CalPERS

Board of Administration

Agenda Item 8b

June 15, 2022

Item Name: Assembly Bill 2080 (Wood) – Health Care Consolidation and Contracting Fairness Act of 2022

Program: Legislative

Item Type: Action

Recommendation

Adopt a **SUPPORT** position for Assembly Bill (AB) 2080, as amended May 19, 2022, that will allow California Public Employees' Retirement System (CalPERS) and its members to benefit from the regulation of health care consolidations and ensure that the California health care market is not impacted by unfair contracting practices that can lead to higher health costs.

Executive Summary

Among other things, AB 2080 would require a medical group, hospital or hospital system, specified health facility, health care service plan, health insurer, or pharmacy benefit manager that intends to purchase, merge, or consolidate with another entity, to provide written notice to, and obtain the written consent of the Attorney General, at the same time as another state or federal agency is notified, at least 90 days before entering an agreement or transaction with a value of $15 million or more. The bill would also prohibit certain contracting practices, such as restricting a plan’s or insurer’s ability to steer an enrollee or insured to another provider or requiring that the plan or insurer contract with other affiliated providers or facilities. The bill applies to any contract issued, amended, or renewed on or after January 1, 2023, between a health care service plan or health insurer and a health care provider or health facility.

Strategic Plan

This item supports CalPERS 2017-22 Strategic Goal by “Transforming Health Care Purchasing and Delivery to Achieve Affordability.”

Background

Anticompetitive behavior has been increasing in the health care sector over the years, particularly with large health care systems buying up multiple hospitals and practices. This behavior often results in higher prices without improving the quality of care.

On March 29, 2018, Attorney General Becerra filed a lawsuit against Sutter Health, a large hospital system in Northern California, after investigating wide disparities between Northern and Southern California health care costs. The lawsuit was meant to address allegations of anticompetitive behavior by Sutter Health, a large hospital system in Northern California. A UC Berkeley report found evidence that the consolidated market in Northern California has led to higher prices for consumers, finding that the average hospital inpatient procedure cost was $131,586 in Southern California and $223,278 in Northern California.

In December 2019, Sutter Health agreed to a settlement while admitting no wrongdoing. The settlement provides for both damages and injunctive relief. Among other things, the settlement prohibits “all or nothing” agreements, which require insurers to include all medical facilities in their network as a condition of including any at all. The settlement also limits what patients can be charged for out-of-network services. The bill applies these and other contracting restrictions to a wide range of health care entities. In August 2021, final approval was given to the settlement.

Analysis

Bill Summary

Beginning January 1, 2023, this bill will:

- Expand the Attorney General’s existing authority to approve or deny a change in ownership of a nonprofit health facility to include oversight and approval or denial of for-profit changes in ownership and control.
- Require a medical group, hospital or hospital system, health care service plan, health insurer, or pharmacy benefit manager that intends to purchase, merge, or consolidate with, initiate a corporate affiliation with, or enter into an agreement resulting in its purchase, acquisition, or control by another entity to provide written notice to, and obtain the written consent of, the Attorney General at least 90 days before entering the agreement if the value is $5 million or more.
- Authorize the Attorney General to consent to, give conditional consent to, or not consent to the agreement.
- Require the Attorney General to notify the entity of the decision within 90 days, which may be extended to one 45-day period, as specified.
- Require the Attorney General to conduct one or more public meetings on a major transaction before issuing a written decision.
- Provide for an administrative hearing to appeal Attorney General denials.

The bill also places requirements on certain contractual provisions. Any contract issued, amended, or renewed on or after January 1, 2023, between a health care service plan offering coverage in the group market or individual market and a health care provider, network or association of health care providers, or other service provider offering access to a network of service providers, shall not:

- Restrict the directing or steering of enrollees or insureds to other health facilities.
- Restrict the offering of incentives to encourage enrollees or insureds to utilize or avoid specific health facilities.
- Require entering into an additional contract with any or all affiliates or individual facilities of the provider as a condition of entering into a contract with the provider.

- Require agreeing to payment rates or terms for an individual facility or affiliate of the health facility as a condition of entering into a contract with the health facility, other individual facility, or affiliate.
- Require agreeing to payment rates or other terms for an affiliate or individual facility that is not party to the contract.
- Restrict other health care service plans and health insurers that are not a party to the contract from paying a lower rate for items or services than the rate of the contracting plan or insurer pays for those items and services.
- Prevent a health care service plan or health insurer from, directly or indirectly, providing provider-specific cost or quality of care information, by any means, to referring providers, the plan or insurer sponsor, enrollees, insureds, or eligible enrollees or insureds of the plan or insurer.

In addition, this bill entitles the Attorney General and any other state entity charged with reviewing health care market competition under this bill's requirements to specific performance, injunctive relief, and other equitable remedies a court deems appropriate for enforcement of the law and would be entitled to recovery attorney's fees and costs incurred in remedying each violation.

