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California Senate Bill 538 Hospital Contracts
Purchaser Update

Senate Bill 538 seeks to level the playing field in health care contracting, and provides more information to consumers and purchasers in the state. It prevents dominant provider systems from engaging in five coercive and unfair practices:

1. Requiring "all or nothing" terms that force health plans to contract with all affiliates of a hospital group regardless of performance;
2. Forcing employers to be bound by undisclosed terms of a contract between a hospital and health plan;
3. Mandating that payers bring anti-trust claims on terms exceedingly favorable to the dominant provider group;
4. Requiring that a health plan provide coverage to its enrollees at the same level of copayment, coinsurance or deductible regardless of underlying value;
5. Requiring that rates be kept secret from parties that are or will become liable for payment.

Last month, SB 538 passed the Senate Health Committee unanimously with bipartisan support. The Appropriations Committee will vote next Thursday, May 25, 2017, after with it will head to the full floor of the California Senate.

Why SB 538 is Needed: Dominant Systems Charge Unjustifiably High Prices

- Empirical studies conclusively demonstrate that dominant providers are using their market power to engage in unfair contracting practices and negotiate higher-than-competitive prices in the state.[1,2,3]
- Prices at the largest multi-hospital systems, for example, have increased 43 percent faster than at other hospitals because of their market power.
- Our experience—particularly in Northern California—is no different: care in the northern half of the state can cost 20-30 percent higher than similar services and procedures performed in the more competitive southern California marketplace.
- In fact, it now costs on average $4,000 more per admission to seek the same services from a dominant multi-hospital system than at all other California hospitals.
- Higher prices do not translate into higher quality health care.[4]

Unfair Contracting Practices are Behind These Increases

- Dominant groups are requiring health plans and employers to include every facility in a provider's network, regardless of performance.
- Large systems are requiring employers to attest that they will be bound by terms and conditions not disclosed to them, preventing them from understanding what their legal obligations are.
- Groups are restricting an employer's ability to provide employees with financial incentives for seeking care from high performing facilities and networks. In some cases, groups impose a financial penalty and require renegotiation of contracted rates after purchasers engage in this type of value-based "tiering." In other cases, dominant groups explicitly prohibit it.
- Groups are prohibiting employers and vendors from proactively disclosing the cost of a test or procedure before an employee receives care, undercutting efforts to help consumers make fully informed decisions. Data that is shared often must undergo an onerous process of review and approval by large provider systems.

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[1] P. Ginsburg, Wide Variation in Hospital and Physician Payment Rates Evidence of Provider Market Power, HSC Research Brief No. 16, (Washington: Center for Studying Health System Change, November 2010).
[2] Robinson JC, Miller K. Total expenditures per patient in hospital-owned and physician-owned physician organizations in California. JAMA. 2014 Oct 22-29;312(16):1663-9.
[3] Melnick GA, Fonkych K. Hospital Prices Increase in California, Especially Among Hospitals in the Largest Multi-hospital Systems. Inquiry. 2016 Jun 9;53.
[4] Hussey PS, Wertheimer S, Mehrotra A. The Association Between Health Care Quality and Cost A Systematic Review. Annals of internal medicine. 2013;158(1):27-34.

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Who Will Benefit

- SB 538 will increase transparency, competition, and choice in California's health care marketplace, which will improve value for anyone who purchases or receives care in the state. The bill directly benefits millions of California consumers who receive coverage through their employer or purchase it on their own.
- SB 538 is good for large businesses, small businesses, and California's economy. Money that is not spent on artificially high health care costs can better be directed to investment and expansion in core business, hiring new workers, and providing existing workers with raises.

Who We Are

Diverse stakeholders, including public and private purchasers, have testified in support of the objectives of this legislation:

PBGH/SVEF

- The Pacific Business Group on Health (PBGH) and Silicon Valley Employers Forum (SVEF) are California-based non-profit organizations who collectively represent 70 large public and private employers dedicated to improving quality and affordability across the U.S. health system.
- Our roots in California are strong—upwards of 95 percent of our members are based in the state or have a significant base of operations here. We are deeply involved in both the health care finance and delivery system.
- All of our members provide comprehensive health and wellbeing benefits to their employees. Last year, they spent more than $12 billion dollars providing coverage to over three million California employees, retirees, and dependents.

Small Business California

- Small Business California is a network for more than 5,000 employers who represent 3.6 million small businesses in the state. SBC is a PBGH member and strong supporter of SB 538.