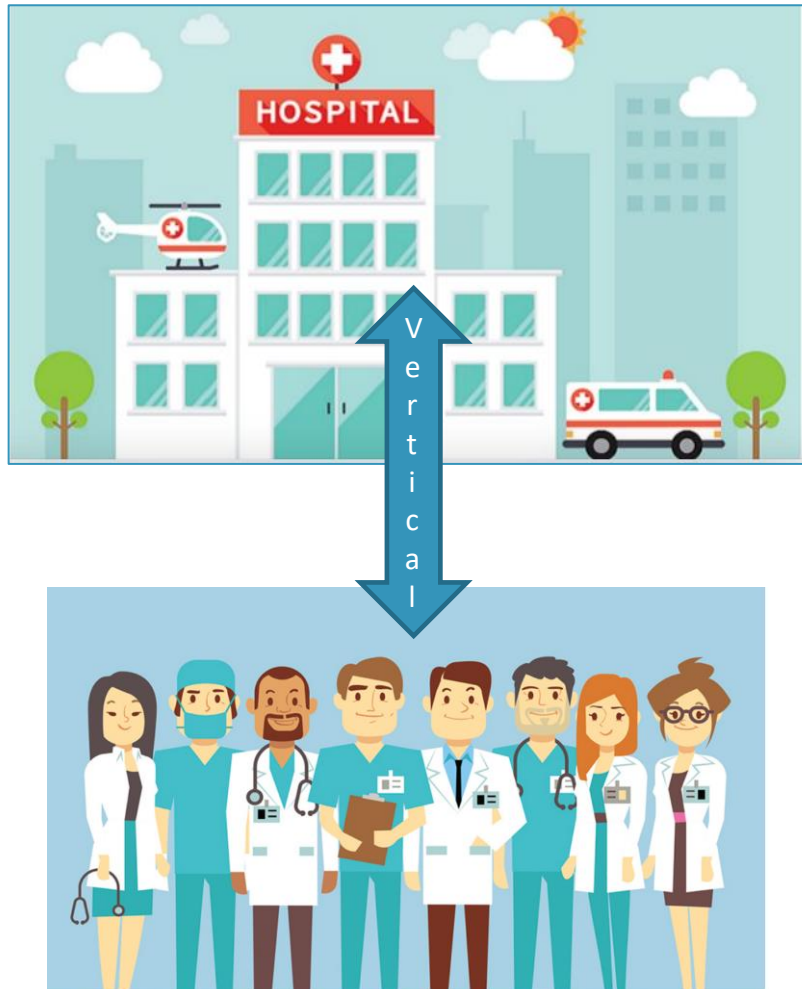
## Cost Impacts: Cross-Market Consolidation

- Prices rise 7-9% at *acquiring* hospitals, 17% at *acquired* hospitals with out-of-state purchaser
- Bystander hospitals also raise prices

