

STATE EFFORTS TO ADDRESS HEALTH CARE CONSOLIDATION AND COSTS

September 14, 2021

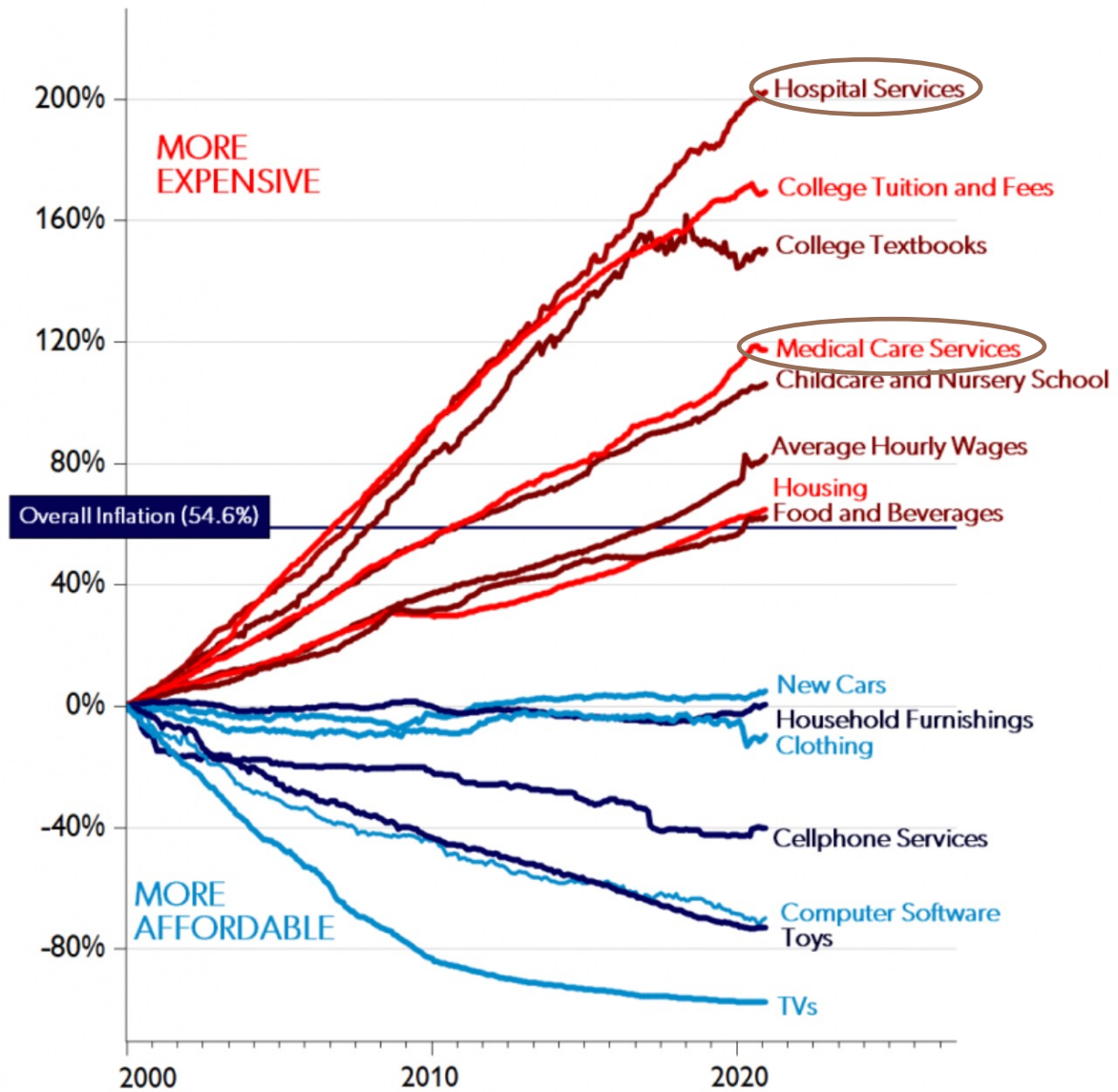
Katherine L. Gudiksen, Ph.D., M.S.

THE SOURCE
ON HEALTHCARE PRICE & COMPETITION



PRICES FOR
HEALTH CARE
HAVE
INCREASED
MUCH FASTER
THAN
INFLATION

Selected US Consumer Goods and Services, Wages



Source: Bureau of Labor Statistics

Carpe Diem 



\$57



\$65



\$160

Source: Institute of Medicine, Best Care at Lower Cost: The Path to Continuously Learning Health Care in America (2013) updated to 2019 dollars with the Federal Reserve Bank Consumer Price Index Inflation Calculator.

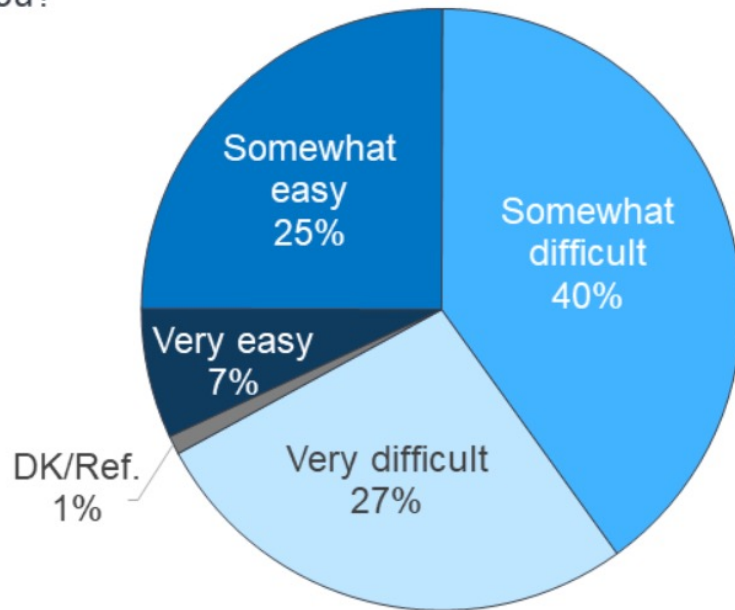
WHAT IF THE PRICE OF FOOD INCREASED LIKE THE PRICE OF HEALTH CARE?

WHY ARE U.S. HEALTHCARE PRICES SO HIGH?

- Failure to protect a free market – lack of transparency
- Failure to protect competition and rigorously enforce antitrust laws
- Failure of policymakers to act when competition no longer exists

TWO-THIRDS OF AMERICANS FIND IT DIFFICULT TO FIND OUT THE COST OF CARE

In general, how easy or difficult would you say it is to find out how much medical treatments and procedures provided by different doctors or hospitals would cost you?



Percent who say they have ever had the following problems with their current health insurance plan:

Difficulty understanding how much they will have to pay out of their own pocket when they use health care

