# SB 343: The Importance of Aligning Kaiser's Disclosure Requirements with Other Insurers and Hospitals

To lower health care costs, transparency is critical.

The recently approved SB 343 is California's next step toward greater price transparency. This bill would require Kaiser Permanente to report the same amount and type of information as any other hospital and health plan would. This change underscores a new reality: while Kaiser may be structurally different from its competitors, its premiums are similarly priced. Because Kaiser covers nearly two thirds of the large group market enrollees (i.e. employers with more than fifty employees), SB 343 fills an important data gap that will better help policymakers lower health care costs.

To better understand how SB 343 is a positive step toward greater transparency, we first provide a synopsis of what the bill does. Next, we analyze three potential, but significant effects of the bill. First, by repealing Kaiser's alternative reporting method, SB 343 would create a uniform disclosure standard and allow "apple to apple" comparisons by policymakers and payers. Second, SB 343 would shine light on why Kaiser's healthcare premiums are similar to other competitors despite a growing profit margin. Third, SB 343 would potentially resolve future APCD data inconsistencies by requiring uniform disclosure.

**Bill Synopsis: SB 343 Creates a Uniform Disclosure Standard for Insurer Rates and Hospital Financial Information**

SB 343 removes Kaiser's exemptions for rate filing disclosure requirements as an insurer and hospital financial information disclosure requirements as a hospital.[1] Specifically, Kaiser will no longer be able to report actual trend experience for the prior contract year by aggregate benefit category.[2] Instead, Kaiser will have to report annual medical trend factor assumptions and the amount of the projected trend attributable to the use of services, price inflation, or fees and risk for annual plan contract trends by aggregate benefit category. Additionally, Kaiser will no longer be able to aggregate financial information by geographic region (i.e. Northern California or Southern California). Instead, Kaiser must disclose, like other hospital systems are required to, financial information for each of its individual hospitals including total gross and net revenue by payer, expenses, and operating surplus. Overall, this creates a uniform disclosure reporting standard and removes Kaiser-specific reporting for rate filings and hospital finances.

**A Uniform Disclosure Standard Directly Helps Policymakers and Payers**

SB 343 is an important step for healthcare cost transparency. As briefly discussed in the April blog, Kaiser's significant market share, about 40% of California's commercial health care insurance market,[3] means that its alternative reporting method significantly skews and hampers full interpretation of the healthcare system. By eliminating Kaiser's alternative reporting schemes to require Kaiser "to report the same data as its competitors, regulators can make 'apple to apple' comparisons of health care pricing."[4] By doing so, policymakers can better understand how the health care market operates and the underlying cost drivers. For example, by requiring Kaiser to file individual hospital information for each of its 35 hospitals instead of group information, policymakers will be able to account for regional differences.

Additionally, Alameda County Board of Supervisors and CalPERs noted that in having uniform health care cost data, they may have more leverage in negotiating plan rates and verifying plan-submitted information.

**SB 343 May Explain Why Kaiser's Market-Rate Premiums Remain Comparable to Other Insurers Despite Continued Increase in Profit**

While SB 343 has obvious direct benefits, Kaiser argued that SB 343 was "unnecessary" and "counter to integrated model of care," because Kaiser's unique model requires a different filing from other insurers.[5] While that might be true, Kaiser has become more and more similar to other insurers in terms of health care premium rates.

In 2012, David Lansky, the president of the Pacific Business Group on Health, stated that Kaiser Permanente had difficulty explaining how it sets its prices.[6] In fact, SB 343 originated from the disconcerting fact that Kaiser had a profit of $1 billion in the first quarter of 2017. This immense profit margin resulted from an 11% increase in total revenue with a less than 2% increase in expenses.[7] More alarmingly, Kaiser continued to raise rates despite a bigger profit of $3 billion in the first quarter of 2019, just two years later.[8]

In a 2012 KQED story, Mark Smith, the founding president of the California Health Care Foundation, stated that Kaiser is no longer the bargain it used to be compared to other insurers.[9] Glenn Melnick, a University of Southern California health policy professor, stated that "Kaiser is not as low cost as many people think."[10] But whereas Melnick suspected that Kaiser keeps higher premiums to prevent sick patients from signing on, Smith speculated that Kaiser was engaging in "shadow pricing," which is setting subjective

pricing based on what people are willing to pay.[11] Oftentimes, this means an organization may set their price just below the more expensive price of their competitors. This seems likely the case for Kaiser. As seen in Table 1 below, Kaiser's rates, while relatively lower, are similar to that of other insurers.

***Table 1: Comparison of Kaiser's Average Rates with Other Statewide Plans***

| Year | Lowest Adjusted Average Rate Increase? | Closest to Kaiser's Adjusted Average Rate Increase | Difference from Lowest Average Per Member Per Month Premium | Percentage of Large Group Total Enrollees |
|---|---|---|---|---|
| **2017** | No, 3.5% (2nd) | Cigna (3.1%) | +$34.94 | 63.4% |
| **2018** | Yes, 3.5% | United Health (3.7%) | +$30.34 | 64.2% |
| **2019** | No, 4.9% (2nd) | Blue Shield (4.8%) | $0.00 (Lowest Avg.) | 63.5% |

***Source: California Department of Managed Health Care's Annual Presentation on Large Group Aggregate Rates***

Such data implies some form of "shadow pricing" where Kaiser Permanente continues to increase its rates to be within its competitors' average rates despite the considerable increase in revenue. As such, both Senator Richard Pan and the California State Council of the Service Employees International Union (SEIU California), the author and sponsor of the bill respectively, noted that SB 343 would help shine more light on understanding Kaiser Permanente rate increases.[12]

**SB 343 Would Resolve Some of California's APCD's Problems**

SB 343 is important for the California's all payer claims database (APCD), known as the Healthcare Payments Database. Because an APCD collects claims data from a variety of health insurers, it would allow comparative studies among different hospitals, plans, and health systems. However, as noted by researchers, there are limited studies that compare Kaiser with other health systems.[13] This may be because of different delivery systems and different information filing. In fact, when Kaiser was fined $2.5 million in 2017 for failure to file data on out-of-network care that its Medi-Cal patients received and on all physician-administered drugs,[14] it used the defense that its systems were not "designed or updated to collect information in the format required by the state."[15] While such argument fell flat with state regulators in that case, Kaiser again employed this reasoning in its opposition of SB 343.