## Quality

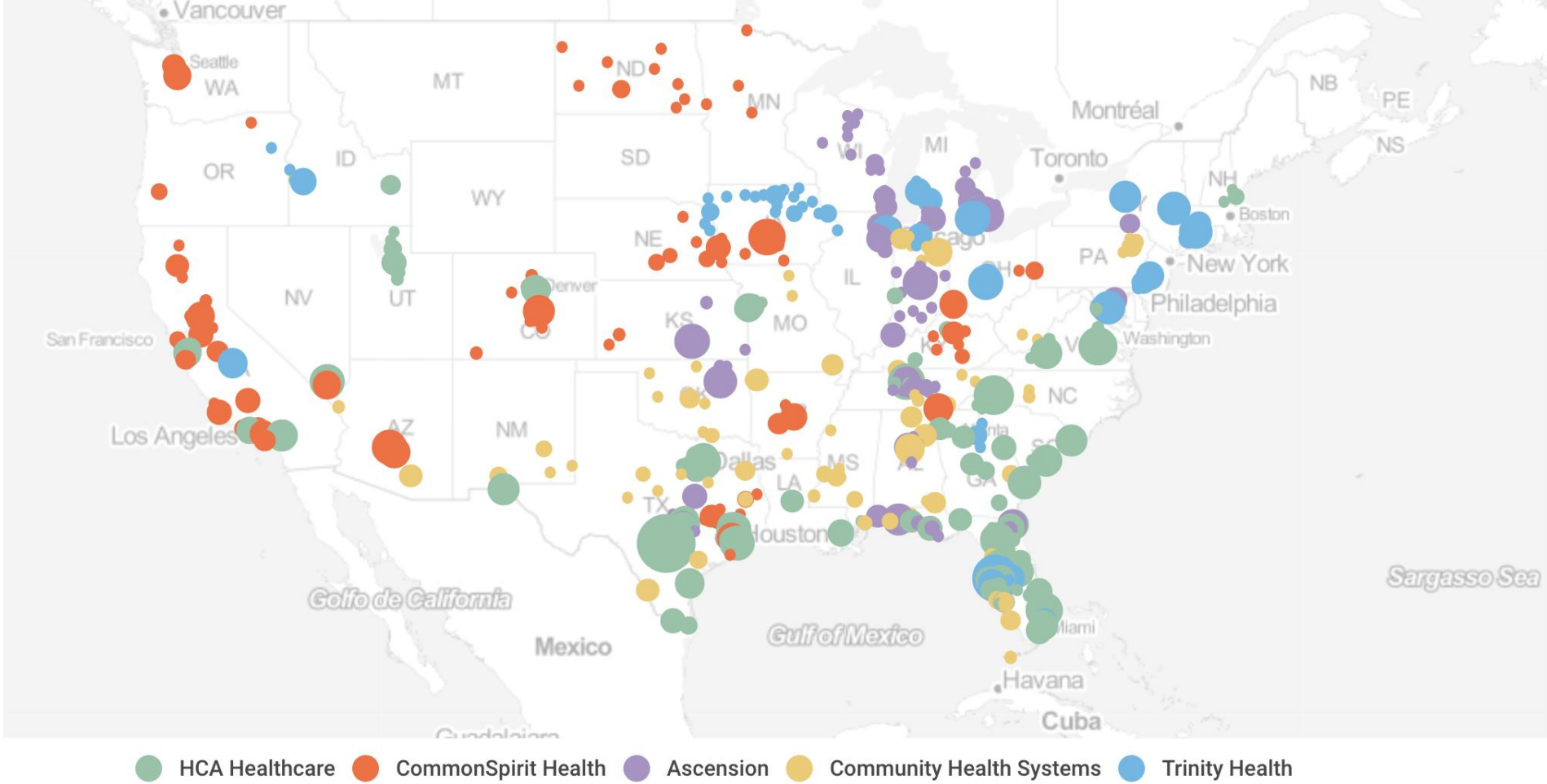
- Most studies find no significant quality changes
- A few have shown modest improvements in a few measures
- Other studies indicated higher mortality and worse quality when there is less competition

# IMPACTS OF VERTICAL MERGERS



- **Higher Physician Prices:**
  - Physician prices increase post-merger with a health system by ~14%
  - Cardiologist prices increased by 33.5%
  - Orthopedist prices increased by 12-20%
- **Higher Clinic Prices:** Hospital-acquired clinic prices increased 32–47% within four years
- **Higher Hospital Prices**
- **Little to no quality improvements**
- **Increased Imaging and Lab Services**

# Merger & Acquisition (M&A) Trend – Hospital Growth into Regional and National Health Systems





# Large, Highly Integrated “Payviders”

Payer/Insurer



Providers



PBM



# OPTIONS FOR STATE ACTION

## Protect Remaining Competition

- Health Care Market Oversight Program

## Restrict Anticompetitive Behavior or Market Failure

- Prohibit Anticompetitive Contracting Practices
- Set Minimum Community Benefit Requirements for Non-profit Entities
- Set Affordability Standards in Insurance Review
- Cap Rates on Services Provided Out-of-network
- Hospital Global Budgets

