

Recapping the 2022 California Legislative Session: What Was and What Wasn't – Part 1: Regulating Competition and Ensuring Affordable Access to Care

Year two of California's 2021-2022 legislative term came to an end last month as the Governor signed 997 bills into law and vetoed 169. The state considered healthcare bills that were rolled over from 2021 as well as new ones that were introduced in 2022. At the end of the 2021 session, The Source recapped noteworthy bills impacting healthcare price and competition that were enacted (see [blog post](#)). In the 2022 session, the legislature again made efforts to promote healthcare access and affordability in California through several legislative themes. In a two-part series, the California Legislative Beat will recap the ones that were signed into law and some important ones that didn't make the cut. In this Part 1 of our recap, we focus on legislation that sought to address healthcare consolidation and promote competition, as well as proposals that aimed to ensure healthcare access and affordable coverage. In Part 2 of the recap, we will cover bills that proposed to eliminate surprise out-of-network costs, advance telehealth, and rein in prescription drug prices.

Competition/Consolidation

The high-profile antitrust lawsuits against Sutter Health in California brought to light many anticompetitive behaviors that can occur in a highly concentrated provider market. Since then, California has continued to be at the forefront of legislative efforts to address healthcare consolidation and enhance competition. The 2022 session is another step forward for California in promoting healthcare competition.

What Passed

Office of Health Care Affordability (Budget Trailer Bill SB 184, adopting AB 1130)

The biggest accomplishment of California's 2022 legislative session is the enactment of the state's healthcare cost commission, the Office of Health Care Affordability (OHCA). Introduced as [AB 1130](#) by Assemblymember Jim Wood in 2021 and with support from Governor Newsom's state budget proposal, the legislature established the cost commission through budget trailer bill [SB 184](#), when the Governor approved the state budget in June.

Joining a [growing number of states](#) with healthcare cost commissions, California's cost commission will not only set and enforce cost-growth benchmarks for the state, but it will also have the authority to review and assess the impact of mergers, acquisitions, affiliations, and other healthcare transactions on price and competition. Importantly, OHCA expands the attorney general's current administrative review of nonprofit entity transactions to require prior notice of *all* healthcare entity transactions that would materially change ownership, operation, control, structure, or governance. For transactions that warrant further review, OHCA is authorized to conduct a cost and market impact review (CMIR) and refer the matter to the AG's office.

The new requirement takes effect April 1, 2024. For more on OHCA, see our [previous coverage](#) in the California Legislative Beat.

What Didn't Pass

The Health Care Consolidation and Contracting Fairness Act (AB 1132 and AB 2080)

While legislation establishing OHCA addresses some of the consolidation concerns in the healthcare market, a more comprehensive healthcare competition legislation that would specifically target healthcare consolidation and anticompetitive contracting practices failed to proceed through the legislative process in the 2021-2022 term. The Health Care Consolidation and Contracting Fairness Act, introduced as [AB 1132](#) in 2021 and [AB 2080](#) in 2022, was similarly sponsored by Assemblymember Jim Wood and contained two components.

First, the proposed legislation aimed to enhance existing healthcare merger review by (1) expanding pre-transaction notice and approval by the AG beyond non-profit hospital mergers to reach any transaction of material change (\$3 million under AB 1132 and \$5 million under AB 2080) involving a medical group, hospital or hospital system, health care service plan health insurer, or pharmacy benefit manager; and (2) expanding pre-transaction notice and approval by the DMHC Director beyond acquisition of health plans to reach health plans that acquire another entity. Notably, the passage of OHCA achieved this proposed component of the act, which gave broad notice and review authority to the new cost commission.

The second component, however, was not incorporated or addressed in the OHCA legislation. Beyond merger review, the proposed act would ban (or prohibit) certain contract terms between a health care service plan or health insurer and a health care provider

or health facility. The injunctive relief in the settlement of the AG's antitrust lawsuit against Sutter Health prohibits Sutter from using many these contract terms in future contracts. Policymakers are increasingly scrutinizing anticompetitive contracting clauses, and the proposed act aimed to statutorily prohibit anti-steering and anti-tiering, all-or-nothing, most-favored nation, and gag clauses for all health systems. While the new OHCA now has the proposed expansion of healthcare merger review authority, anticompetitive contracting practices remain unrestrained by statute in California. See previous issues of California Legislative Beat for details on [AB 1132](#) and [AB 2080](#).

