

Exploring the Market System Ecosystem: Lessons Learned and Next Steps

OCTOBER 19, 2022

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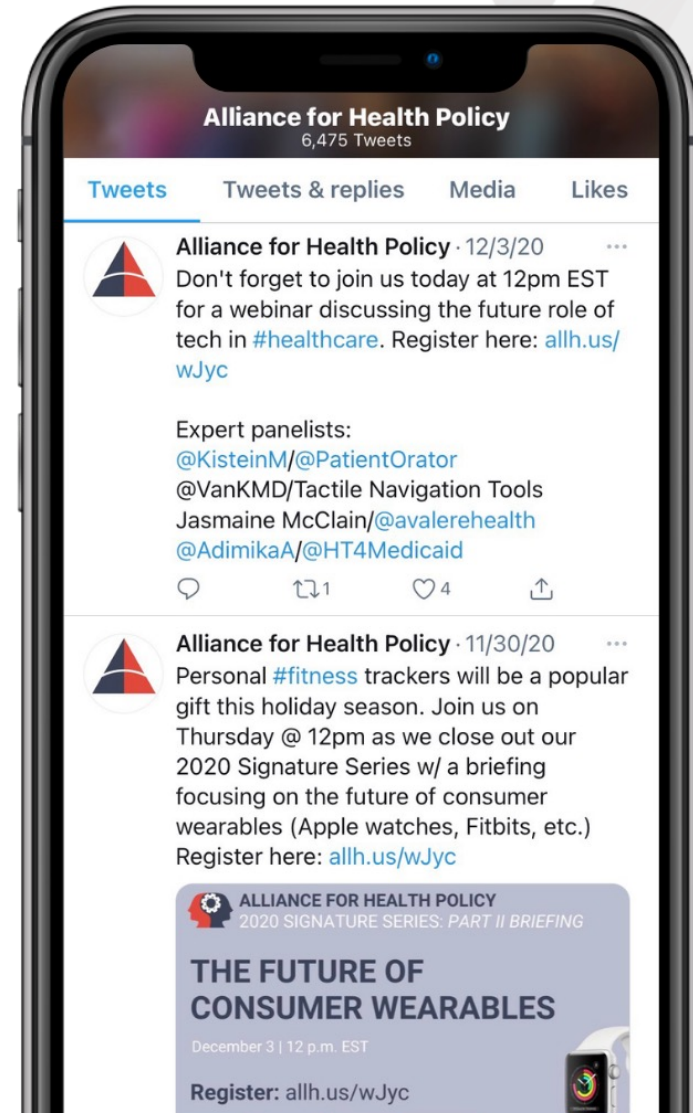


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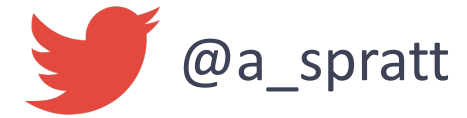


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Exploring the Market Consolidation Ecosystem

Erin C. Fuse Brown, JD, MPH

Georgia State University College of Law

Alliance for Health Policy Webinar

October 19, 2022

The New York Times

When Hospitals Merge to Save Money, Patients Often Pay More

By [Reed Abelson](#)

Nov. 14, 2018

Modern Healthcare

NEWS DIGITAL HEALTH INSIGHTS DATA/LISTS OPINION EVENTS & AWARDS MULTIMEDIA

Home > Mergers & Acquisitions

October 06, 2021 05:09 PM


'Mega-mergers' dominated in 2021, analysis finds

STEVEN ROSS JOHNSON

PROVIDERS

Healthcare Dealmakers—CVS Health drops \$8B into home health; Trinity Health buys out MercyOne for \$613M & more

By [Dave Muoio](#) · Oct 6, 2022 04:48pm

 Markets Tech Media Success Perspectives Videos

Amazon to buy One Medical for \$3.9 billion as it expands healthcare footprint



By [Catherine Thorbecke](#)

Updated 9:00 AM EDT, Fri July 22, 2022

CONNECTICUT

Yale New Haven Health signs deal to buy Manchester, Rockville and Waterbury hospitals. Lawmakers warn of health care consolidation.

By [Stephen Singer](#)

Hartford Courant · Oct 06, 2022 at 9:43 am

Types of consolidation

- Horizontal, vertical, cross-market
- Buyers: other providers, payers, private equity
- Types of transactions: mergers, acquisitions, affiliation agreements, joint contracting, joint ventures