44%

Difficulty understanding what their plan will and will not cover

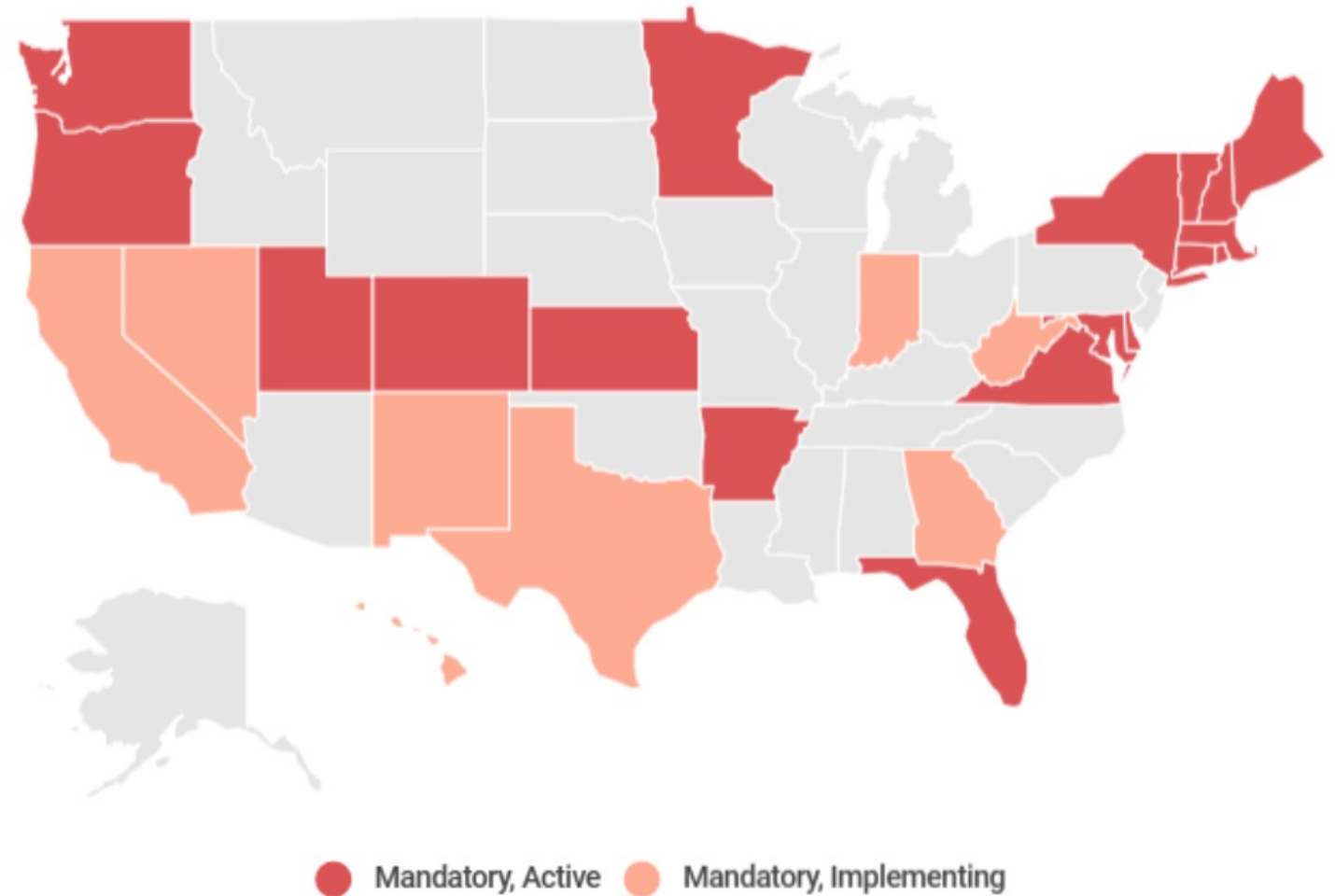
40%

SOURCE: KFF/LA Times Survey of Adults with Employer-Sponsored Health Insurance (Sept. 25-Oct. 9, 2018). See topline for full question wording.



**FAILURE TO
PROTECT A FREE
MARKET**

State All-Payer Claims Databases



Source: <https://www.sourceonhealthcare.org>

PRICE TRANSPARENCY FINAL RULES

Hospital Price Transparency

- Comprehensive machine-readable file
- Shoppable services in a consumer-friendly format.

Transparency in Coverage

- Payers must make public machine-readable files with negotiated rates, including covered prescription drugs



LOW COMPLIANCE WITH HOSPITAL RULE

94% of Hospitals Noncompliant with Hospital Price Transparency Rule

Just over six months after the hospital price transparency rule went into effect, only 5.6% of hospitals are compliant, new research shows.

Source: <https://revcycleintelligence.com/news/94-of-hospitals-noncompliant-with-hospital-price-transparency-rule>

CONNECTICUT HOSPITALS

Hospital	City	State	Compliance	Compliance Criteria												Explanation	Review Date
				Complete Standard Charge File	Codes	Gross Charge	Discounted Cash Price	Negotiated Min	Negotiated Max	Payer and Plan	300 Shoppable List	Price Estimate Tool (PET)	PET Provides Cash Price	PET Serves Uninsured			
Hartford Hospital	Hartford	CT	Noncompliant	N	Y	Y	Y	Y	Y	Y	N	N	Y	Y	Y	Standard charges file includes major payers but not specific plan names. Assumed to be missing data because many negotiated rates values are zero.	6/7
Navance Health Danbury Hospital	Danbury	CT	Noncompliant	N	Y	Y	N	N	N	Y	N	Y	N	N	N	Standard charges file does not list specific plans and the de identified min/max is not listed for every item/service.	6/7
Saint Francis Hospital and Medical Center	Hartford	CT	Noncompliant	N	Y	Y	N	Y	Y	N	N	Y	N	N	N	Standard charges file does not list Payer names and specific plans. Shoppable list is missing data.	6/7
Yale New Haven Hospital	New Haven	CT	Noncompliant	N	Y	Y	Y	Y	Y	Y	N	N	Y	Y	Y	Standard charges file includes major payers but not specific plan names.	6/7

Source: Patient Rights Advocate. Semi-Annual Hospital Price Transparency Compliance Report July 2021.

<https://static1.squarespace.com/static/60065b8fc8cd610112ab89a7/t/60f1c225e1a54c0e42272fbf/1626456614723/PatientRightsAdvocate.org+Semi-Annual+Hospital+Compliance+Report.pdf>

DISCLOSED
PRICES MAKE
LITTLE
ECONOMIC
SENSE

At the University of Mississippi
Medical Center, a **colonoscopy**
costs ...

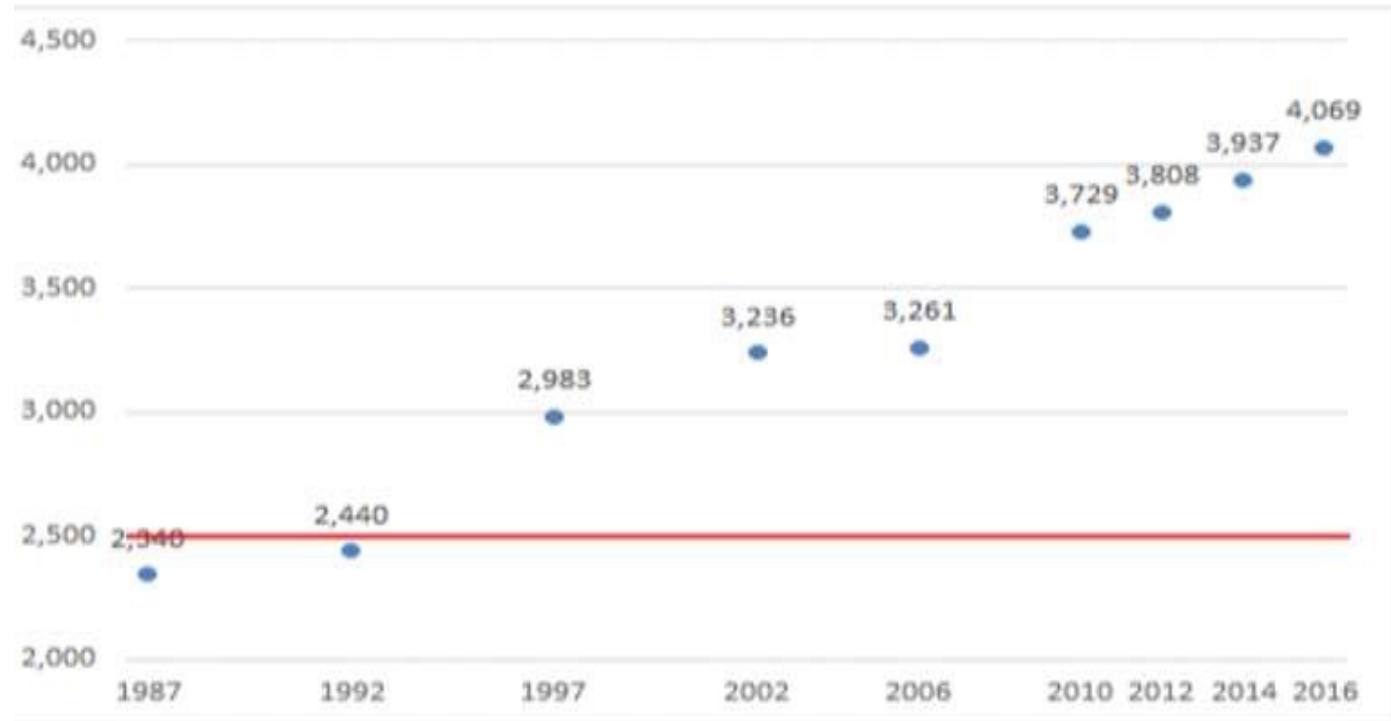
\$1,463
with a Cigna plan.

