Verdict in Sidibe v. Sutter Health Overturned by 9th Circuit Court of Appeals

On Tuesday, June 4, 2024, the 9th U.S. Circuit Court of Appeals overturned Sutter Health's win in a $411 million antitrust suit, saying that the jury that found in favor of Sutter in 2022 was given improper jury instructions, and that the plaintiffs were improperly prevented from presenting relevant evidence. In September 2012, a class of individuals and employers who purchased fully insured plans from the five largest commercial health insurance companies in California filed this lawsuit alleging that Sutter Health restricted competition in the healthcare market using anticompetitive tactics. A similar lawsuit, filed by a class of self-funded employers and labor unions in state court and later joined by the California Attorney General, was settled when Sutter Health agreed to pay $575 million in damages, avoid using anticompetitive contract clauses and agreed to limits on increases for out-of-network prices.

With a 2-1 split in the Court's decision to overturn the case, the majority opinion states that the lower court improperly kept pre-2006 evidence out of the trial, which included internal memos from Sutter executives that would have helped the plaintiffs prove Sutter's anticompetitive strategies resulted in overpayments. The majority opinion also held that the district court improperly removed "purpose" from the jury instructions, failing to instruct the jury to consider Sutter's anticompetitive purpose as to the unreasonable course of conduct claim. The dissenting Judge would have affirmed the jury verdict, stating a belief that district courts, and not the appellate courts, have the authority to determine a reasonable cutoff date for relevant evidence.

The court's decision reverses the district court's 2022 judgment and remands the case for a new trial. No timeline has been determined and the parties could still reach a settlement.

The Source has been following these cases for over a decade and we will continue to update our coverage of this lawsuit as it unfolds. Our analysis of case can be found on our Sidibe v. Sutter Health case page and our coverage of the settled, state case can be found on our UEBT v. Sutter Health case page.

California Becomes Latest State To Try Capping Health Care Spending

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Verdict for Sutter Health in antitrust case overturned on appeal

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Addressing Medi-Cal Behavioral Health Workforce Shortages Through Non-financial Incentives

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Governor Newsom’s May Revision to the California 2024-2025 State Budget

On May 10, California Governor Gavin Newsom released the “May Revise” to his initial January proposal for California’s 2024-2025 budget. The revised budgetary proposal lays out $288 billion in total spending [1], a reduction of $3.5 billion from his initial January proposal [2]. The decreased budget proposal reflects the increase in the state deficit, originally projected to be $38 billion, now forecasted to exceed $45 billion, [1]. This is a $17.6 billion difference from the Governor’s estimated shortfall of $27.6 billion [3].

Throughout 2021, California’s revenue experienced a surplus following the federal payout during the Covid-19 pandemic that resulted in over estimations in the coming years’ budgets [4, 5]. However, by 2022, the stock market began to steadily decline, interest rates climbed, and tax revenue diminished, leading to a twenty-one percent decline in the General Fund [3,

5]. Additionally, the federal government's extension of the 2022 tax deadline stalled collections and, when gathered, the taxes resulted in lower-than-expected totals, compounding the ability to accurately project revenues for the future [3, 4]. General Fund projections are now 12.5 billion lower than initial estimations in the January budget [3].

To help cover this gap, the legislature approved an early action budget package in April to implement $17 billion in budget solutions, including $8.6 billion of delays, deferrals, and fund shifts, $3.6 billion of reductions of one-time funding, $1.4 billion of borrowing from other state funds, and $3.8 billion of managed care organization tax actions. The Governor's May revision proposes additional solutions to address the remaining $27.6 billion shortfall, including using $12.2 billion from the Budget Stabilization Account, spread out over two years, with $3.3 billion being used in the 2024-25 fiscal year and $8.9 billion in 2025-26 [6]**.** This proposal generates spending pattern concerns from budget analysts citing the administration's unwillingness to utilize saving funds that were intended for revenue shortfalls such as this [7]**.** However**,** the May Revision proposes a proactive measure in the form of newly proposed legislation that would provide for further savings during fiscal 'upswings' by setting aside an undetermined amount of surplus [3]**.**

The communities most in need of social support are those most affected by the proposed cuts due to reductions across multiple agencies including CalWORKs services, behavioral health and substance abuse initiatives, welfare, housing, public health, childcare, and expanding access to broadband internet [8]**.** Similarly, the administration's proposed solutions to cover the shortfall will directly impact scholarship programs, state government operations, clean energy, and public transportation [1].