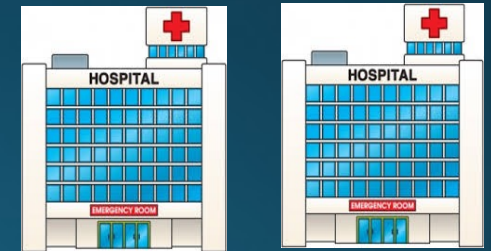
Horizontal



Vertical



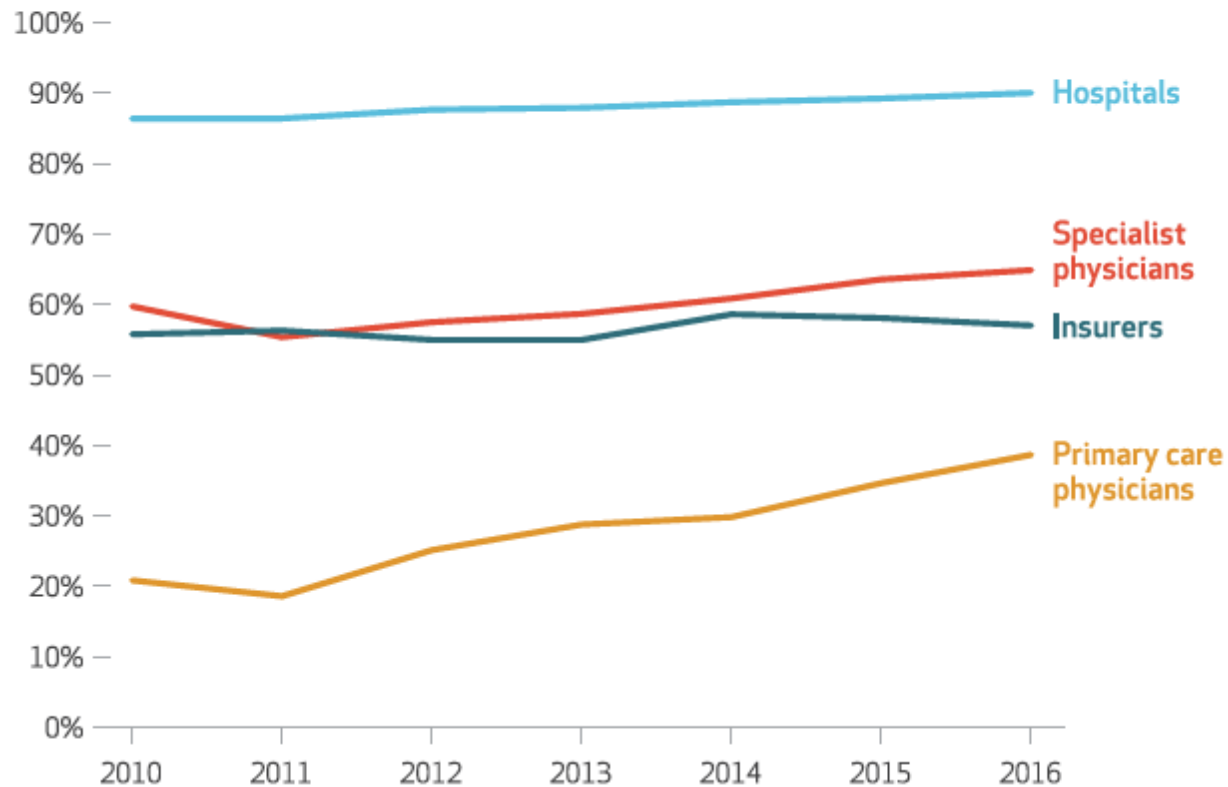
Cross-Market



Health care consolidation trends

EXHIBIT 2

Percentages of Metropolitan Statistical Areas (MSAs) whose Herfindahl-Hirschman Index (HHI) was above 2,500 for hospitals, physician organizations, and health insurers, 2010-16



% of markets that are highly concentrated:

90% of hospital markets

65% of specialty physician markets

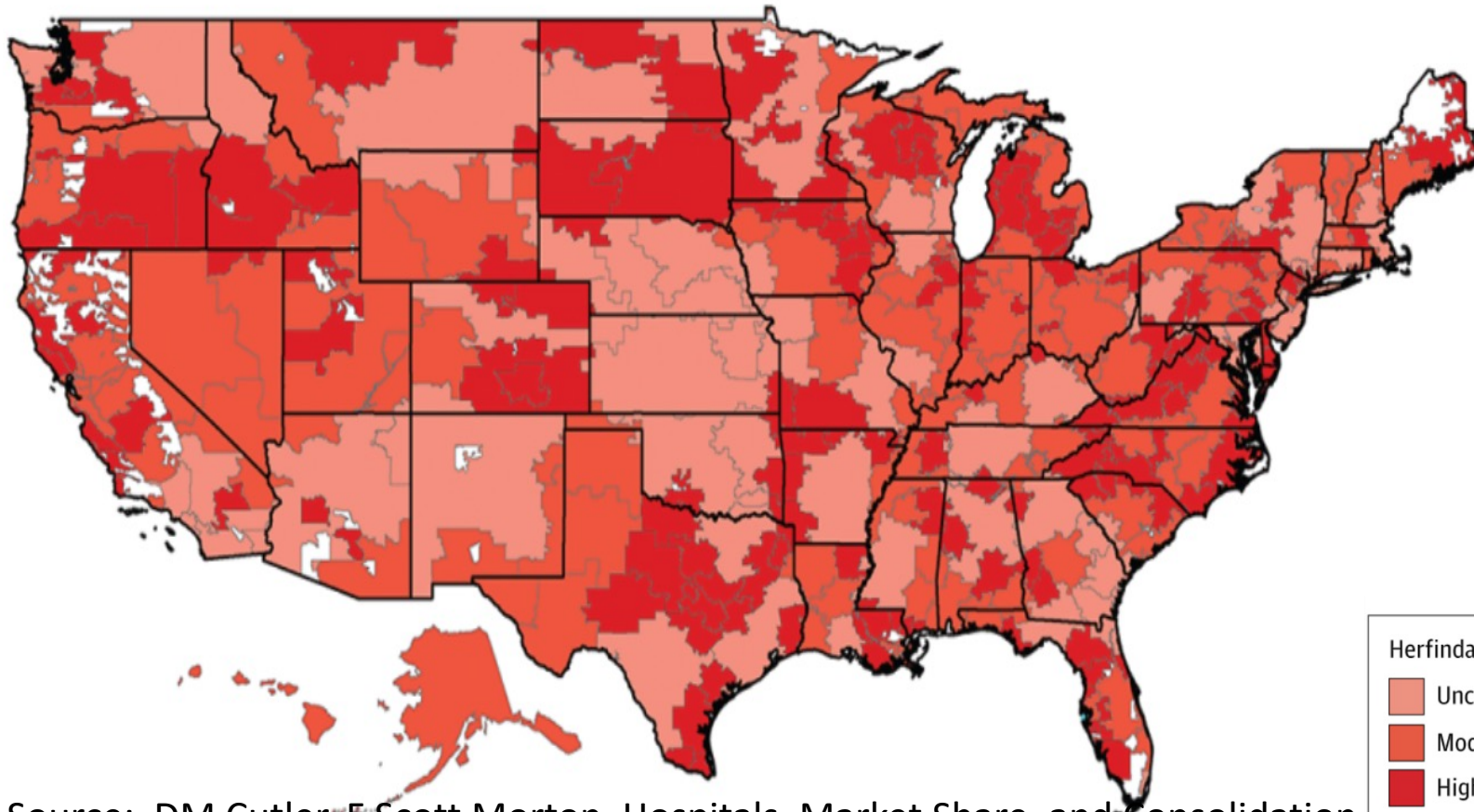
57% of insurer markets

39% of primary care markets

Source: Fulton, BD. Health Care Market Concentration Trends in the United States: Evidence and Policy Responses. Health Affairs. 2017;36(9):1530-1538.

Hospital consolidation

A Hospital referral regions



- 1,629 hospital mergers from 1993-2017
- 90% of hospital markets are highly concentrated
- In most markets a single hospital controls >50% of market share

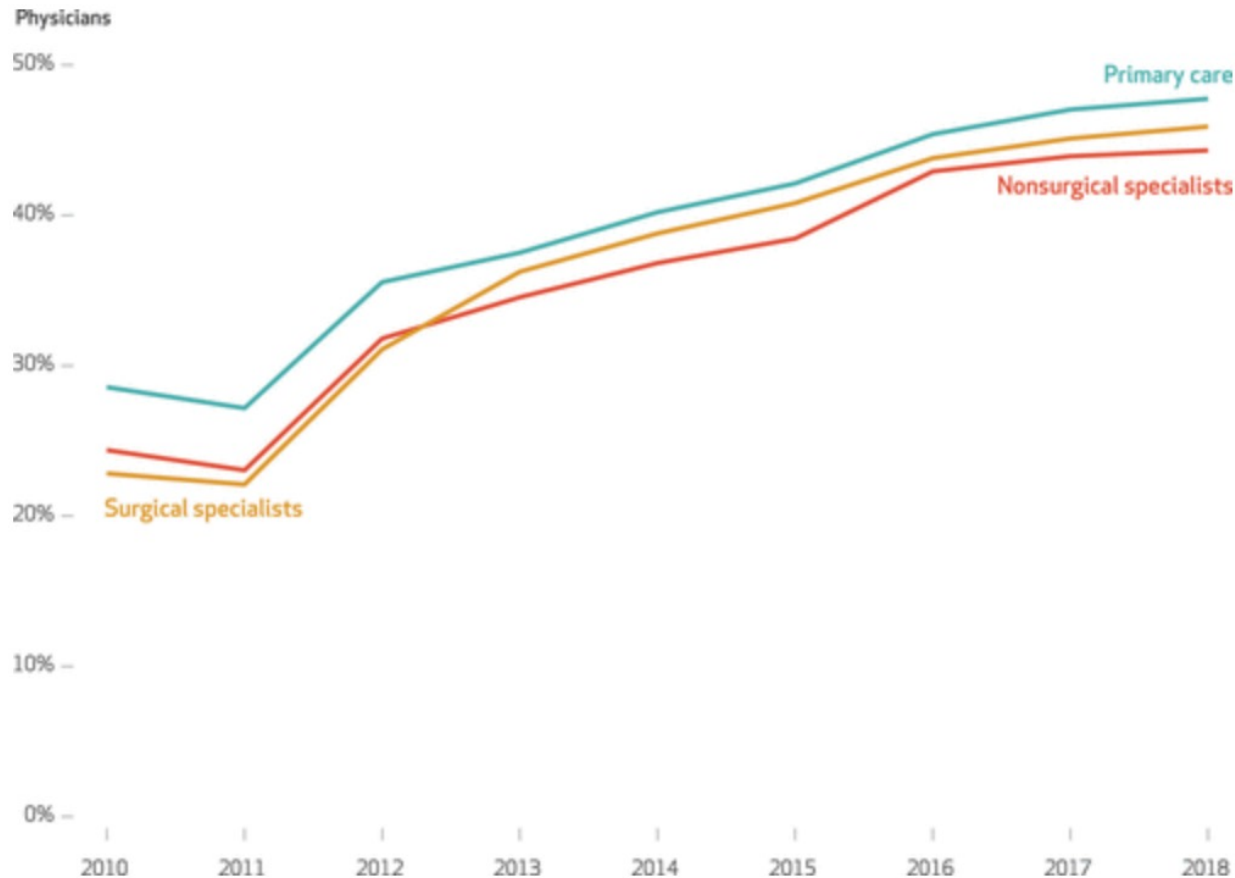
Source: DM Cutler, F Scott Morton, Hospitals, Market Share, and Consolidation, JAMA. 2013;310(18):1964-1970

Herfindahl-Hirschman Index (HHI) of Market Concentration

- Unconcentrated (HHI 100 to <1500)
- Moderately concentrated (HHI 1500 to <2500)
- Highly concentrated (HHI ≥2500)
- Not located in any hospital referral region

Vertical consolidation on the rise

Exhibit 1 Percent of US physicians in practices owned by hospitals or health systems, by specialty group, 2010–18



From 2010-2018, hospital ownership of physician practices increased 89% (from 24%-46%)

Most transactions are too small to receive antitrust review

Consolidation drives prices higher

- It all comes down to **market power**
- Market power is amassed through **consolidation** (horizontal mergers, vertical consolidation, joint ventures)
- Higher priced providers are **not higher quality**