By eliminating the difference in filing requirements, uniform disclosure under SB 343 would potentially resolve such filing complications that had prevented state regulators from properly assessing quality measures. It would also ensure a more seamless transition for Kaiser data into California's APCD and create a more complete APCD that allows "apples to apples" data comparison.

**Conclusion**

Kaiser has significant benefits as a delivery system.[16] However, in trying to understand health care costs, every insurer and hospital, no matter how different it may be, must provide an equivalent amount of financial information so that policymakers may make proper decisions. While SB 343 is an important step, it does not completely close the gap. For example, with charity care spending on the decline in

California, Kaiser Permanent hospitals are not required, unlike other acute-care hospitals, to report charity care totals.[17] But, for now, SB 343, in removing the Kaiser exemption, provides more data for policymakers to review and temper growing health care premiums.

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[1] The law was written in such a way that only Kaiser was exempted. The language used to exempt Kaiser was exempting "[a] health insurer that exclusively contracts with no more than two medical groups in the state." Only Kaiser fit that definition.

[2] Examples of an aggregate benefit category are: "hospital inpatient, hospital outpatient, physician services, prescription drugs and other ancillary services, laboratory, and radiology."

[3] Kaiser Permanente is the largest nonprofit health plan in the United States.

[4] Sen. Com. on Health, Analysis of Sen. Bill No. 343, 2019-2020 Reg. Sess. as amended Feb. 19, 2019, p. 3.

[5] *See* Assem. Com. on Health, Analysis of. Sen. Bill No. 343 (2019-2020 Reg. Sess.) as amended June 18, 2019, p. 5.

[6] Sarah Varney, *Could Kaiser Permanente's Low-Cost Health Care Be Even Cheaper?*, KQED (Jun. 25, 2012).

[7] *See* Dave Barkholz, *Behind Kaiser's $1 billion quarterly operating gain, and how it might repeat it*, Modern Healthcare (Aug. 3, 2017).

[8] *See* Tara Bannow, *Kaiser Permanente's net income exceeds $3 billion in first quarter*, Modern Healthcare (May 10, 2019).

[9] Sarah Varney, *Could Kaiser Permanente's Low-Cost Health Care Be Even Cheaper?*, KQED (Jun. 25, 2012).

[10] Chad Therhune, *Kaiser's Obamacare rates surprise analysts*, Los Angeles Times (Jun. 12, 2013) (writing that "Some experts say Kaiser intentionally bid high to avoid drawing too many customers next year who are sick or who have been uninsured for years and may be costlier to treat. Others suspect Kaiser was worried that lower premiums would bring an influx of newly insured patients that could overwhelm its in-house roster of doctors and hospitals . . . Mulkey of the California HealthCare Foundation said Kaiser has regretted being the low-cost option at times in the past and being overrun by too many members at one time").

[11] Sarah Varney, *Could Kaiser Permanente's Low-Cost Health Care Be Even Cheaper?*, KQED (Jun. 25, 2012).

[12] *See* Assem. Com. on Health, Analysis of. Sen. Bill No. 343 (2019-2020 Reg. Sess.) as amended June 18, 2019, p. 4; Rebecca Pifer, *Kaiser to Reveal Detailed Financials Under Newly Signed California Bill*, Healthcare Dive (Sept. 2019) (reporting Senator Pan stated that "[t]his law arms employers and others with the information they need to fully understand why the cost of their health insurance with Kaiser Permanente may be rising"). Ironically, researchers noted that Kaiser Permanent was successful in entering new markets when there was strong backing from local organizations like unions. *See* Daniel P. Gitterman, et al., *The Rise and Fall of a Kaiser Permanente Expansion Region*, 81 Milbank Q. 567 (2003) (further discussing that Kaiser was successful in California because it was able to achieve a large scale before other HMOs entered the market).

[13] *See* Jared Lane K. Maeda, Karen M. Lee & Michael Horberg, *Comparative Health Systems Research among Kaiser Permanente and Other Integrated Delivery Systems: A Systematic Literature Review*, 18 Perm. J. 66 (2014).

[14] Chad Terhune, *California Fines Kaiser Permanente $2.5 Million Over Missing Medicaid Data*, California Healthline (Jan. 26, 2017).

[15] *Id.*

[16] *See* Alain C. Enthoven & Laurence C. Baker, *With Roots In California, Managed Competition Still Aims To Reform Health Care*, 37 Health Affairs 1425, 1427 (2018); Alain C. Enthoven, *Integrated delivery systems: the cure for fragmentation*, 15 Am J Manag Care S284 (2009); Jesse Pines et al., Kaiser Permanente – California: A Model for Integrated Care for the Ill and Injured (2015), https://www.brookings.edu/wp-content/uploads/2016/07/KaiserFormatted_150504RH-with-image.pdf.

[17] Harriet Blair Rowan, *Charity Care Spending By Hospitals Plunges*, California Healthline (Aug. 12, 2019). Kaiser unions accused Kaiser of underfunding charity care. *See* Samantha Liss, *Kaiser Permanente net income soars to $2B*, Healthcare Dive (Aug. 12, 2019).