

Optum faces antitrust lawsuit from California health system

FTC sues to block Tenet, John Muir deal

In An Era Of Premium And Provider Price Increases, State Employee Health Plans Target Key Cost Drivers

SB 770

This bill would direct the Secretary of the California Health and Human Services Agency to research, develop, and pursue discussions of a waiver framework in consultation with the federal government with the objective of a health care system that incorporates specified features and objectives, including, among others, a comprehensive package of medical, behavioral health, pharmaceutical, dental, and vision benefits, and the absence of cost sharing for essential services and treatments. The bill would further require the secretary to engage specified stakeholders to provide input on topics related to discussions with the federal government and key design issues, as specified. Health care: unified health care financing. The bill would require the secretary, no later than January 1, 2025, to provide an interim report to specified committees of the Legislature and propose statutory language to the chairs of those committees authorizing the development and submission of applications to the federal government for waivers necessary to implement a unified health care financing system. The bill would require the secretary, no later than June 1, 2025, to complete drafting the waiver framework, make the draft available to the public on the agency's internet website,

and hold a 45-day public comment period thereafter. The bill would require the secretary, no later than November 1, 2025, to provide the Legislature and the Governor with a report that communicates the finalized waiver framework, as specified, and sets forth the specific elements to be included in a formal waiver application to establish a unified health care financing system, as specified. The bill would also include findings and declarations of the Legislature related to the implementation of a unified health care financing system.

Recapping the 2023 California Legislative Session (Part 1): Regulating Market Competition and Health System Reforms

On September 14, the California Legislature concluded the 2023 legislative session when it adjourned for an interim recess. The session marked the end of the first year of the two-year 2023-2024 term. In total, the Legislature introduced over 3,000 bills this session - more bills than it has introduced in more than a decade; of which, 700 bills remain active.

Like past sessions, the California Legislative Beat recaps the noteworthy bills from this session that impact California's health care market in a two-part series. In this Part 1 of our recap, we focus our attention on legislation that address healthcare consolidation and promoting market competition, alongside bills that propose to reform the greater health system. In the next issue, we will recap other notable bills that would directly affect healthcare costs including the prescription drug costs.

Competition/Consolidation

In 2023, the legislature was successful in making improvements to individual's employment rights and increasing the transparency and accessibility of health care market data to promote competition. As the legislature looks to next year's priorities, we may see a showdown for the regulation of health care competition and consolidation with dueling bills competing for increased or decreased regulation of health system mergers.

What Passed

- **Contracts in Restraint of Trade: Noncompete Agreements (AB 1076)**

While AB 1076 does not specifically regulate the health care industry, this bill will certainly have a long-standing impact on the broader healthcare market. The proposed bill, which was signed into law on October 13, makes it unlawful for companies to impose non-compete clauses on employees, no matter how narrowly tailored those clauses may be. In addition to prohibiting future noncompete agreements, AB 1076 will require employers to release any employees who signed noncompete clauses after January 1, 2022, to release those employees by voiding the noncompete clause or agreements by February 14, 2024. The bill, which will go into effect on January 1, 2024, codifies existing case law in *Edwards v. Arthur Andersen LLP* (2008) 44 Cal. 4th 937.

The new law would impact the retention of health care and health care system employees by giving greater bargaining power to the employees when seeking employment. At the same time, the law imposes notification requirements on health care employers and requires these notices to be sent to the last known address and email address of each former employee, which may pose some added administrative burdens to administer. Nonetheless, it may ultimately benefit consumers with increased competition among healthcare providers.

- **Minimum Wages: Health Care Workers (SB 525)**

Relatedly, SB 525 would impact the healthcare labor market by raising the minimum wage for health care employees. Effective June 2024, minimum wage will increase on an annual basis starting from \$18 per hour in 2024 and ending at \$25 per hour by June 2028, and both hourly and salaried health care workers will be provided with a private right of action to enforce new minimum wage requirements. As a result of the new law, health care employers can expect to pay more in wages and potentially incur legal costs to assess whether the requirements apply to their business. Together with the new noncompete law, it remains to be seen what the cumulative effect would be in the healthcare market and its resulting impact on consumers and the cost of health care.

- **Primary Care Clinic Data Modernization Act (SB 779)**

The Primary Care Clinic Data Modernization Act is a sweeping bill that will require previously exempted health care providers to file annual reports detailing their mergers and acquisitions, workforce design, and quality and equity measures. Previously exempted healthcare facilities, including free clinics, intermittent clinics, and clinics that were exempted from licensure, will have to file annual reports with the Department of Health Care Access and Information (HCAI)

on or before February 15th each year.

This act is expected to improve transparency, accountability, and accessibility on information pertaining to the ways in which community clinics are addressing key concerns such as patient care and health equity. The added transparency may also enhance market competition as it could make entities more accountable for their practices in comparison to their competitors, with potential benefits to downstream consumers.