Evidence of the impact of consolidation

Clear evidence that provider consolidation significantly ↑ prices

- Horizontal hospital consolidation increases prices 20-60% (Cooper et al. 2020)
- Horizontal physician consolidation increases prices 8-26% (Austin & Baker 2015)
- Vertical consolidation associated with 14.1% increase in physician prices (Capps, Dranove, Ody 2019)

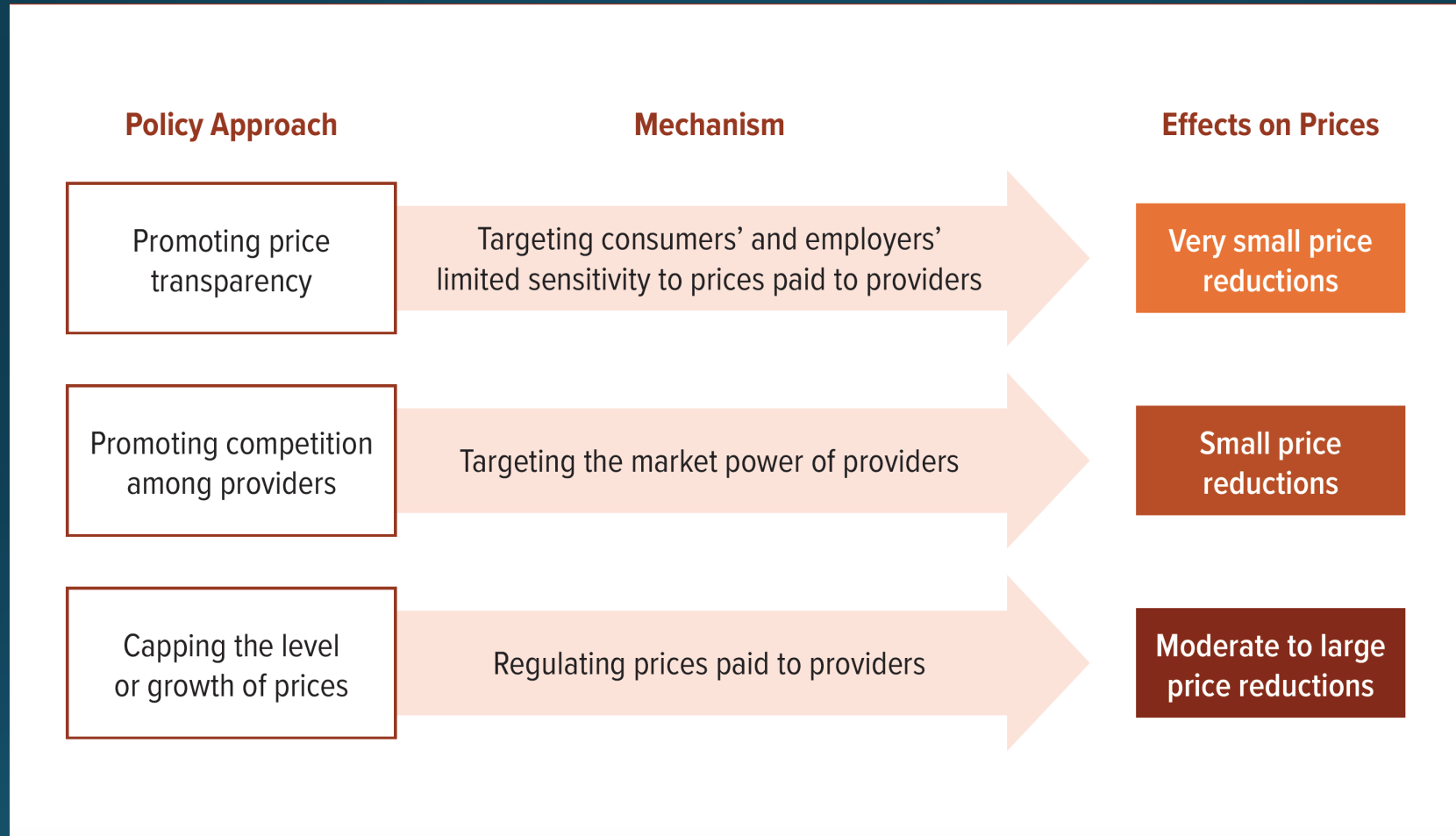
Mixed evidence on consolidation's impact on quality

- Hospital mergers did not affect patient outcomes, readmissions, or mortality, but patient satisfaction declined (Beaulieu et al. 2020)
- Hospital ownership of physician practices led to higher readmission rates and no better quality measures (McWilliams et al. 2013, Neprash et al. 2015)

Policy Tools to Address Health Care Consolidation

Policy Approach	State Tools	Federal Tools
1. Transparent Data	<ul style="list-style-type: none"> • All-payer claims databases • Enhanced hospital financial reporting and hospital cost analysis 	<ul style="list-style-type: none"> • Hospital Price Transparency Rule • Transparency in Coverage Law • Federal APCD (or federal help for state APCDs)
2. Mitigate consolidation and abuses of market power	<ul style="list-style-type: none"> • Pre-transaction notice, review, and approval for health care transactions • Banning anticompetitive health insurance contract terms • State AG action against anticompetitive conduct 	<ul style="list-style-type: none"> • Health care merger review under the Clayton Act • Reporting under Hart-Scott-Rodino Act • Federal antitrust enforcement against anticompetitive conduct under Sherman Act
3. Oversee health care rates and growth	<ul style="list-style-type: none"> • Cost growth benchmarks • Health insurance rate review – affordability standards • Limit outpatient facility fees • Public option • Out-of-network price caps • All-payer model, global hospital budgets 	<ul style="list-style-type: none"> • Medicare site neutral payment (limiting facility fees) • No Surprises Act • Public option • Employer public option • Caps on commercial prices or price growth

CBO boils health policy down to 1 slide



Source: CBO, Policy Approaches to Reduce What Commercial Insurers Pay for Hospitals' and Physicians' Services (Sept. 2022)

Thank you!