Author's Intent

It is the intent of the author that this bill creates a process to evaluate the impact health care consolidation, market influence, and other health care marketplace practices have on California's rising health care costs. Assembly Member Wood has stated that "we have reviewed, time and time again, many reports and studies that show these types of transactions in health care have, more often than not, resulted in higher health care costs and profits for the corporations rather than lower the cost and better health for patients" and "that's the wrong direction and absolutely something that needs more careful scrutiny by the Attorney General". Per the author's office, "the goal of increasing access to health care cannot be accomplished without controlling health care costs and certain practices within the health care marketplace [that] are contributing to these increases."

CalPERS Competition Model

At the March 2021 Pension & Health Benefits Committee, CalPERS staff presented the Competition Study & 2022 New Plans, Area Expansion, and Benefit Changes. While recommending health plan service expansions, it was also noted that greater competition among health plans promotes lower prices, higher quality, and greater value to members. On numerous occasions, the CalPERS team has also discussed the high cost that hospital and other provider consolidation has on CalPERS premiums. Consolidated health care markets reduce competition and have been shown to increase health care costs.

CalPERS recognizes the need for affordable health plans and the continuity of health care coverage for our members and their dependents. AB 2080 will allow CalPERS and its members to benefit from the review of health care consolidations that sometimes lead to anticompetitive effects on the health care market. This bill will also ensure that the California health care market is not impacted by unfair contracting practices that can hinder competition and raise health care prices.

Consolidation Continues to Trend

Forbes noted in their "Three Trends Expected to Accelerate for Healthcare Providers in 2022" article, that hospitals are considering strategic merger opportunities because "large hospital systems simply have more purchasing power, stronger networks and more negotiating leverage with payers". As previously stated, anticompetitive behavior has been increasing in the health care sector over the years, particularly with large health care systems buying up multiple hospitals and practices. While AB 2080 seeks to restrict anticompetitive business activities, the article reports the potential positive impact on health care with an "increased and more convenient access for underserved patients, fewer administrative burdens and better workload distribution for clinical staff and stronger and more integrated care delivery networks, to name several benefits." Consolidation in the health care market will require continued examination and study and this bill will strengthen and expand the existing authority of California's Attorney General and Department of Managed Health Care to review future health care consolidations. With this trend continuing, AB 2080 will protect CalPERS members to ensure that potential consolidations do not involve unfair contracting and anticompetitive behaviors.

Registered Support and Opposition

(As of 5/17/22)

Support

California Health Care Coalition; California Labor Federation, AFL-CIO; California Pan - Ethnic Health Network; California Rural Legal Assistance Foundation, INC.; California State Council of Service Employees International Union; California Public Interest Research Group; CHCC; Community Health Councils; Community Health Initiative of Orange County; Desert Aids Project D/b/a Dap Health; Economic Security Project Action; Health Access California; Latino Coalition for A Healthy California; NARAL Pro-choice California; National Health Law Program; Nextgen California; Purchaser Business Group on Health; Small Business Majority; United Food and Commercial Workers, Western States Council; Western Center on Law & Poverty, INC.; Young Invincibles

Oppose unless Amended

California Association of Health Plans; California Medical Association; County of Santa Clara; Vision Service Plan

Opposition

Adventist Health; Alliance of Catholic Health Care, INC.; America's Physician Groups; American Investment Council; Association of California Healthcare Districts; The Association of California Healthcare Districts; CalChamber; California Association of Health Facilities; California Children's Hospital Association; California Hospital Association; California Special Districts Association; Cedars Sinai; CVS Health; Dignity Health; District Hospital Leadership Forum; El Camino Health; Huntington Hospital; John Muir Health; Kaiser Permanente; Keck Medicine of USC; Kindred Hospitals; Kindred Hospitals – California; Loma Linda University Health; Private Essential Access Community Hospitals; Providence; Providence Health Systems; Rady Children's Hospital - San Diego; Scripps Health; Sharp Healthcare; Silicon Valley Leadership Group; Stanford Health Care; Sutter Health; Tenet Healthcare Corporation; United Hospital Association; University of California

Budget and Fiscal Impacts

Benefit Costs

Increased oversight of health care system consolidation may mitigate health care cost increases attributed to a lack of competition.

Administrative Costs

No additional cost to CalPERS.

Benefits and Risks

Benefits:

- Potential to mitigate CalPERS health expenditure increases by prohibiting anticompetitive contracting practices at the insurer and provider level.
- Provide additional oversight of mergers and acquisitions by health care entities, which have historically driven increases to the cost of care.
- Increased transparency and information regarding market activities can help contain health care costs for CalPERS members and employers.

Risks:

- Potential adverse circumstances for consolidations that are not anticompetitive.
- Potential of increased legal fees for health care service plans that can have a downstream effect on the increase of health care premiums.

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