Notwithstanding these cuts, the May Revision continues January's proposal to maintain key healthcare programs including Medi-Cal expansion coverage to all, regardless of age or immigration status [5]. The proposed Health and Human Services agency budget includes $110.6 million in total state expenditures, a nearly $1 million decrease from the January proposal [5, 2]. Moreover, the May Revise maintains its stance on utilizing remedies outside of tax increases, despite calls to close tax loopholes often overutilized by businesses resulting in little to no tax revenue payments [3].

Reprioritizing California's Health Care: De-emphasis on Behavioral Health & Healthcare Workforce Support

While the proposed revision maintains a multitude of healthcare expenditures, there are substantial cuts to a number of mental healthcare and provider initiatives.

Behavioral Health

The May Revise proposes an elimination of $189.4 million allocated to support the implementation of California's Mental Health Services Act, originally anticipated to begin in the 2025-2026 fiscal year [9]. Funding eliminations for a number of behavioral health programs have been proposed including a $450.7 million elimination across two years for the Behavioral Health Consortium Infrastructure Program; a $425.9 million reduction over three years for the Children and Youth Behavioral Health Initiative; and $340 million worth of cuts to the Behavioral Health Bridge Housing Program [3]. With an estimated 1 in 7 Californian adults experiencing mental illness [3], and with accompanying cuts in funding for CalWORKs Mental Health and Substance Abuse Services, worries of further marginalizing California's poorest residents abound [10].

Health Care Workforce Development and Wages

The May Revise reduces $1 billion in funding workforce development and training programs that would have helped to meet the growing demand for providers [3], especially problematic given that an estimated seven million Californians are living in areas with healthcare provider shortages, and experts are recommending that more than 4,000 primary providers enter the field by 2030 to match the demand [9]. A total of $820 million of unspent funding is being taken back to supplement the state's growing deficit, impacting training programs, student funding initiatives, and a variety of healthcare workforce initiatives [10]. Moreover, the state of SB 525, a 2023 approved bill meant to incrementally increase health care worker's minimum wage to $25 over multiple years, remains uncertain [11]. Recent projections by the Department of Finance raise concerns in light of substantial budgetary shortfalls, as the cost of implementing the statute could reach $2 billion, largely financed through Medi-Cal managed care rate increases [11]. Likewise, Governor Newsom's budget revision seeks to eliminate the remaining $280 million from the Equity and Practice Transformation Payments to Providers grant program; provider grants intended to enhance the quality of care for Medi-Cal enrollees through alignment with value-based payment models [12].

MCO Tax

The provider-based Managed Care Organization (MCO) tax is a critical funding mechanism for Medicaid throughout the US that matches federal funding to garner additional funding for Medi-Cal coverage in California [13]. In addition to workforce development, Governor Newsom's May Revise also seeks to alter the previously approved MCO tax. The May revision expands the scope of the tax beyond Medi-Cal to include Medicare revenue, further offsetting general fund spending by $2.9 billion over a three-year timespan [12]. This modifies January's $9.7 billion MCO tax revenue proposal of Medi-Cal provider participation enhancement and

care expansion to a $6.7 billion savings plan through program elimination [3].

Coverage-Related Changes

The revision, despite its many cuts and eliminations, maintains access to a range of health services from reproductive health services to hospital funding [3]. Additionally, Medi-Cal coverage continues to be a mainstay within the budget but will face some reductions in funding as will critical care programs such as public health and CalWORKs.