\$2,144
with an Aetna plan.

\$782
with no insurance at all.

FAILURE TO PROTECT COMPETITION AND RIGOROUSLY ENFORCE ANTITRUST LAWS

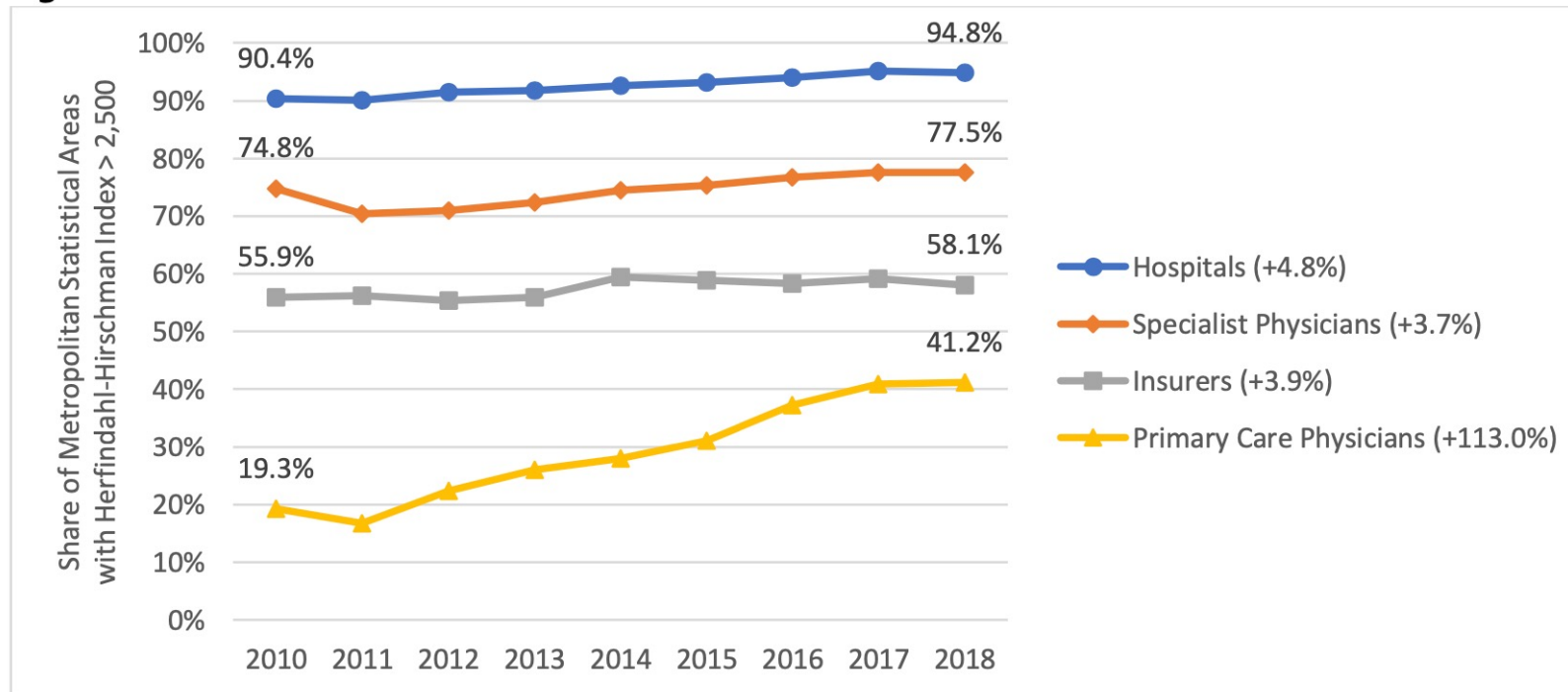
Mean Hospital Admissions HHI (population weighted)



Source: King et al. "Preventing Anticompetitive Healthcare Consolidation: Lessons from Five States" The Source, June 2020 ; Nicholas C. Petris Center on Health Care Markets and Consumer Welfare (petris.org), University of California, Berkeley, analysis of data from the American Hospital Association's Annual Survey Databases, using MSA definitions from Brent Fulton

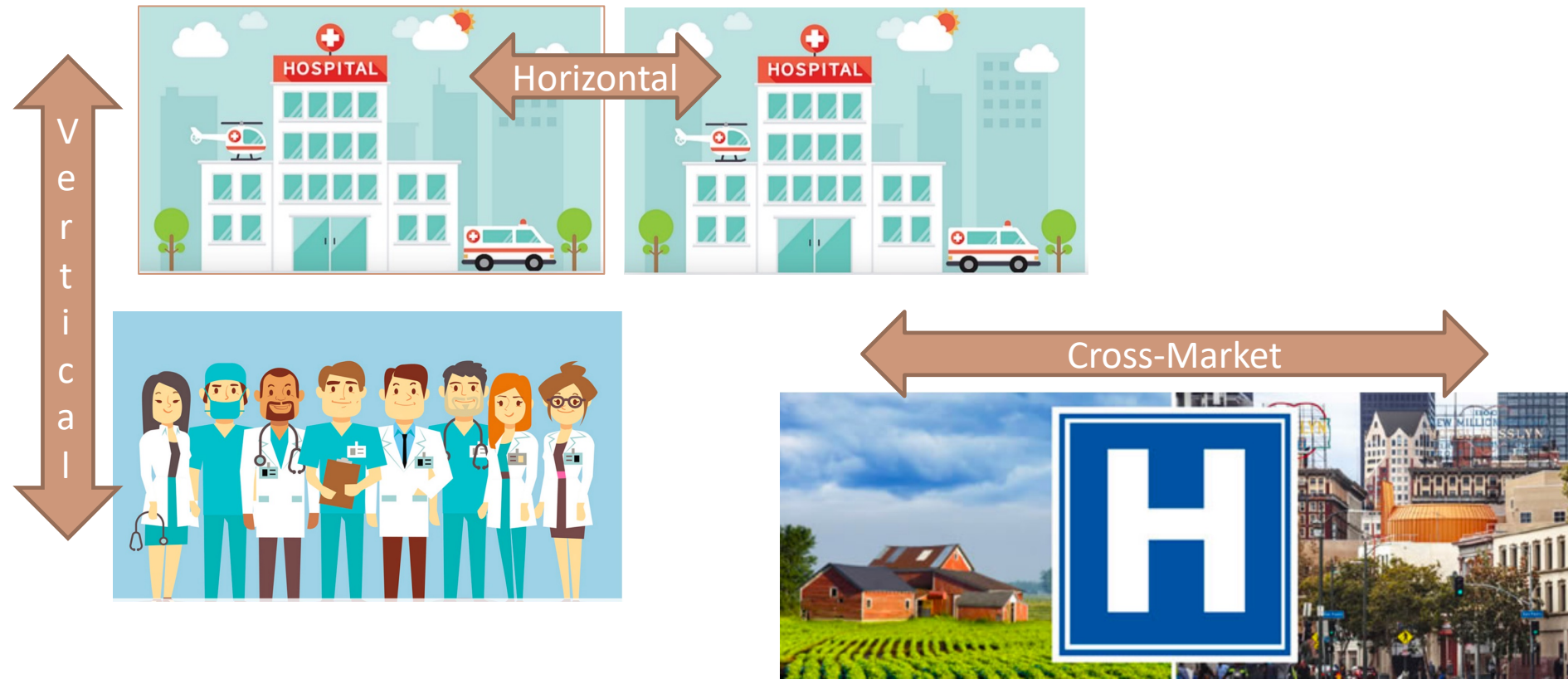
CONSOLIDATION IS INDUSTRY-WIDE

Figure 1: Healthcare Market Concentration Levels 2010-2018



Source: Nicholas C. Petris Center on Health Care Markets and Consumer Welfare (petris.org), University of California, Berkeley, analysis of data from the American Hospital Association Annual Survey, SK&A Office Based Physicians Database from IQVIA, and Managed Market Surveyor File from HealthLeaders InterStudy (Decision Resources Group).