Erin C. Fuse Brown, JD, MPH



@4_BetterHealth

Brian Miller, M.D., MBA, MPH

Nonresident Fellow, American Enterprise Institute
Assistant Professor of Medicine, Johns Hopkins School of
Medicine

Hospital Consolidation



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Nonresident Fellow, American Enterprise institute

October 19, 2022

Bad News – It's Not Just Hospitals Anymore...

- 90% of Metropolitan statistical areas are concentrated for hospitals
- 1,412 hospital mergers from 1998 – 2015
- PCP employment: 27 -> 44% over 10 yrs to 2016
 - Specialist...65%...oof



Why Should Policymakers Care?



SPECIAL ARTICLE

Changes in Quality of Care after Hospital Mergers

Nancy D. Beaulieu
Bruce E. Landon, M.D., M.B.A., J.D.
and J. Michael

BACKGROUND
The hospital industry has consolidated substantially since 2000, and at an accelerated pace since 2010. Multiple

KFF Filling the need for trusted information on national health issues

Provider consolidation leads to higher prices

A wide body of research shows that consolidation in the insurance and Medicare markets

Robert Wood Johnson Foundation

THE SYNTHESIS PROJECT
NEW INSIGHTS FROM RESEARCH RESULTS

UPD

This document is a previous Synthesis at www.pod

The impact of hospital consolidation —Update

Intro
In 20
merg
expa
In pa
intro
the 2
Acco

The National Academies of
SCIENCES • ENGINEERING • MEDICINE
CONSENSUS STUDY REPORT

Taking Action Against
Clinician Burnout
A Systems Approach to
Professional Well-Being

Harms of Hospital Consolidation



Tools To Address Consolidation

Do No Harm

1. More Rate Regulation/Price Caps

- Promotes a static, not dynamic market
- Subject to regulatory capture
- *Doesn't work*: Certainly hasn't controlled costs in Medicare FFS

$$\text{Cost} = f(P, V, I)$$

Diagram illustrating the components of the cost function $\text{Cost} = f(P, V, I)$:

- Capitation (red bracket above P)
- Episodic Bundling (blue bracket above V and I)
- FFS (green bracket below V and I)



2. Certificates of Public Advantage

- Industry using state authorities to circumvent FTC oversight
- Replaces competition w/state oversight

A Living System: *Encourage Dynamism*

1. Improve antitrust enforcement

- Provide FTC authority for anticompetitive behavior for nonprofit (hospitals)
- State competition index for targeted enforcement

2. Eliminate payment policy arbitrage

- Eliminate CMS inpatient only list
- Promote site neutral payment
- Reform 340B

3. Allow competition: encourage entry

- Eliminate Certificate of Need
- Allow Physician-Owned Hospitals
- Stark Law reforms to promote new clinical enterprises





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Managing Director and Chair
Kaufman Hall

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**Remarks for
“Exploring the Market Competition Ecosystem”**

**Kenneth Kaufman
Kaufman Hall**

Alliance for Health Policy | October 19, 2022

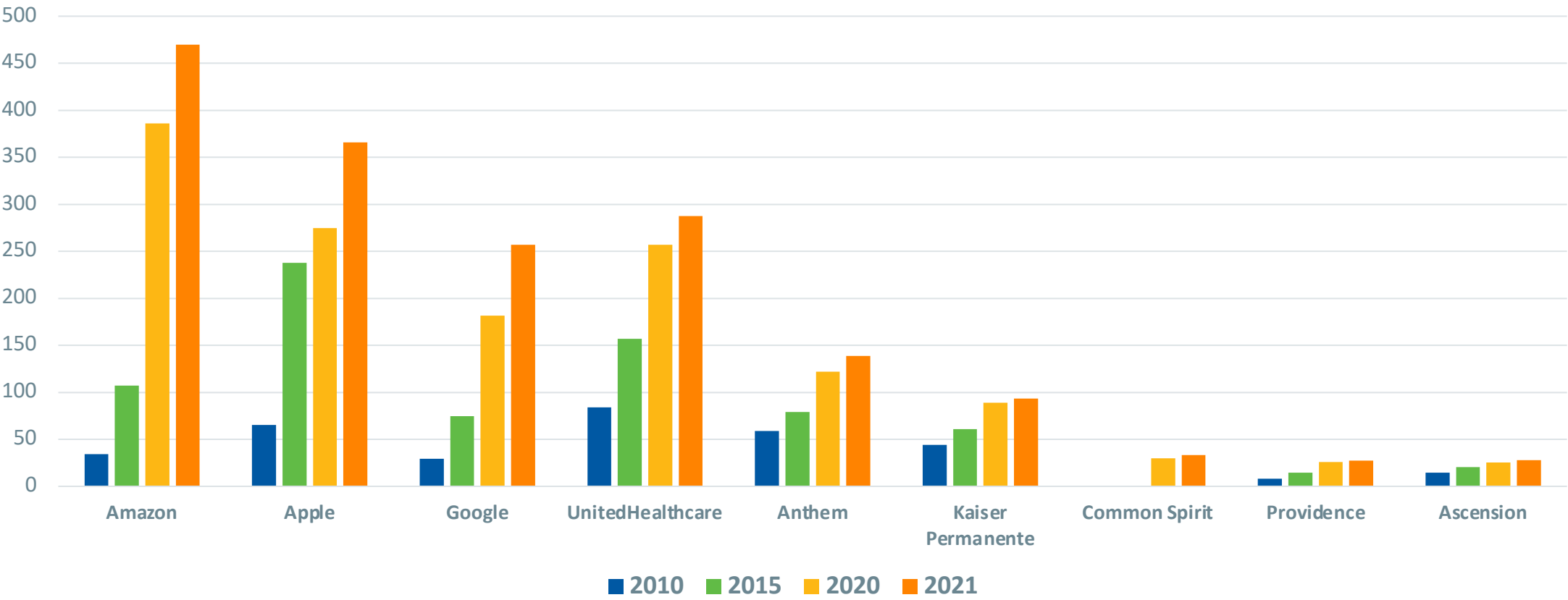
A Lens for Viewing the Not-for-Profit Healthcare Market

