2021 California Healthcare Bills Part 1: Healthcare Market and System Reform Proposals Lead the Way

February 19th was the deadline for California legislators to introduce their proposed bills this session. In a two-part series, we highlight some of the notable healthcare bills on the table in 2021. In this post, we focus on a few ambitious reform efforts to the healthcare market and delivery system. Next month, we'll turn our attention to proposed bills that aim to regulate the prescription drug market and bills that promote price and quality transparency.

Healthcare system reform measures are those that change the structure of health care in a way that impacts health care accessibility, quality, and cost. Most people likely think of the Affordable Care Act when they think of healthcare reform, but reform also occurs on an individual state basis, and California has been a consistent leader in these initiatives. A few major healthcare reform bills were proposed this legislative session, and we outline them below.

Healthcare Market and Costs: AB 1130 and AB 1132

AB 1130 and AB 1132, both introduced by Assemblymember Jim Wood, attempt to tackle increasing health care costs by focusing on California's healthcare markets. The California Health Care Quality and Affordability Act (AB 1130) would create the Office of Health Care Affordability, which will analyze the health care market for cost trends and drivers of spending, develop data-informed policies for lowering health

care costs for consumers, set and enforce cost targets, and create a cost strategy for controlling the cost of health care and ensuring affordability for consumers and purchasers. Additionally, the director of the Office of Statewide Health Planning and Development (OSHPD) would be required to establish a statewide health care cost target for total health care expenditures, and would authorize OSHPD to take progressive actions against health care entities for failing to meet cost targets, including corrective action plans and escalating administrative penalties.

Healthcare consolidation is a driving force of increasing costs in health care. Research has shown that when hospitals merge in already concentrated markets, price increases can exceed 20%.[1] Both AB 1130 and AB 1132 address this issue. AB 1130 would require OSHPD to monitor cost trends in the health care market and examine health care mergers, acquisitions, corporate affiliations, or other transactions that entail material changes. Health care entities would be required to provide OSHPD with written notice of agreements and transactions that involve a material amount of assets, or that would transfer control, responsibility, or governance of a material amount of the assets or operations to one or more entities. OSHPD would also be required to conduct a cost and market impact review if it finds that the change is likely to have a significant impact on market competition, the state's ability to meet cost targets, or costs for purchasers and consumers.

AB 1132, the Health Care Consolidation and Contracting Fairness Act of 2021, would specifically target health care consolidation and anti-competitive contract terms in contracts between health care service plans or insurers and health care providers or health facilities. Specifically, it prohibits a contract issued, amended, or renewed on or after January 2022 between a health care service plan or health insurer and a health care provider or health facility from containing terms

that, among other things, restrict the plan or insurer from steering an enrollee or insured to another provider or facility or require the plan or insurer to contract with other affiliated providers or facilities.[2] AB 1132 would also require a health care service plan that intends to acquire or obtain control of an entity, to give notice to, and secure approval from, the director of the Department of Managed Health Care. A medical group, hospital or hospital system, health care service plan, or health insurer that intends to purchase, merge, or consolidate with another entity would be required to provide written notice to the Attorney General at least 90 days before entering into such an agreement with a value of $3,000,000 or more.

Addressing the major health care reform bills he authored this session, Wood stated, "Creating the Office of Health Care Affordability, establishing a statewide health information exchange and creating a process for the state to assess the impact of health care consolidation and other marketplace practices are essential and fundamental to creating a sustainable and equitable universal health care model."[3]

Healthcare Coverage and Accessibility: AB 1400

Health care accessibility is another important piece of health care reform. While the Affordable Care Act has greatly increased the number of individuals enrolled in health insurance coverage, about 3.5 million Californians remain uninsured, and millions more are enrolled in costly plans that they can't effectively use because of high deductibles.[4] The COVID-19 pandemic also proved why employment-sponsored health insurance is not a particularly sustainable model, as millions of Americans lost their jobs along with their insurance coverage.[5]