HEALTHCARE MERGER MANIA



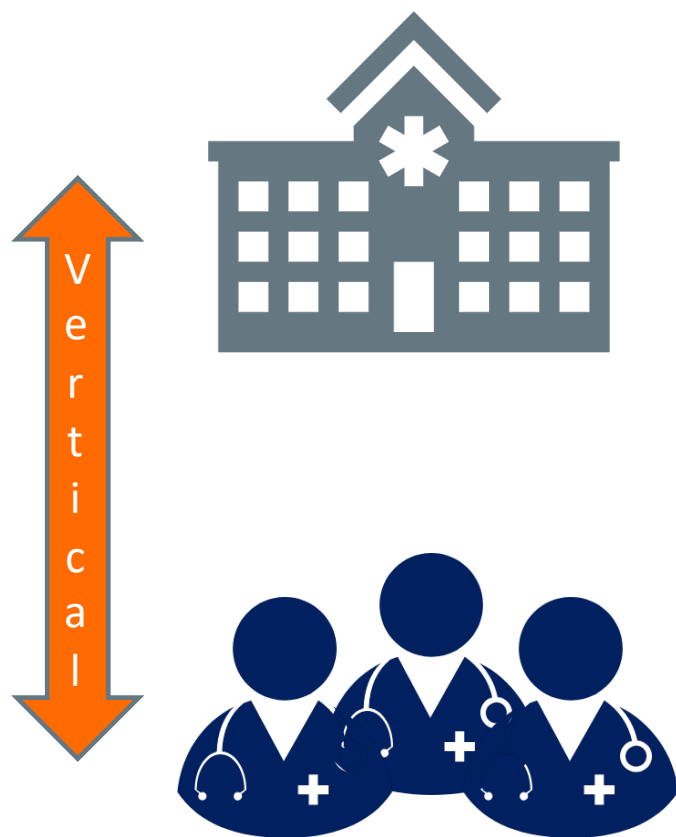
DATA ON RESULTS FROM HEALTHCARE MERGERS



Horizontal Mergers

- **Increased Prices:** Post-merger hospital prices increased 20-44%
(Dafny, 2009; Haas-Wilson & Garmon, 2011; Tenn, 2011; Gaynor & Town, 2012)
- **Increased Premiums:** Higher hospital concentration associated with higher ACA premiums
(Boozary, et al., 2019)
- **Reduced Wage Growth:** Hospital mergers reduced wage growth by 6.3% for nurses and pharmacists
(Prager and Schmitt, 2019)
- **Mixed to Negative on Quality:** Hospital acquisition associated with modestly worse patient experiences, reduced quality, or no effect
(Gaynor et al. 2013; Koch et al. 2018; Short and Ho, 2019; Beaulieu, Dafny, et al., 2020)

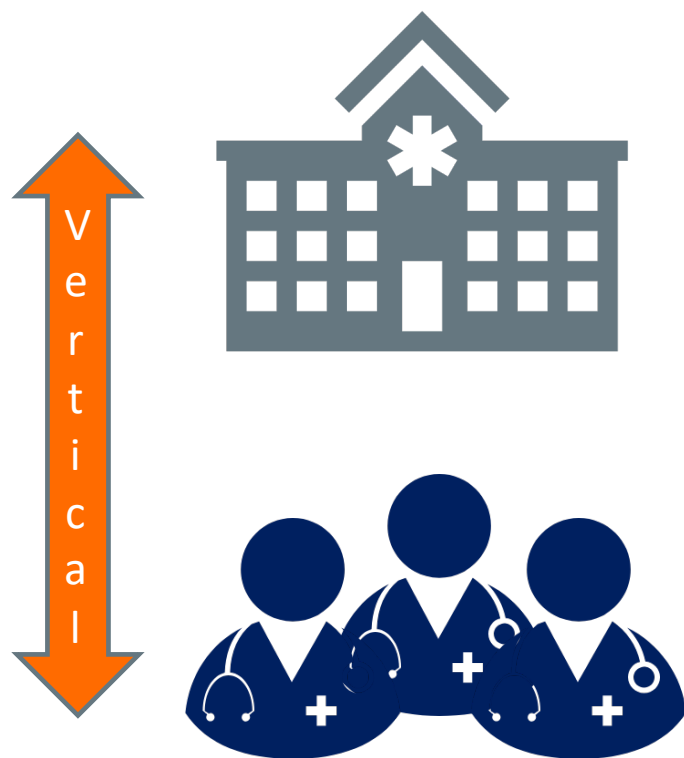
DATA ON RESULTS FROM HEALTHCARE MERGERS



Vertical Mergers

- **Higher Physician Prices:** Physician prices increase post-merger by an average of 14%
(Capps, Dranove, & Ody, 2018)
 - Cardiologist prices increased by 33.5%
(Capps, Dranove, & Ody, 2018)
 - Orthopedist prices increased by 12-20%
(Koch and Ulrick, 2017)
- **Higher Clinic Prices:** Hospital-acquired clinic prices increased 32–47% within four years
(Carlin, Feldman & Dowd, 2017)
- **Higher Hospital Prices** (Baker, Bundorf, Kessler, 2014)
- **Little to no quality improvements** (McWilliams et al. 2013; Neprash et al. 2015; Short and Ho, 2019)

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- **Higher Hospital Prices** (Baker, Bundorf, Kessler, 2014; Arnold and Whaley 2020)
- **Increased Spending** (Scheffler 2018; Ho et al. 2020; Whaley et al. 2021; Young et al. 2021)
- **Little to no quality improvements** (McWilliams et al. 2013; Neprash et al. 2015; Short and Ho, 2019; Ho et al. 2020; Beaulieu et al. 2020)

DATA ON RESULTS FROM HEALTHCARE MERGERS

Cross-Market Mergers

- **Increased Prices at Acquired Hospital:** 7-17% increases in prices for hospitals purchased by out-of-market systems

(Lewis & Pflum, 2016; Dafny, Ho, & Lee 2019)

- **Increased Prices at Acquiring Hospital:** 7-9% increase after merging with a hospital in a different market in same state

(Schmitt M, 2018; Dafny, Ho, & Lee 2019)

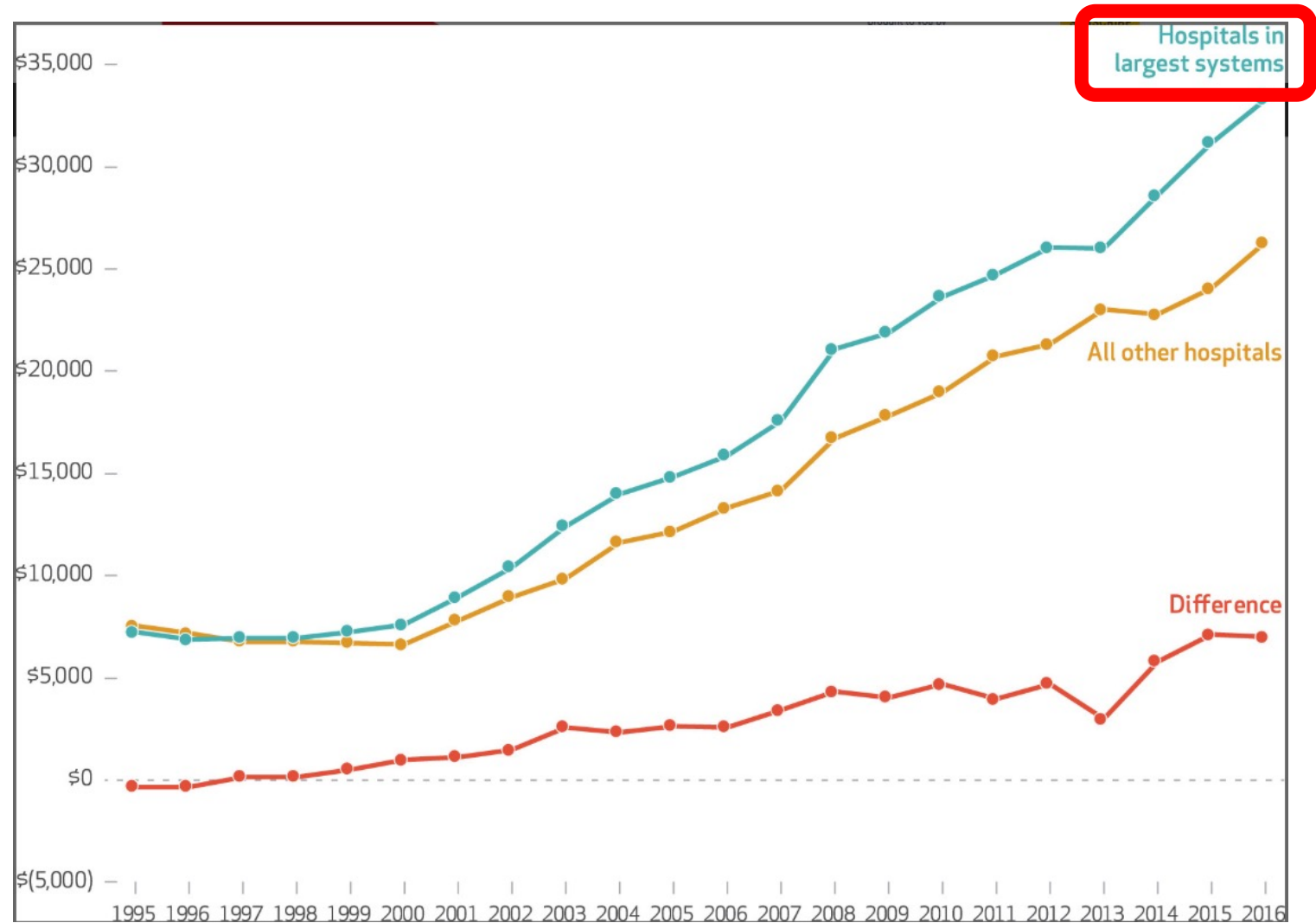
- **Increased Prices at Other Hospitals:** Price increases by 7.8% in nearby rival hospitals