Medi-Cal

Governor Newsom's sustained desire to provide healthcare coverage to all Californians is reflected in the budget. Medi-Cal will be expanded to include an estimated 764,000 residents aged 26-49, regardless of immigration status [9]. In spite of this expansion, the budget makes clear that continuous coverage for children aged 0-4 years will not be included, requiring administrative renewals [9]. Additionally, funding for CalAIM, the initiative to support people of marginalized communities, remains intact with continued plans to roll out the remaining components over the next few years [3]. While the May Revise does not strip away health coverage from anyone, it does propose a $94.7 million elimination allotted for the In-Home Supportive Services for Undocumented Individuals [14]. This program services approximately 14,000 residents with a range of needs including seniors and people with disabilities by curbing costly healthcare alternatives such as nursing facilities by providing in-home care [3, 14]. Proponents of the program have voiced concerns that despite initial financial savings by eliminating this program, long-term effects may lead to the need for more expensive care in the future [3]. Further cuts to Medi-Cal in the May Revise include eliminating acupuncture coverage as well as reformation funding for the Share of Cost program [3].

Public Health and Support

To remediate the General Fund shortfall, the Governor's May Revision proposes further significant cuts to California's public health services totaling $352.5 million worth of spending over the next two fiscal years [15]. Support for additional staffing, infrastructure, disease prevention and control, and emergency preparedness will be affected as a result of defunding the minimum base allocations to community organizations [3]. These cuts will likely further compound inequalities of already marginalized communities, specifically those receiving low incomes and communities of color, as they often seek to fund initiatives grounded in health and social equity [16].

Similarly, the California Work Opportunity and Responsibility to Kids program, better known as CalWORKs, is slated to experience a substantial funding reduction by $47.1 million [17].

The program provides social support to parents and families to improve social determinants of health that can have a positive impact across health, education, and financial security [17]**.** Additional CalWORKs programs anticipated to impact California residents' social determinants of health include those pertaining to mental health and substance abuse care, food security, childcare, social security income, employment programs, and home visiting programs for new families [17]**.**

Next steps

Looking ahead, the Senate Budget and Fiscal Review Committees and the Assembly Budget Committee will hear a budget bill that itemizes expenditures, and will assign the bill to the lower subject area subcommittees to act on the January and May proposals [18]**.** Upon receipt of subcommittee recommendations, the Budget Bill will be sent to their respective houses in preparation for a conference committee to resolve differences between budget versions with the goal of meeting the state constitutional deadline of June 15 for an approved budget by the Legislature. Following approval, Governor Newsom is expected to sign the bill, but further modifications are expected past the June deadline. The Source will keep readers informed of any and all health-related revisions to the budget in the near future.

1. Sophia Bollag, *Newsom Announces $27.6 Billion Budget Deficit – After State Already Cut $17 Billion*, S.F. Chronicle (May 23, 2024), https://www.sfchronicle.com/politics/article/newsom-may-budget-19447474.php.
2. of Cal., Governor's Budget Summary (January 10, 2024), https://ebudget.ca.gov/2024-25/pdf/BudgetSummary/FullBudgetSummary.pdf
3. California Budget & Policy Center, First Look: Understanding the Governor's 2024-25 May Revision, (May 2024), https://calbudgetcenter.org/resources/first-look-understanding-the-governors-2023-24-may-revision/
4. Taryn Luna, Mackenzie Mays and Anabel Sosa, *What to Know About Gov. Newsom's Plan to Offset California's $45-Billion Deficit*, Los Angeles Times (May 10, 2024, 5:19 PM), https://www.latimes.com/politics/story/2024-05-10/2024-california-budget-deficit-newsom-need-to-know
5. of Cal., May Rev. Budget Detail (May 14, 2024), https://ebudget.ca.gov/2024-25/pdf/Revised/BudgetSummary/FullBudgetSummary.pdf

6. Assembly Budget Committee (2024) *Early Action Summary*. rep. Available at: https://abgt.assembly.ca.gov/system/files/2024-04/early-action-summary-thursday-april-4-2024.pdf.