Healthcare Access and Coverage

In line with the state's long-term goal of health care affordability, the legislature continued to consider bills that would ensure and promote affordable access and coverage of healthcare services, both at a larger system level and a more targeted scope.

What Passed

Civil Penalty on Health Plan Violations (SB 858)

In addition to enhanced oversight of healthcare providers, the state enacted legislation this session to better regulate health care service plans. Under the Knox-Keene Health Care Service Plan Act, managed care health plans in California are regulated by the Department of Managed Health Care (DMHC), which ensures health plans' compliance with specific standards and consumers protections such as network adequacy requirements and timely access to medically necessary care. While health insurance premiums skyrocketed over the years, the maximum amount of penalty for health plan noncompliance has remained at \$2,500 per

violation since the enactment of the Knox-Keene Act in 1975. [SB 858](#) raised that base penalty amount by tenfold, to \$25,000 per violation, to be adjusted annually. Importantly, to better ensure compliance, the new law allows DMHC to assess the penalty amount based on factors including the nature, scope, and gravity of the violation. This legislation also authorizes the director of DMHC to impose a corrective action plan on noncompliant health plans and additional monitoring to ensure compliance.

Access and Coverage of Reproductive Healthcare Services (SB 245 and SB 523)

In line with the state's commitment to protect reproductive rights following the Supreme Court decision in *Dobbs v. Jackson*, Governor Newsom signed two major bills to ensure access to and coverage for reproductive healthcare services in California. First, the Abortion Accessibility Act ([SB 245](#)) ensures affordable access to abortion services for the privately insured and Medi-Cal beneficiaries by requiring state-licensed health plans, as well as Medi-Cal managed care plans, independent practice associations, and preferred provided groups, to cover all abortion services without imposing a co-payment, deductible, or any type of cost-sharing. Second, the Contraceptive Equity Act ([SB 523](#)) provides expanded access and coverage of birth control options. Specifically, the amended law requires coverage of over-the-counter birth control options without cost-sharing and extends coverage of contraceptives to state workers, university employees, and college students.

What Didn't Pass

Single Payer: Guaranteed Health Care for All (AB 1400, ACA 11)

Even as several notable laws were enacted to enhance access to necessary care with affordable coverage, they are targeted patches that still leave coverage gaps in the healthcare system.

[AB 1400](#), introduced in 2021 and titled “Guaranteed Health Care for All,” proposed to establish a universal, single-payer health care system in California that would guarantee health care coverage of all Californians regardless of employment, income, and immigration status. Specifically, AB 1400 would replace Medicaid, Medicare, and private health insurance with CalCare, a state-run system and would eliminate all out-of-pocket fees, such as copays, deductibles, and premiums. Regrettably, the proposal failed to proceed to a vote in the Assembly, likely due to the lack of clarity in funding the system. Although the bill sponsor Ash Kalra later introduced companion bill [ACA 11](#) as the funding component, it wasn’t until the second part of the 2-year term in 2022. In any event, the proposed tax increase to fund the system would have faced a steep climb in the legislature and in garnering voter support. For more on AB 1400 and California’s single payer efforts, see our [coverage](#) in the California Legislative Beat.

AB 1400 is the latest, and likely not the last, proposal in the multiple rounds of efforts at implementing a single payer system in California. While the legislature has passed several bills that would explore the possibility of a single payer system, no law or mandate has required actual implementation to provide universal health care in the state, as providing the requisite funding for the system remains a big challenge to the transition. Nonetheless, the state continues to explore financing possibilities through legislative efforts. Most recently, the Healthy California for All Commission issued a report that provided a thorough analysis of unified financing options for universal healthcare in the state (Read more on the report [here](#)). A policy evaluation of the design options for financing may be the most viable next step in California’s goal of implementing single payer universal healthcare.

Stay tuned for next month's Part 2 of the 2021-2022 term recap, as we cover three other topic areas of proposed healthcare bills: surprise out-of-network costs, telehealth, and prescription drug prices.