(Lewis & Pflum, 2016)



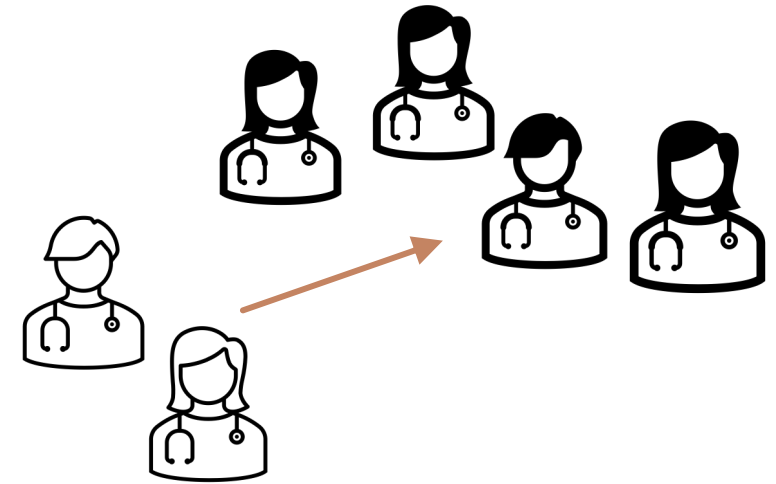
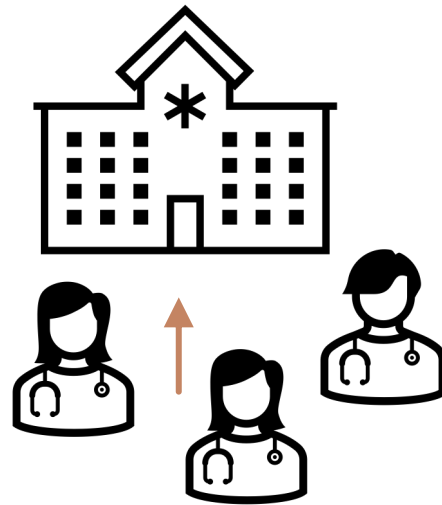
HIGHER
CONCENTRATION
LEADS TO HIGHER
PRICES

Hospital Prices in California



Source: Glenn A. Melnick, Katya Fonkych, and Jack Zwanziger, The California Competitive Model: How Has It Fared, And What's Next?, 37 Health Affairs 1417 (Sept. 2018)

PHYSICIAN CONSOLIDATION ALSO LIKELY LEADS TO PRICE INCREASES

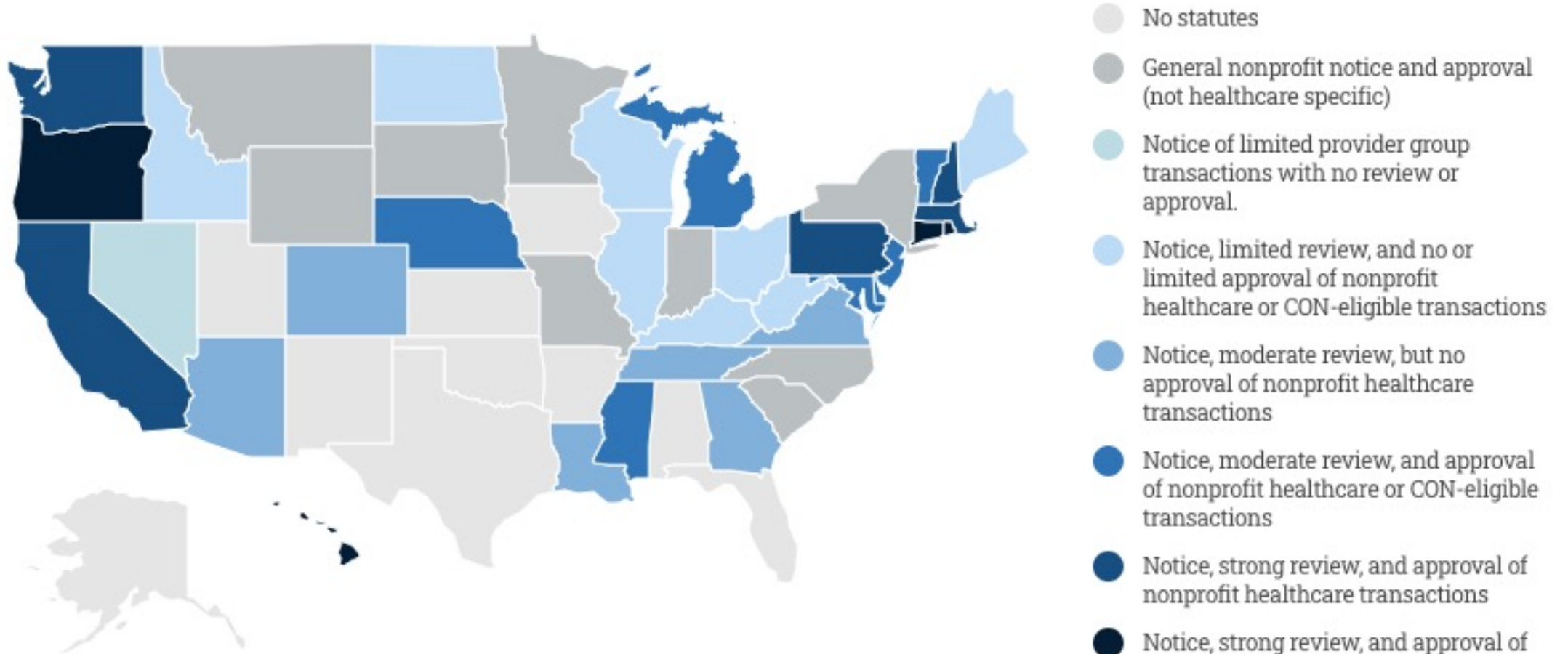


- Generalist and specialist prices are higher when in integrated practices. (Baker 2020)
- House Energy and Commerce Committee launched an investigation into acquisitions of hospital-based physician groups by private equity firms and their billing practices

WHAT CAN STATES DO TO PROTECT REMAINING COMPETITION?