- The historical regulatory approach toward not-for-profit healthcare has been based on the narrow theory that prices to consumers are negatively impacted by consolidating providers
- But this is an overly narrow way of viewing the healthcare market
- Regulation toward the provider community should be seen through the lens of the macroeconomic environment within which health systems currently operate

Everything In the American Economy Is Getting Bigger...

Except for Not-for-Profit Healthcare, Which Is Significantly Impacting the Sector's Ability to Compete

Net Revenues, 2010-2021 (\$ in Billions)



*Sources: Statista and individual company's audited financial statements.

The Pandemic, Inflation, and the Regulatory Environment Have Seriously Weakened Not-for-Profit Healthcare With the Following Results

- More than half of hospitals are projected to have negative operating margins through 2022, an increase over pre-pandemic levels
 - Under an optimistic scenario, **53%** of hospitals would have negative operating margins in 2022
 - Under a pessimistic scenario, **68%** of hospitals would have negative operating margins in 2022
- Expenses are significantly elevated from pre-pandemic levels
 - Total expenses are projected to increase nearly **\$135 billion** over 2021 levels
 - Labor expenses are projected to increase by **\$86 billion**, while non labor expenses are projected to increase by **\$49 billion**
- U.S. hospitals are likely to face billions of dollars in losses in 2022 under both optimistic and pessimistic scenarios
 - Under an optimistic scenario, hospital operating margins would be **down 37%** compared with 2022
 - Under a pessimistic scenario, hospital operating margins would be **down 133%** compared with 2022
- **As a result, many hospitals are no longer able to meet all the clinical services that are required by their respective communities**

How Anti-Consolidation Regulation Impacts Communities

- As an example, consider the scenario of a two-hospital city in which one hospital is successful and another is struggling to maintain sufficient volume
- A merger would offer a systematic approach to managing a complex transition to reduce duplication and to create the best mix of services, locations, and clinical quality
- Health system executives view the merger option as a far more positive approach for a community than the alternative—which allows one organization to decline financially and clinically over a period of years
- Over the past 20 years, the regulatory apparatus has made it close to impossible for hospitals to merge in a two-hospital town—most recently preventing the merger of the two hospitals in New Brunswick New Jersey
- Such a regulatory approach actually raises local healthcare costs and forces the maintenance of service lines whose quality is suspect



Kenneth Kaufman

Chair, Kaufman Hall

kkaufman@kaufmanhall.com

For more than forty years, Ken Kaufman has been one of the leading thinkers on the future of healthcare. He is the Chair of Kaufman Hall, a management consulting and software firm that he founded in 1985. Ken has helped healthcare organizations of all sizes with their most critical strategic challenges. He is also the author of seven books and hundreds of articles, and he has delivered more than 400 speeches, most recently focusing on healthcare disruption. In 2019, he received the Richard L. Clarke Board of Directors Award from the Healthcare Financial Management Association for lifetime contribution to healthcare.

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WHAT STATES CAN DO ABOUT CONSOLIDATED HEALTH CARE PROVIDERS

October 19, 2022

Katherine L. Gudiksen, Ph.D., M.S.