OPTION 1:  
ADDRESS  
ANTICOMPETITIVE  
CONTRACTING  
PRACTICES

## 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.

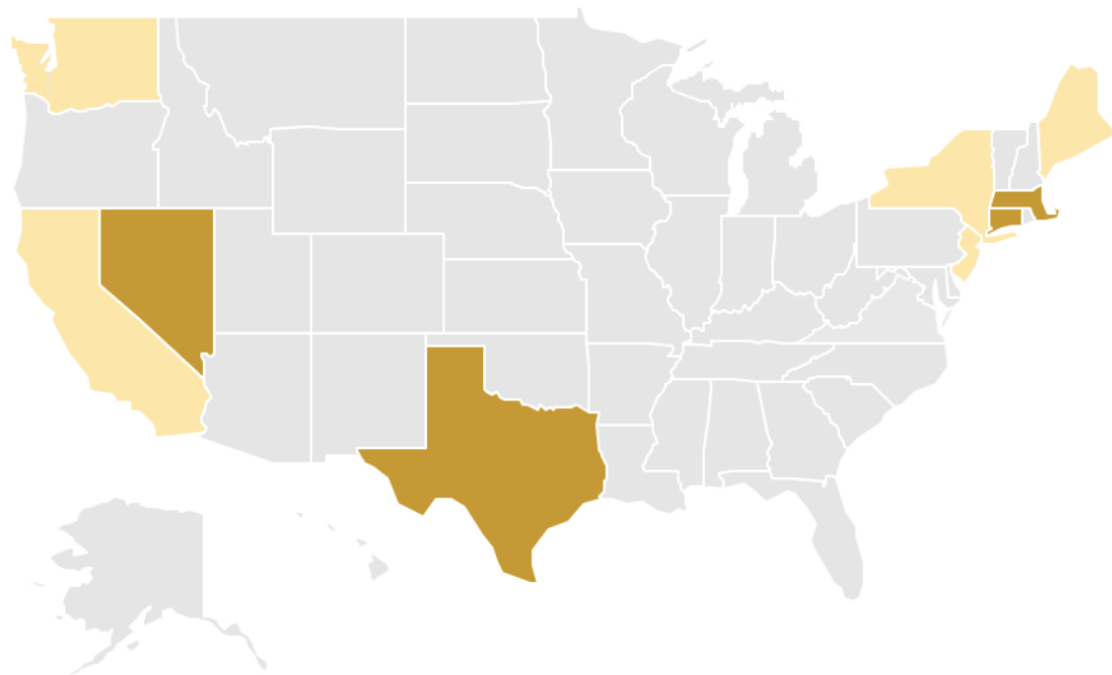
THE WALL STREET JOURNAL.