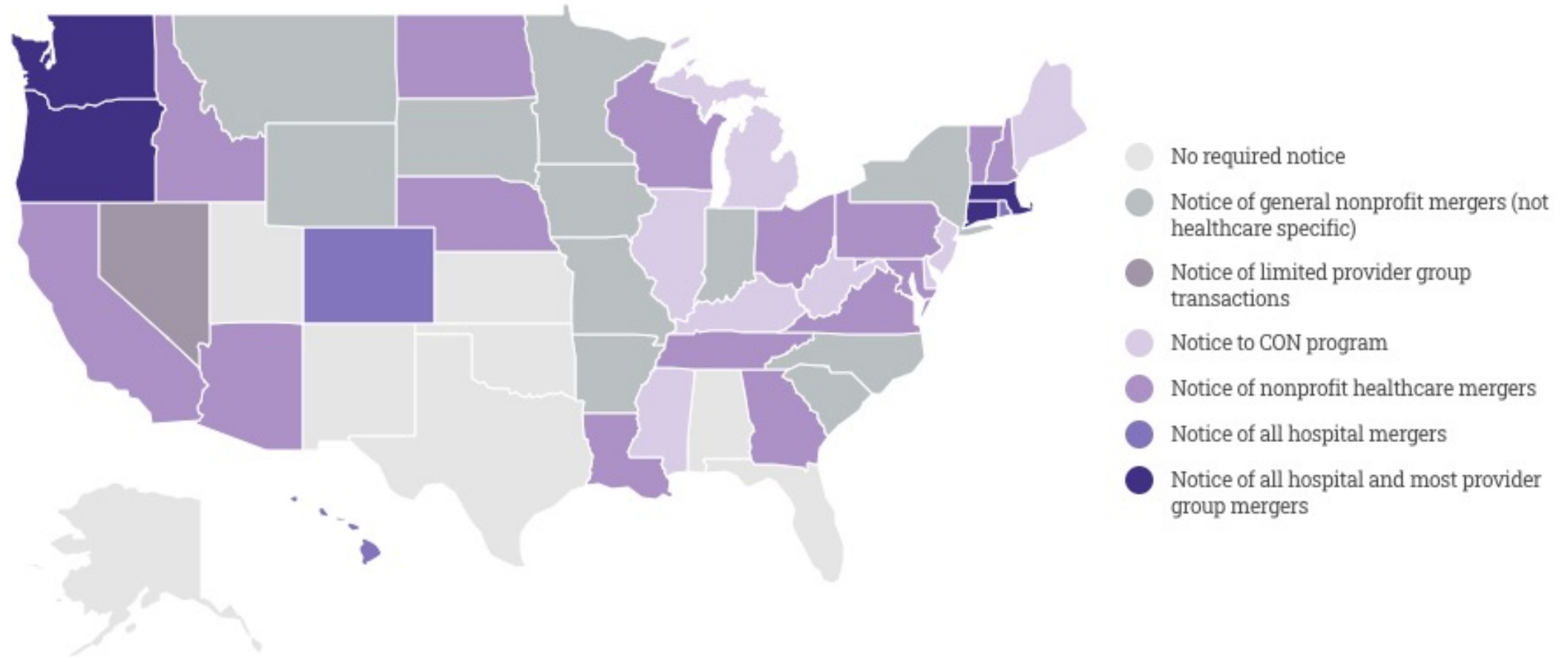
- Antitrust enforcers should consider unwinding problematic mergers, but “unscrambling the egg” is very difficult
- Improved merger review is critical to prevent additional consolidation

50-STATE SURVEY OF STATE LAWS ON HOSPITAL MERGER REVIEW



Source: <https://sourceonhealthcare.org/market-consolidation/>

MOST STATE NOTICE REQUIREMENTS ALLOW STEALTH CONSOLIDATION OF PHYSICIAN PRACTICES



Source: <https://sourceonhealthcare.org/market-consolidation/>

Statutory Authority: Ideal Provider Merger Review

Notice	Review and Approval	Post Transaction Monitoring
<p>Broad Scope of Entities (hospitals, physicians, clinics, etc)</p>	<p>Substantive Review Criteria</p> <ul style="list-style-type: none"> - Competition - Affordability/Prices - Public Interest 	<p>Independent Monitors Paid for by merging entities</p>
<p>Broad Scope of Transactions (affiliations and “any material change”)</p>	<p>Tiered Level of Review</p>	<p>Require Annual Compliance Reports</p>
<p>Waiting Period</p>	<p>AG can approve, deny, or impose conditions</p>	

Source: Jaime S. King et al. “Preventing Anticompetitive Healthcare Consolidation: Lessons from Five States” The Source. June 2020.

ACTION IN STATE LEGISLATURES IN 2021

- Nevada (AB 47)
 - Group practices must notify the AG if the resulting practice will have more than 50% marketshare
- Oregon (HB 2362)
 - Parties with revenue thresholds must be approval before merging





UNFORTUNATELY, IN MANY MARKETS...

FAILURE TO
ACT WHEN
COMPETITION
BECOMES
INSUFFICIENT

The Boston Globe

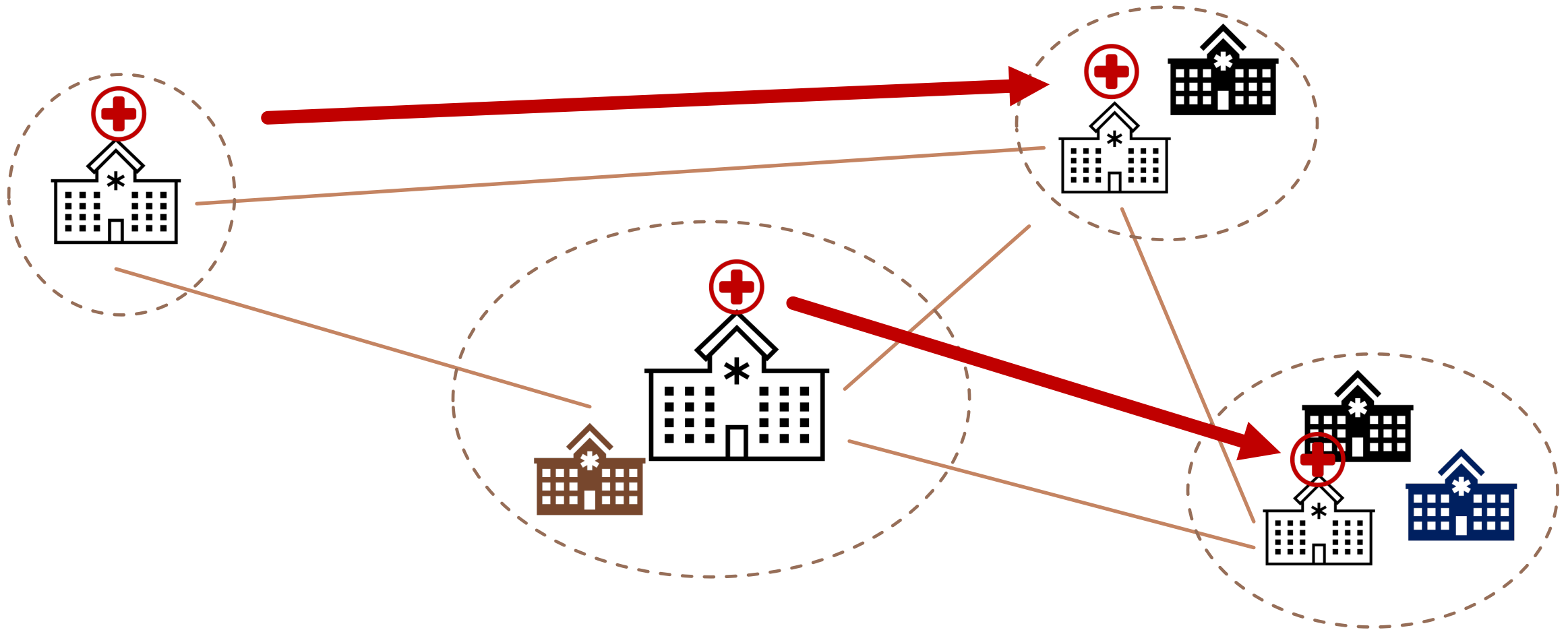
A handshake that made healthcare history

Partners HealthCare was born in 1993, but its powerhouse potential didn't fully hit home until 2000. That's when the emerging giant cut a quiet deal with Blue Cross to ratchet up insurance costs across the state. Nothing in Massachusetts healthcare has been the same since.

THE WALL STREET JOURNAL.