What Didn't Pass

- **Health Care Consolidation and Contracting Fairness Act of 2023 (AB 1091)**

Research has demonstrated that when hospital systems merge, prices of care tend to go up for consumers with few improvements in quality or equity. Ultimately, increasing the size of hospital systems enables providers to gain market power, thereby enabling them to increase their prices more effectively. AB 1091 would authorize increased oversight over hospital, health system, and medical group mergers by the attorney general. The AG's oversight authority for healthcare mergers previously only applied to non-profit entities. The enactment of this Act would broaden the scope of the AG's powers to also include oversight and approval over for-profit healthcare system mergers with net revenue of \$15 million or more. Under the proposed legislation, proposed healthcare transactions must give the AG 90 days advanced notice, and the attorney general is required to conduct public meetings before issuing written decisions on major health care merger transactions. Increased oversight over these business transactions can help to ensure consumers will continue to receive high quality care with limited or less substantial price increases by better regulating market competition. This bill was referred to the Health and Judiciary committees in March and has yet to be discussed by the broader Assembly.

- **Health Care Service Plans: Consolidation (AB 1092)**

In another measure to increase antitrust scrutiny over the consolidation in the healthcare market, AB 1092 would expand the Department of Managed Health Care (DMHC)'s oversight over health plan mergers. Presently, DMHC authority applies only when the health care service plans agreement *results in its purchase, acquisition, or change of control* by another entity. AB 1092, which is being held under submission at the Appropriations Committee, would strengthen existing authority by requiring health care service plans that intend to acquire or control another entity to also give notice to and secure approval from the Director of the DMHC. If enacted, this legislation will impose a state-mandated local program and provide the director with the authority to approve or disapprove of transactions and agreements based on whether the transaction would substantially limit competition in health

care market. The director would also be required to relay competition-related information to the Attorney General. Increasing oversight over the consolidation of health plans has the potential to return direct economic and healthcare impacts on consumers by ensuring pricing remains affordable and does not increase significantly due to a lack of competitive forces in the market.

- Non-Profit Health Facilities: Sale of Assets (SB 774)

In a direct contrast to some of the previously mentioned bills, SB 774, also known as the “Save Our Hospitals” bill seeks to limit the Attorney General’s authority over health care and hospital transactions. The bill would prohibit the Attorney General from imposing conditions on hospital mergers, partnerships, or agreements that would limit or restrict hospital operations or foreseeably have adverse effects on the financial condition of a hospital. Stakeholders including small businesses have come out against the bill as they worry that limiting the Attorney General’s authority in favor of the hospital systems will affect individual Californian’s access to affordable health care services. The bill was set to be heard in April, but the hearing date was cancelled at the request of the author. It remains to be seen whether this bill will once again emerge into discussions next year.

Healthcare System Reform

California appears to be moving ahead with its efforts to provide access to affordable health care for all of its residents. In making modifications to the existing healthcare system, the legislature advanced efforts to move towards a unified health care financing model, while also working on improving the accessibility of Medi-Cal by working more closely with the federal government. At present, the state appears to be moving steadfast towards a single-payer coverage system that would cover every California resident. It remains to be seen whether the legislature will make moves towards a more concerted and blatant universal health care coverage system for California in the new year.

What Passed

- Medi-Cal: Part A Buy-in (SB 311)

On October 10, Governor Newsom signed a bill that would simplify the enrollment process for individuals who rely on Medicare and Medi-Cal but have trouble paying for Medicare Part A premiums. The bill necessitates that the Department of Health Care Services enter into an agreement with the federal government to buy into Medicare Part A for qualified beneficiaries

by submitting a state plan amendment. The bill is anticipated to become effective on January 1, 2025. The Act is anticipated to benefit low-income older Californians and persons with disabilities who use Medicare and Medi-Cal but have trouble paying the associated premiums. Consequently, the passage of the Act has the potential to provide financial relief for persons from low-income communities while enabling them to expand their access.

- Health Care: Unified Health Care Financing (SB 770)

California became the first state in the country to pass a bill on unified healthcare financing, when Governor Newsom signed SB 770 into law on October 7. SB 770 will bring together the governor, California Health and Human Services Agency (CalHHS), community stakeholders, and the federal government to implement a new financing system for California. The bill requires the CalHHS to report a finalized framework to the legislature and governor by November 1, 2025. Following the Healthy California for All Commission's 2022 report on financing a single-payer system, the newly enacted legislation creates a framework for developing a systemwide unified healthcare approach for guaranteeing services, including applying for federal waivers and establishing a timeline. The framework is expected to include a comprehensive package of medical, behavioral health, pharmaceutical, dental, and vision benefits, and will likely provide a single level of care for all Californians.

What Didn't Pass

- Universal Health Care Coverage (AB 1690)

In an effort to further commit and advance California towards a system of universal health care coverage, AB 1690 outlines the Legislature's intent to "...guarantee accessible, affordable, equitable, and high-quality health care for all Californians through a comprehensive universal single-payer health care program that benefits every resident of the state." This is the most direct proposal the legislature has made towards advancing care and lowering costs to consumers. While the enacted SB 770 sets up steps toward financing a single-payer system in California, AB 1690 would act to codify the state's intent provide a universal single-payer health care program. The bill, which is anticipated to be debated next year, could ensure that all Californians are able to access affordable and equitable healthcare, but faces concerns of stifled innovation and increased wait times.

Stay tuned for next month's Part 2 of the 2023-2024 term recap for coverage of bills related to healthcare costs including prescription drug prices.

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After Price-Cap Veto**

**Envision Healthcare completes bankruptcy
restructuring**

**California Achieves Lowest Uninsured Rate
Ever in 2022**

**California Health Insurance Enrollment in
2022**

**New California law takes a step toward
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