## 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

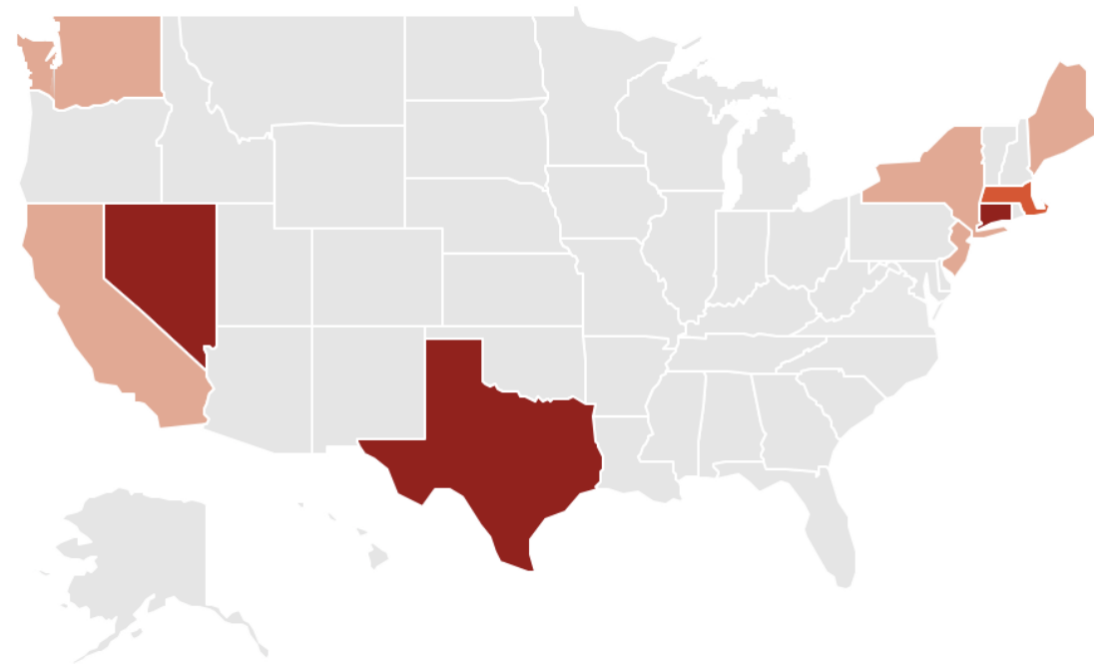
# STATES RESTRICTING USE OF SPECIFIC CONTRACT TERMS

## Anti-tiering/anti-steering Restrictions



- 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

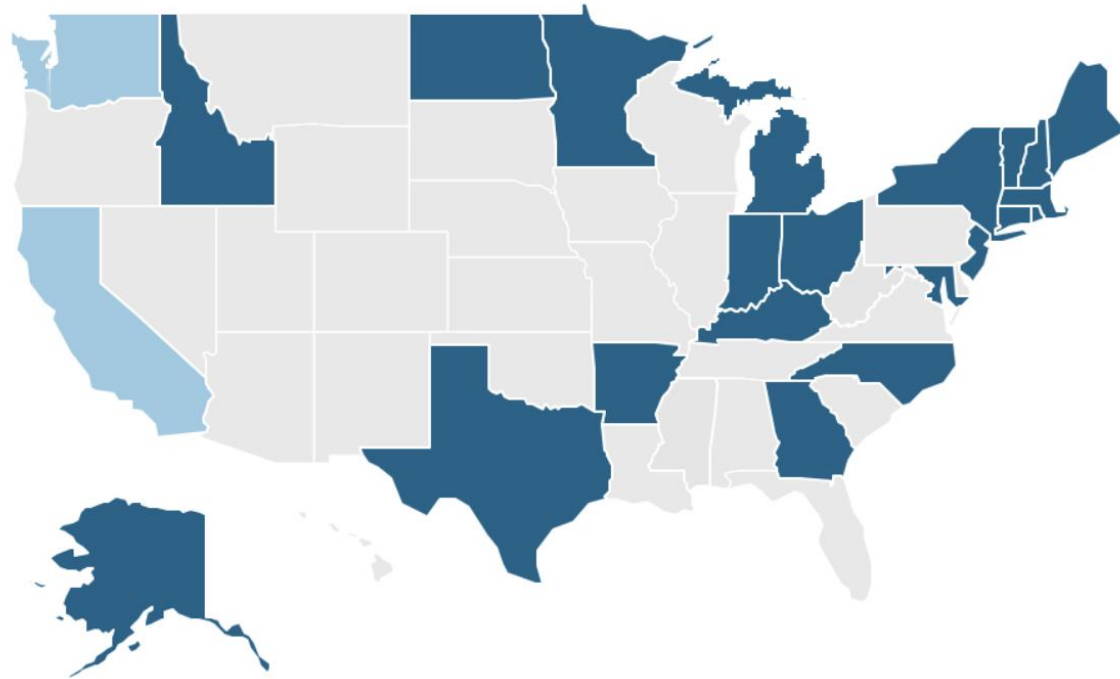
## All-or-nothing or Affiliate Contracting Restrictions



- Law banning all-or-nothing contract provisions
- Law restricting some all-or-nothing contract provisions
- Current session bill to restrict all-or-nothing contract provisions
- No restrictions on all-or-nothing contract provisions