Behind Your Rising Health-Care Bills: Secret Hospital Deals That Squelch Competition

Contracts with insurers allow hospitals to hide prices from consumers, add fees and discourage use of less-expensive rivals



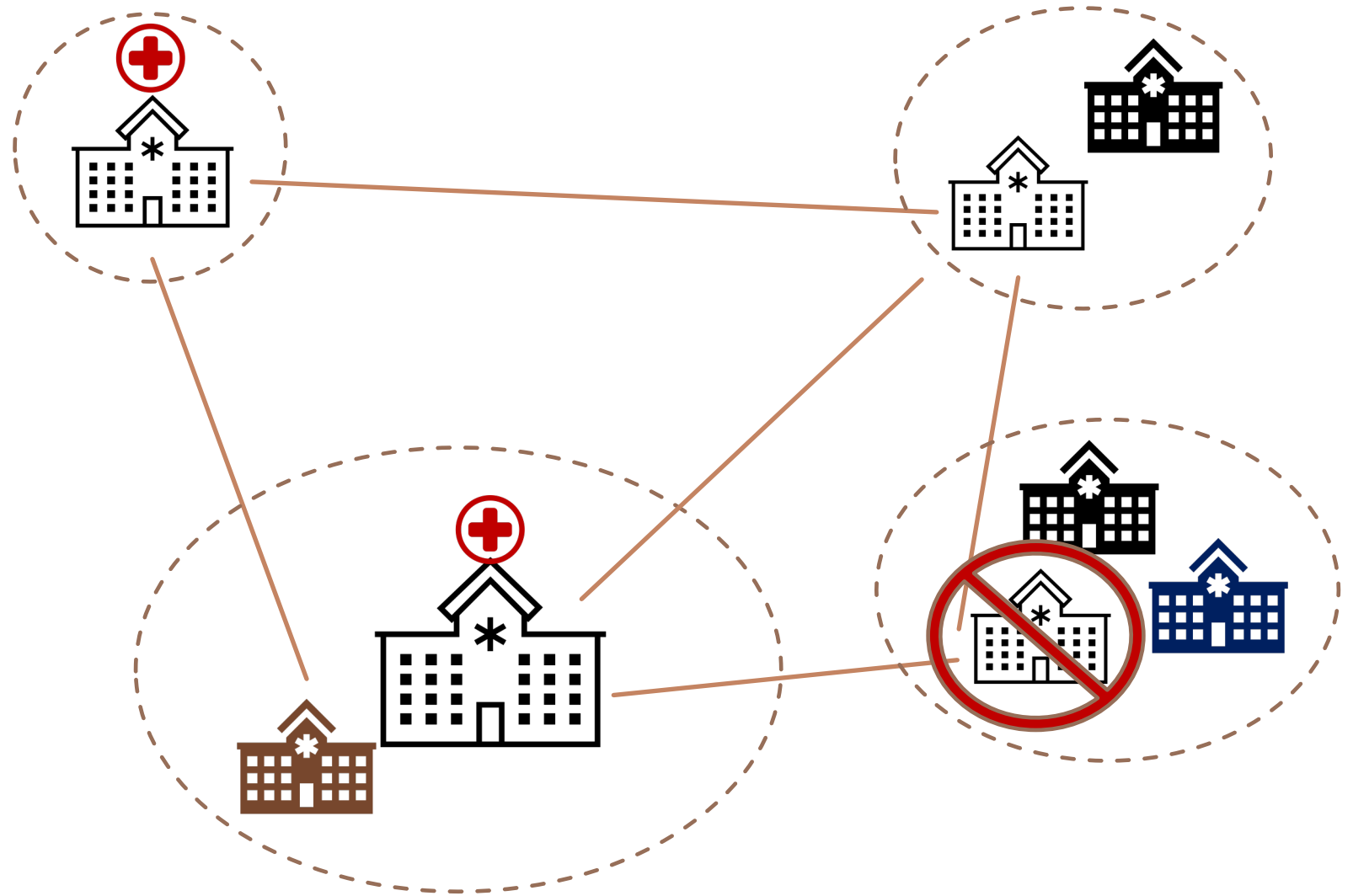
ANTICOMPETITIVE CONTRACTING PRACTICES ALLOW HEALTH SYSTEMS TO SPREAD MARKET POWER THROUGH A SYSTEM

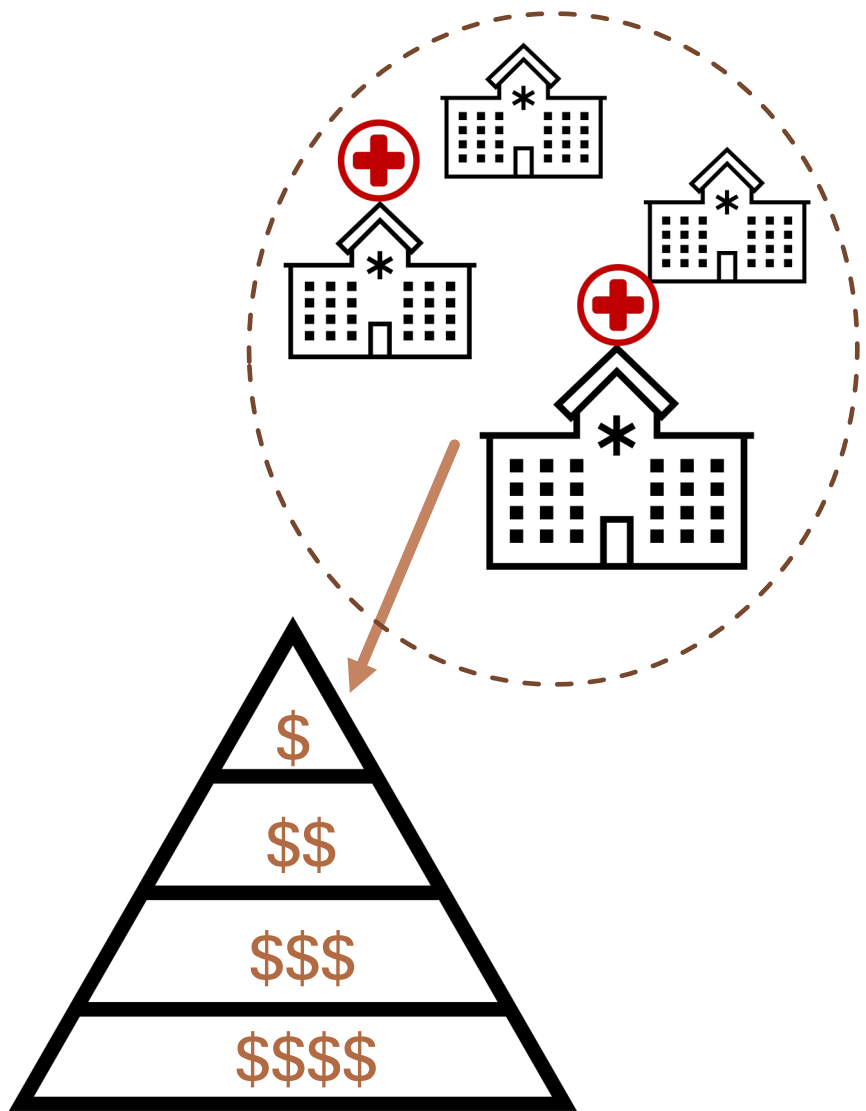
ANTICOMPETITIVE CONTRACT CLAUSES

- All-or-Nothing or Affiliate Contracting
- Anti-Tiering/Anti-Steering Clauses
- Most-Favored-Nation Clauses
- Gag Clauses

ALL OR NOTHING CONTRACTING (AFFILIATE CONTRACTING)

- ❖ Health system demands an insurer include all facilities in the network





ANTI-TIERING AND ANTI-STEERING CLAUSES

- Agreements in which an insurer agrees to place all hospitals in a health system in the most favorable tier with the lowest cost-sharing tier

