California Establishes Office of Healthcare Affordability with Approval of 2022-2023 State Budget

On June 30, California Governor Gavin Newsom signed the 2022-2023 state budget, which includes a trailer bill (SB 184) that provides funding to establish the highly anticipated Office of Healthcare Affordability (OHCA) within the Department of Health Care Access and Information (HCAI). California joins a number of other states including Massachusetts, Oregon, and Rhode Island, as it becomes the latest state to establish a healthcare cost commission. This is a promising step forward in California's efforts to control health care costs while ensuring high quality and broad accessibility. The main roles of OHCA are to set and enforce target cost growth benchmarks to control rising healthcare prices and to monitor health care cost trends and analyze proposed healthcare transactions to assess its effect on price and competition.

Main Goals of the OHCA

OHCA is charged with analyzing the health care market for cost trends and drivers of spending, developing data-informed policies for lowering health care costs, setting and enforcing cost targets, and creating a state strategy for controlling the cost of health care and ensuring affordability. The Office will also analyze price trends for the health care workforce as well as health care technologies and pharmaceuticals. OHCA is granted broad access to request data from health care entities, public and private data sources, and state agencies to facilitate accurate, effective, and thorough analyses. In addition, OHCA is responsible for setting standards for various health care metrics, including those that deal with quality, equity, investments in primary care and behavioral health, and workforce stability.

Recognizing the impact healthcare mergers, acquisitions, and other transactions have on health care costs and to further its goals of controlling price and maintaining competitive markets, OHCA has the authority to analyze mergers, acquisition, affiliations, and other transactions among health care entities. Health care entities are required to notify OHCA of any potential transactions occurring on or after April 1, 2024 that will materially change ownership, operation, control, structure, or governance. If the Office determines the transaction could significantly impact competition, cost, or the ability of the state to meet its cost targets, OHCA must conduct a cost and market impact review (CMIR), paid for by the health care entities seeking the transaction, to determine the effect of the potential deal and may refer the matter to the attorney general's office for review of "unfair methods of competition, anticompetitive behavior, or anticompetitive effects." If the proposed transaction involves insurance plans, the OHCA director must consult with the appropriate insurance regulatory agency (i.e., Department of Managed Health Care, Department of Health Care Services, or Department of Insurance). Any further action is left to the purview of the Attorney General. This authority is similar to that of Massachusetts, where the Health Policy Commission (HPC) reviews proposed actions based on criteria of cost and competition, but does not go as far as the newly passed Oregon legislation, which empowers the Oregon Health Authority to unilaterally approve, approve with conditions, or not approve the transaction upon review.

Implementation and Enforcement

To implement its goals, this legislation establishes an eight-member Health Care Affordability Board tasked with setting annual statewide healthcare cost targets for per capita total health care expenditures. The Board has the power to define health care sectors and set sector-specific cost targets; set benchmarks for primary care and behavioral health spending; set the scope and range of administrative penalties; and approve goals for the adoption of alternative payment models and standards. Importantly, Board members are prohibited from "receiv[ing] financial compensation from, or being employed by, healthcare entities subject to cost targets or entities subject to cost and market impact reviews or exempted providers." This critical provision limits the potential for conflicts of interest and double dealing that could compromise cost target-setting, data collection, analysis, and enforcement. The Board is further instructed to appoint a Health Care Affordability Advisory Committee, to be comprised of a diverse group of stakeholders. Unlike the Board, the Advisory Committee is specifically intended to include representatives from health care entities, as well as consumer and patient groups, payers, and health care workers, to ensure that the Board has access to a breadth of knowledge, expertise, and experience as it conducts their work.

Additionally, OHCA is noteworthy in its enforcement provisions in that cost target benchmarks against health care entities will be enforced using an escalating progression of penalties that are "commensurate with the failure of the health care entity to meet the target" to support the entities to achieve the targets. One of the criticisms of Massachusetts' HPC has been its minimal enforcement, as it just required its first performance improvement plan in over a decade from Mass General Brigham after determining that its cost trends threatened the state's ability to meet its benchmarks. Further, the maximum financial penalty that the HPC can impose is $500,000[1], which is less than 0.2% of the estimated excessive charges of $293 million in cumulative commercial cost-growth above the benchmark.[2] In comparison, OHCA can enforce penalties starting with technical support, then progressively level-up to public testimony, then submission of performance improvement plans, and finally the imposition of administrative penalties by the Director. This progression of penalties provides the noncompliant entity with multiple opportunities to come into compliance with OHCA's assistance.

The OHCA legislation establishes an aggressive timeline for implementation and reporting. The Board is to establish statewide health care cost targets for 2025. By June 1, 2025, the Office must submit a report on baseline health care spending trends to the Board. The enforcement of cost growth targets begins in 2026. OHCA's first annual report on spending trends and other required metrics for 2024 and 2025, accompanied by policy recommendations for cost control and improvements to quality and equity, must be published on or before June 1, 2027. Also, on or before June 1, 2027, and annually thereafter, the Office must present a report about the implementation of cost targets, growth trends, and recommendations for cost control and the Board must establish cost targets by sector by June 1, 2028, after public comment.

California’s efforts to establish a cost commission is a significant step towards California’s efforts to control costs, increase transparency, expand access, and improve equity. Undoubtedly, much work remains to be done as the new OHCA develops its methodologies, performs analyses, and implements its enforcement goals. Check out The Source’s California Legislative Beat for additional details of the proposed OHCA legislation and stayed tuned for the latest developments in its implementation.

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[1] *Mass. Gen. Laws Ch. 6D § 10.*

[2] Massachusetts Health Policy Commission 2022.