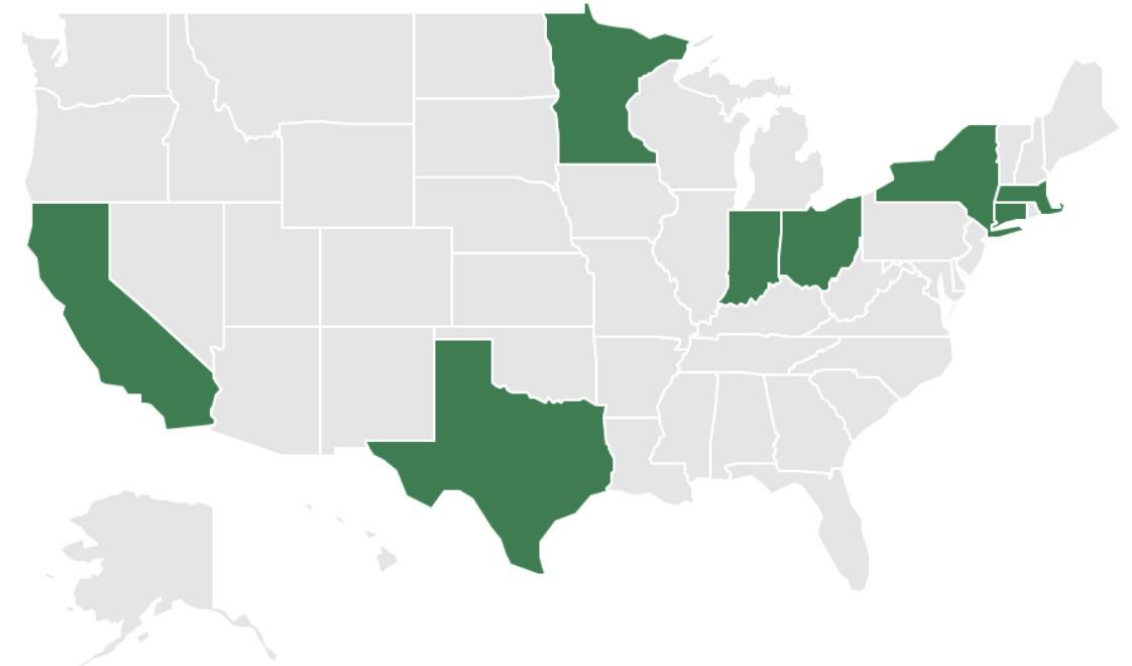
# STATES RESTRICTING USE OF SPECIFIC CONTRACT TERMS

## Most-favored Nation Restrictions



- Law restricting MFN contract provisions
- Current session bill to restrict MFNs
- No restrictions on MFN contract provisions

## Gag Clause or Price Secrecy Restrictions



- 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)

# OPTION 2: SET MINIMUM CHARITY REQUIREMENTS FOR NON-PROFIT HOSPITALS

- States can determine exemptions from state property, income and sales tax
  - Many states exempt any organization that is exempt from federal income tax pursuant to Internal Revenue Code §501(c)
  - A few states have an independent assessment of what is exempt from state taxes or place requirements on minimums for non-profit hospitals
- States can pass legislation to
  - Better define charity care,
  - Increase transparency about the benefits hospitals provide, and
  - Set minimum financial thresholds for charitable help to their communities.



## Pennsylvania

- 5-part test to determine what is a public charity
- Tax boards and school districts can challenge tax exemption in court
- 2023 tax-exempt status revoked for three hospitals owned by Tower health

# OPTION 3: SET AFFORDABILITY STANDARDS

- Insurance commissioners are authorized to reject “unaffordable rate increases”
- Rhode Island implemented them in 2010, with Delaware and Colorado more recently implementing them
- Can be paired with minimum spending on primary care



## Rhode Island

- The Office of the Health Insurance Commissioner (OHIC)
  - reviews rate increases for individual hospitals
  - may reject premium rate increases that exceed the consumer price index (CPI – Urban)+1%.
- Successfully reduced spending on hospital care relative to a national control cohort

## OPTION 4: CAP ON PRICES FOR OUT-OF- NETWORK (OON) SERVICES

A maximum payment that applies when a patient obtains care from a provider outside their insurance network

Providers threaten insurers with exorbitant OON Prices to negotiate higher INN rates

Caps on OON prices can truncate very high OON prices AND give insurers more bargaining power to negotiate lower INN rates

In Medicare Advantage, in network rates hover near a de facto OON cap at traditional Medicare prices

State must only regulate prices for OON services, so most services subject to market negotiations



## OPTION 5: HOSPITAL GLOBAL BUDGETS

A prospectively determined cap on annual revenues where the total budget is set in advance

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

Flexible budgets neutralize FFS incentives to increased volumes but allow for payer "shifts" in care from high-cost to low-cost hospitals

# COMPARISON OF GLOBAL BUDGET MODELS



## Maryland

- 2014: moved from a unit rate setting system to hospital global budgets
- Initially met its all-payer and Medicare growth targets, but recently struggled to meet Medicare TCOC goal
- Use of 100% fixed budgets induced hospitals to shift care to unregulated providers



## Rochester NY

- Operated 1980-87 and applied to all payers
- Regulated at the aggregate budget level and was very "formula-driven"
- Success in reducing unnecessary hospital use, improving hospital financials, and controlling cost growth



## Pennsylvania

- In 2017, PA obtained CMS waiver implement to implement model for small/rural hospitals (voluntary participation)
- Aims to improve financial predictability for hospitals and incentivize efforts to improve the health status of community
- Implementation delays due to Covid

## CONSIDERATIONS & RECOMMENDATIONS

Market failures are leading to unaffordable increases in health care spending

Oregon is already a leader in reviewing mergers to prevent anticompetitive consolidation

Existing market power may necessitate policies to address anticompetitive behavior

States can choose policy options to target specific market failures to promote affordability, access, quality, and equity



# Thank You!

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The Source: [sourceonhealthcare.org](https://sourceonhealthcare.org)