THE SOURCE
ON HEALTHCARE PRICE & COMPETITION



LIMITING THE ANTICOMPETITIVE USE OF SYSTEM POWER

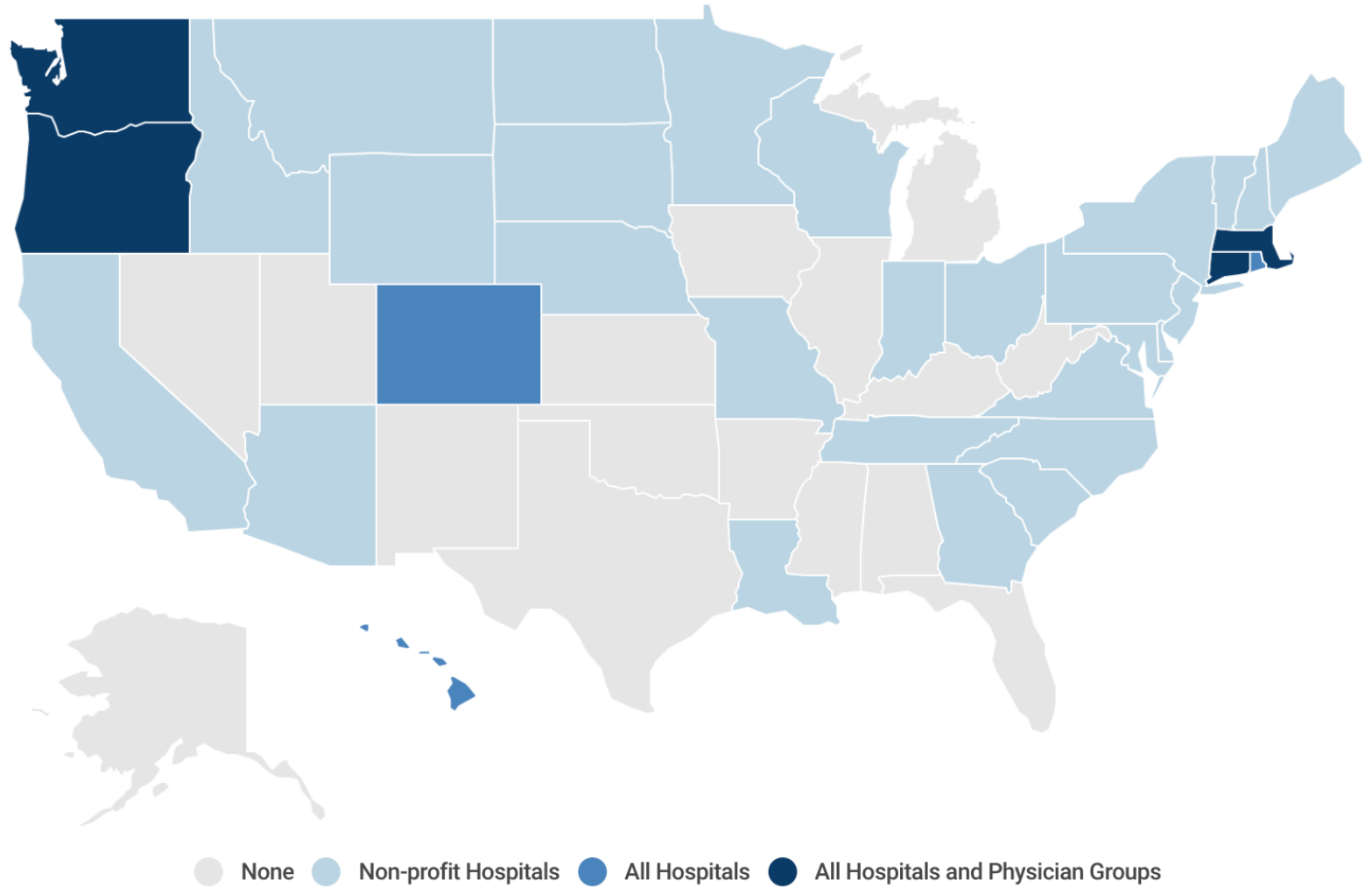
Oversee Future Consolidation

- Increased Notice of Proposed Transactions
- Administrative Review Process

Restrict Use of Market Power

- Prohibit Anticompetitive Contract Terms
- Restrict Pricing Power of Dominant Providers

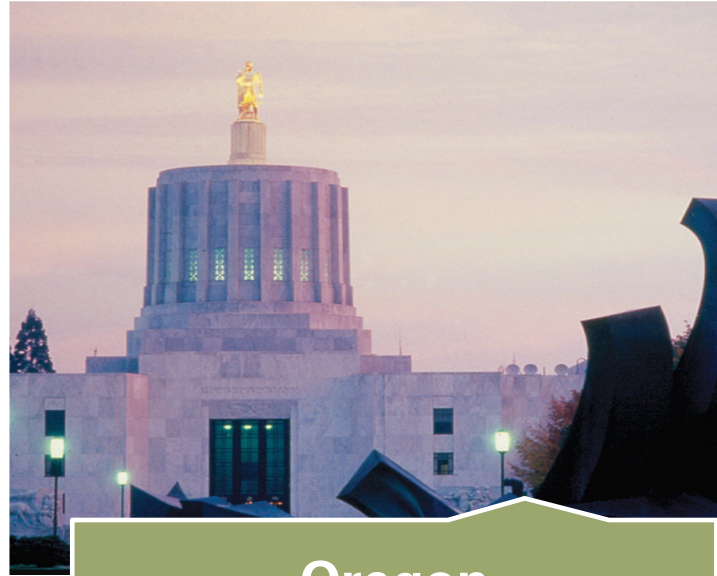
REQUIRED NOTICE OF PROPOSED TRANSACTIONS