7. CalBudgetCenter, *Examining the Governor's 2024-25 May Revision,* (May 22, 2024), https://www.youtube.com/live/DVynsyfCFOU

8. WCLP Policy Team, *Analysis of Governor Newsom's May Revision of California's 2024-2025 Budget*, Western Center on Law & Poverty (May 10, 2024), https://wclp.org/analysis-of-governor-newsoms-may-revision-of-californias-2024-2025-budget/

9. Insure the Uninsured Project, Governor's FY 2024-25 Budget: Key Highlights in the May Revision, (May 17, 2024), https://www.itup.org/itup-blog-governors-fy-2024-25-budget-key-highlights-in-the-may-revision/

10. Alexsi Koseff, *Big Cuts, No New Taxes: Gov. Newsom's Plan to Fix California's Budget Deficit*, Jefferson Public Radio (May 10, 2024), https://www.ijpr.org/politics-government/2024-05-10/big-cuts-no-new-taxes-gov-newsoms-plan-to-fix-californias-budget-deficitt

11. Lynn La, *California budget: More detail on cuts, more pushback*, CalMatters (May 16, 2024), https://calmatters.org/newsletter/california-budget-cuts/.

12. *The 2024-2025 Budget Medi-Cal Fiscal Outlook,* Legislative Analyst's Office (December 7, 2023), https://lao.ca.gov/Publications/Report/4820#:~:text=Estimates%20Lower%20Level%20of%20Spending,the%202023%2D24%20budget%20package.

13. Senate Committee on Budget and Fiscal Review, Overview of the Governor's 2024-25 May Revision (May 10, 2024), https://sbud.senate.ca.gov/sites/sbud.senate.ca.gov/files/Overview%20of%20the%20Governors%202024-25%20May%20Revision.pdf

14. California's Managed Care Organization (MCO) Tax Receives Federal Approval, Department of Healthcare Services (Jan. 3, 2024), https://www.dhcs.ca.gov/formsandpubs/publications/oc/Documents/2024/24-01-MCO-Tax-1-3-24.pdf

15. Adam Beam, *Gavin Newsom Proposes Painful Cuts to Close California's Growing Budget Deficit*, ABC News (May 9, 2024), https://abcnews.go.com/US/wireStory/californias-budget-deficit-grown-gov-gavin-newsom-reveal-110096510

16. Tran Nguyen, *California has a multibillion-dollar budget deficit. Here's what you need to know,* Associated Press News, (May 10, 2024), https://apnews.com/article/california-budget-deficit-18ff9c1ec885ec5bc69e790a836d9bdd

17. 2024 May Revise: Additional Analysis Shows Protentional Dire Situation For Families, The Children's Partnership (May 17, 2024), https://childrenspartnership.org/news/2024-may-revise-additional-analysis-shows-potential-dire-situation-for-families/

18. *Joint Analysis Governor's 2024-25 May Revision*, California Community Colleges (May 15, 2024), https://www.cccco.edu/-/media/CCCCO-Website/docs/report/2024-joint-analysis-may-revision.pdf?la=en&hash=81F52839DE150AAE253106C57B9EA95AB6D7B45D

A day with no COVID deaths? It finally happened in California

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Push to create universal health care in California gets scrapped in committee

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Private Equity in Health Care: Prevalence, Impact and Policy Options for California and the U.S.

California Floats Extending Health Insurance Subsidies to All Adult Immigrants

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California Legislature Considering Bills to Ease CHFFA Hospital Loan Repayment

Introduction

In February 2024, lawmakers in California introduced Assembly Bill 2098 and Assembly Bill 2637. Both bills would make changes to loans offered by the California Health Facilities Financing Authority (CHFFA), an important entity that helps struggling California hospitals. These loans are often essential to communities because they help the local hospitals get back onto sound financial footing.

Background

The California Legislature created CHFFA in 1979 to provide financial help to hospitals and other healthcare providers via loans that are funded through the issuance of tax-exempt bonds. The financing can be used for a variety of operational costs, but state law limits these bonds to a two-year period.

2024 California Legislation

The two bills introduced this session would relax some of the requirements of CHFFA bonds, including the time frame to repay the loans.

AB 2098 would amend the California Health Facilities Financing Authority Act to extend the repayment requirements for loans given to hospitals. The Act currently requires standard CHFFA loans to be repaid beginning 18 months after the date of the loan; this legislation would bump the start date back to 24 months. The bill would also require loans to be at 0% interest and would give 72 months to repay the loan, instead of the current two-year window. At an April 16 hearing, California State Assemblymember Eduardo Garcia, sponsor of the bill, testified that the bill would extend a lifeline for hospitals by extending the repayment timeline of CHFFA bridge loans. This extended timeline is especially important given the current state of distress of many California hospitals and the importance of these hospitals to often underserved areas. During the hearing, the Committee voted unanimously to pass the legislation and referred the bill to the Committee on Appropriations.