AB 1400, titled "Guaranteed Health Care for All," proposes a

universal, single-payer health care system, which would guarantee health care coverage of all Californians regardless of employment, income, immigration status and any other considerations. The author of AB 1400, Assemblymember Kalra, stated, "Our current system results in unjust outcomes and these inequities are underscored especially now, exacerbating economic downturns for working families who have lost their income and meaningful access to health care… this bill will set us on a real path towards a single-payer system…"

Health Care Delivery Expansion: Telehealth (AB 32, AB 457, AB 935)

While telehealth had been a rapidly growing practice since before the COVID-19 pandemic, it has really taken center stage since the pandemic began last March. Telehealth has offered continuity of care and health care access during a time many across the nation sheltered-in-place, and there is no doubt that it is here to stay. Increased access and potential cost reductions are two benefits of the telehealth movement, but some challenges remain in regulating this relatively new care delivery practice. Below we outline three bills that would regulate and expand the practice of telehealth in California.

AB 32 is an attempt to make current telehealth flexibilities, expanded during the COVID-19 pandemic, permanent under California state law. The author of AB 32, Assemblymember Aguiar-Curry stated, "Access to healthcare should not require a state of emergency, nor depend upon a person's location, mobility, or income. It's time for the State of California to recognize that access to health care is always important, and to make telehealth part of our health world whether or not we face a crisis."[6]

AB 457, authored by Assemblymember Santiago, establishes a Telehealth Patient Bill of Rights. The described purpose of

the Telehealth Bill of Rights is to protect the rights of a patient using telehealth to be seen by a health care provider with a physical presence within a reasonable geographic distance from the patient's home, unless specified exceptions apply. Further, a health care service plan or a health insurer would be exempt from existing telehealth payment parity provisions for any interaction where the health care provider is not located within a reasonable geographic distance of the patient's home, unless that provider holds specialized knowledge not available in the patient's region.

Finally, AB 935 attempts to expand telehealth more widely to cover children, pregnant and postpartum persons' mental health care. It would require health care service plans and health insurers, by July 1, 2022, to provide access to a telehealth consultation program that meets specified criteria and provides providers who treat children and pregnant and certain postpartum persons with access to a mental health consultation program.

All of these bills are still in the first steps of a lengthy legislative process. Stay tuned to see which of these bills become law and which pass into relative obscurity. Next month, we'll cover two other topic areas of proposed healthcare bills: prescription drug prices and health care cost and transparency bills.

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[1] Martin Gaynor and Robert Town, *The Impact of Hospital Consolidation*, Robert Wood Johnson Foundation, (June 1, 2012), https://www.rwjf.org/en/library/research/2012/06/the-impact-of-hospital-consolidation.html.

[2] An anti-steering clause is a contractual requirement that

an insurer place all physicians, hospitals, and other facilities associated with a hospital system at the lowest cost-sharing rate to avoid steering patients away from that network.

[3] *Asm. Jim Wood Introduces Priority Health Care Package*, Assemblymember Jim Wood District 2 (February 19, 2021) https://a02.asmdc.org/press-releases/20210219-asm-jim-wood-introduces-priority-health-care-package.

[4] Laurel Lucia, Miranda Dietz, & Ken Jacobs, *California's Health Coverage Gains under the Affordable Care Act: What's at Stake in California v. Texas?*, UC Berkeley Labor Center (September 28, 2020), https://laborcenter.berkeley.edu/californias-health-coverage-gains-under-the-affordable-care-act-whats-at-stake-in-california-v-texas/.

[5] Paul Fronstin & Stephen A. Woodbury, *How Many Americans Have Lost Jobs with Employer Health Coverage During the Pandemic?*, The Commonwealth Fund (October 7, 2020), https://www.commonwealthfund.org/publications/issue-briefs/2020/oct/how-many-lost-jobs-employer-coverage-pandemic.

[6] Emma Hodson, *Telehealth Bill Introduced to Improve Health Care Access*, Essential Access Health (January 11, 2021), https://www.essentialaccess.org/about/press-room/telehealth-bill-introduced-improve-health-care-access.