Massachusetts

Health Policy Commission



Oregon

Oregon Health Authority



California

Office of Health Care
Affordability

STATE AGENCIES OVERSEEING FUTURE CONSOLIDATION

LIMITING THE ANTICOMPETITIVE USE OF SYSTEM POWER

Oversee Future Consolidation

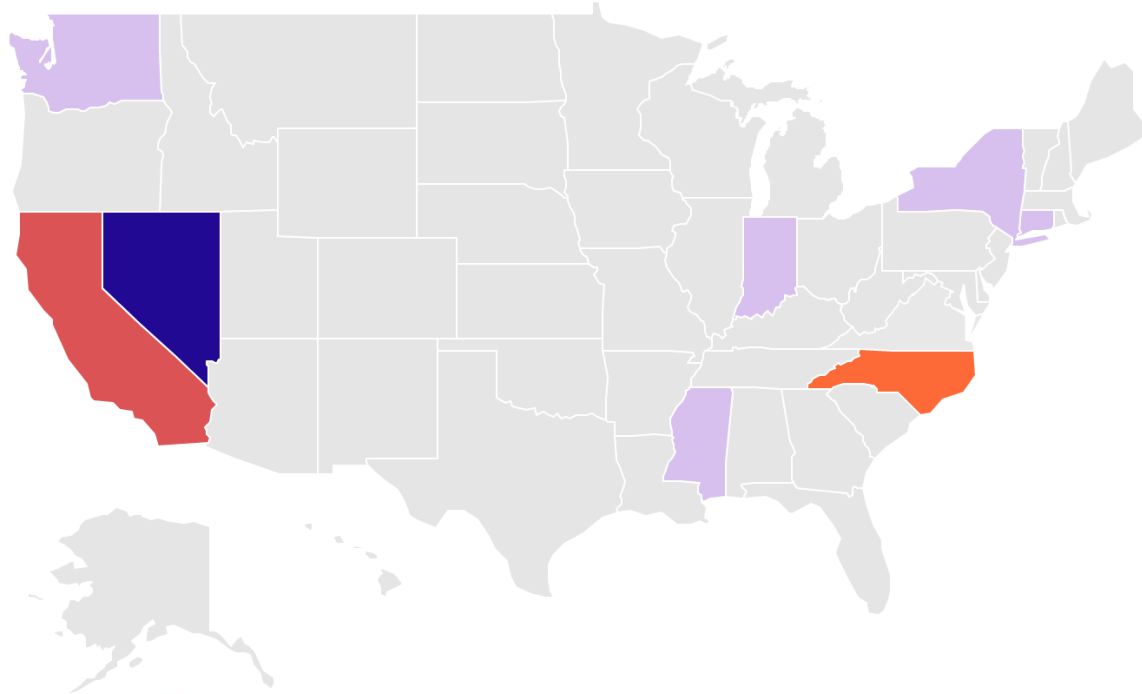
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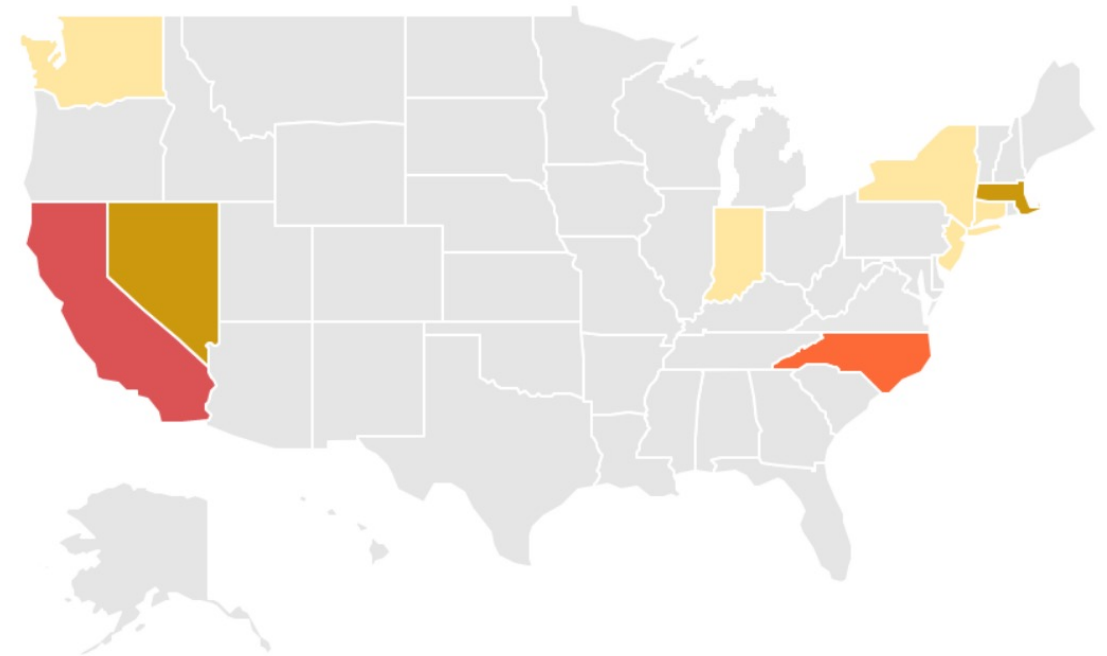
STATES WITH LAWS RESTRICTING USE OF SPECIFIC CONTRACT TERMS

All-or-nothing or Affiliate Contracting Restrictions

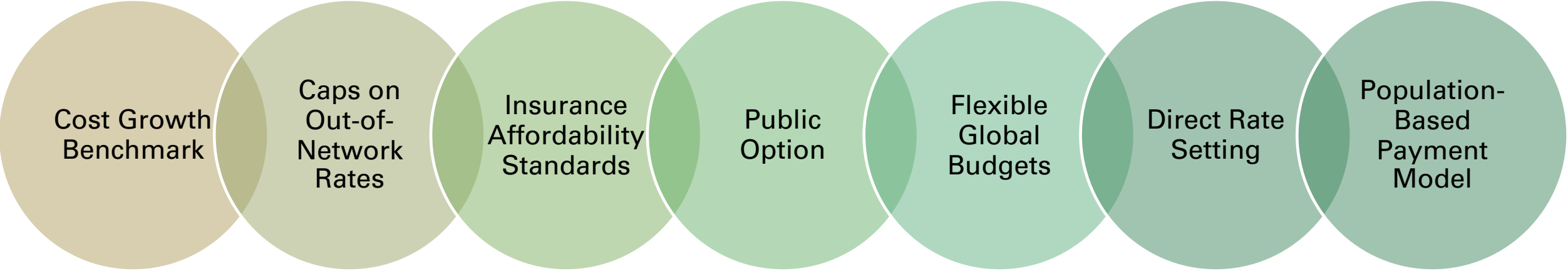


- Legislation restricting all-or-nothing provisions + Major lawsuit
- Major lawsuit alleging anticompetitive contract use
- Law banning all-or-nothing contract provisions
- Current session bill to restrict all-or-nothing contract provisions
- No restrictions on all-or-nothing contract provisions

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



Spectrum of Options to Constrain Provider Pricing Power



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Christopher Wheeler, J.D.

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TAKE OUR SURVEY

Please fill out the evaluation survey you will receive immediately after this presentation, or via email this afternoon!

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UPCOMING EVENT

October 26, 2022 | 12:00 PM – 1:30 PM ET

Rebuilding Trust in Public Health Messaging

This briefing will provide a brief overview of successful federal, state, and local examples of public health messaging, historical examples of mistrust, and how public health officials overcame these barriers. This panel will also discuss potential strategies for rebuilding trust in public health officials and institutions, such as further diversifying the workforce, effective and consistent communication, improving data collection on subpopulations, and tailoring public health messaging to specific communities.

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ATTENDING!