AB 2637 would remove the current requirement that a loan made through CHFFA to a hospital for working capital be repaid within 24 months. According to the author of the bill, this limitation has "resulted in some hospitals seeking financing being turned away." At a committee hearing regarding the legislation on April 23, testimony was given by Assemblymember Pilar Schiavo, the bill sponsor, stating that CHFFA has a number of programs that assist hospitals by finding the financing they need to improve infrastructure, equipment, and by connecting hospitals to private investors and loans, and that the current two-year loan repayment terms limits what CHFFA can do. The Assemblymember noted the challenges hospitals faced due to the pandemic and that allowing loans to be paid off over a longer window of time will reduce financial pressures. The Executive Director of CHFFA, Carolyn Aboubechara, testified about the role CHFFA played in helping hospitals weather the pandemic, and the need for long-term working capital finance assistance. Committee Chair Mia Bonta stated concerns about letting hospitals stretch out operating loans over decades, noting that this may make them more financially tenuous in the long run and could result in harmful consolidation. Assemblymember Schiavo responded by noting that if hospitals don't get the financing they need through CHFFA, they will have to go out to the market and get their financing with potentially worse terms. Director Aboubechara testified that the two-year restriction has been in place since the 1980s – at the time there was a belief that there wouldn't be a need for long-term working capital loans, but the healthcare environment has changed significantly since then. The Director stated that CHFFA staff does an analysis, as do investors, to make sure hospitals aren't getting themselves into situations they can't handle. At the hearing, the Committee unanimously passed the bill and referred it to the Assembly Appropriations Committee.

Why are so many hospitals distressed at this time?

Hospitals have shown significant financial stresses since the start of the Covid epidemic.

While rising labor costs, inflation, aging infrastructure, and low reimbursements have been a continuing part of the problem, hospitals faced additional problems specific to the pandemic. These problems include continuing supply shortages, provider shortages aggravated by Covid-related burnout issues, and increases in volume of care as patients catch up on care postponed during the crisis. While Covid-19 relief funds helped in the short-term, these funds have expired, leaving hospitals to deal with the continuing problems on their own.

While recent research shows that the hospital industry is in a better overall financial state in 2024 than it was in 2022 and early 2023, a significant number of individual hospitals continue to lose money. In 2024, the majority of hospital had positive operating margins and were making a profit, but 40% of hospitals are still losing money.

Importance of local hospitals

The closure of any hospital can have negative ramifications for a community, but these problems are exacerbated in rural areas where there may be no other hospitals nearby to serve patient needs. Additionally, in these areas, the hospitals are often the largest (and best paying) employer, so their closure can have significant economic impacts, as unemployment rises and good paying jobs vanish, affecting the entire economy with a loss of local spending on goods and services. Research also shows that when a hospital closes, care delivery in surrounding hospitals is negatively affected.

Why public support could be crucial

Over a quarter of merger and acquisition proposals included a hospital or health system in financial distress. Hospital mergers lead to an increase in hospital prices, and consumers bear the price effects of hospital mergers in the form of reduced wages. A significant number of studies found no change or worse quality of care after consolidation. There are increased patient safety issues at hospitals acquired by private equity, and private equity acquisitions lead to higher charges, prices, and societal spending.

Despite the potential harms arising from consolidation, if struggling hospitals don't get an infusion of cash, they may fail entirely. Communities that completely lose access to hospital services when the hospital closes are likely worse off than having a hospital with high prices and questionable quality of care. If public programs like CHFFA can continue to succeed, it may allow facilities to remain open without an acquisition by private equity or larger system.

In summary

When hospitals fail, in can have a profound negative impact on local communities. The

California Health Facilities Financing Authority Act provides funding to assist struggling hospitals get back on sound footing. AB2098 and AB2637 are looking to make evolutionary, not revolutionary, changes to how CHFFA loans operate, but these changes could help to provide more needed relief to beleaguered facilities.