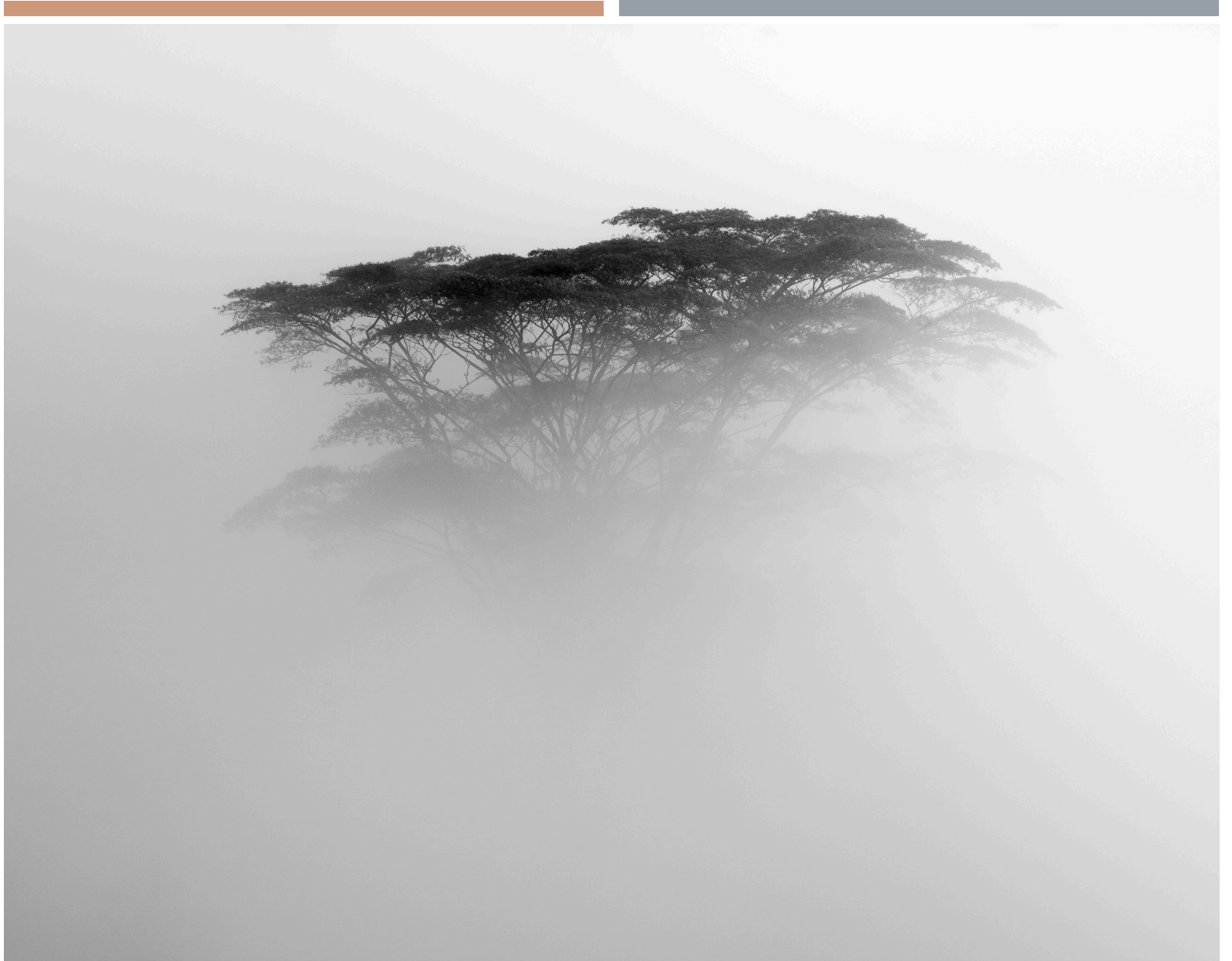
MOST-FAVORED-NATION CLAUSES



- Agreements in which a hospital agrees with an insurer to give it the best price or to not to give a lower provider payment rate to any rival
- Landmark lawsuit:
 - *United States and the State of Michigan v. Blue Cross Blue Shield of Michigan*

GAG CLAUSES

- Agreements in which both parties agree to keep the terms of the agreement, including price information, confidential from any person or entity not party to that agreement





Sutter Health
Sutter Medical Center

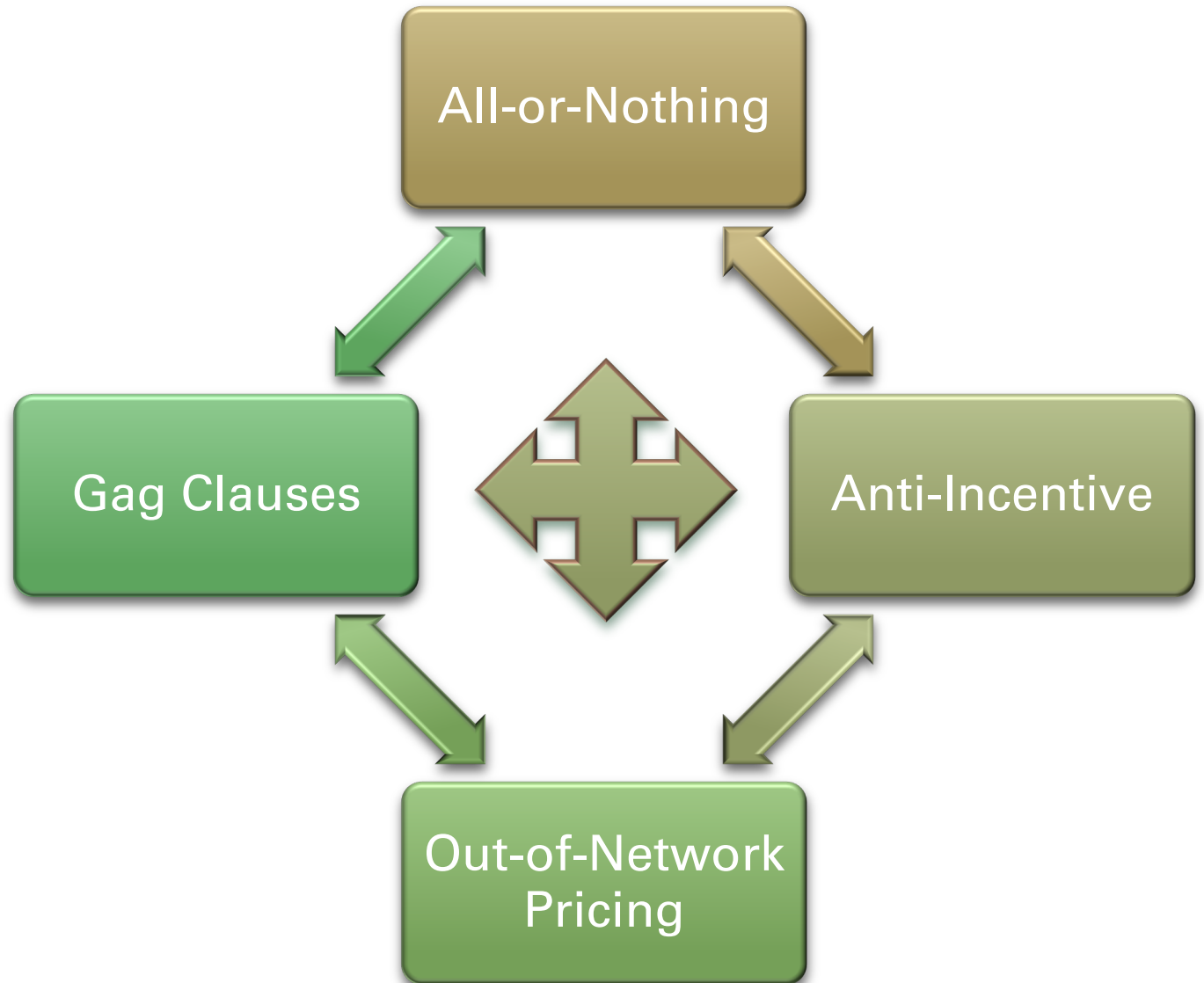
**ALLEGED ABUSE OF
MARKET POWER:**

*UEBT AND THE STATE OF CA
V. SUTTER HEALTH*

SIDIBE V. SUTTER HEALTH

McChetti
Children's Center

ANTICOMPETITIVE CONTRACT PROVISIONS



USE OF LITIGATION TO ADDRESS ANTICOMPETITIVE CONTRACTING

Benefits

- Situations addressed on case-specific basis, but have market-wide effects
- Can be brought by private parties (for treble damages)
- Can demonstrate harm from new contract provisions

Drawbacks

- Resource intensive
 - Cases can take many years
- Case-by-case enforcement doesn't assure widespread compliance
- Legal uncertainties
 - Market definition can come down to dueling economists



ANTITRUST ENFORCEMENT SEEDS OTHER INTERVENTIONS

THE LOWER HEALTH CARE COSTS ACT OF 2019 (S. 1895)

- Would have prohibited specific clauses in health insurance contracts
 - All-or-Nothing Contracting
 - Anti-Tiering or Anti-Steering provisions (except within value-based arrangements)
 - Most-Favored-Nation clauses
 - Gag Clauses

STATE EFFORTS TO ADDRESS HEALTH CARE CONSOLIDATION AND COSTS, SEPTEMBER 14, 2021



ACTION IN STATE LEGISLATURES IN 2021

■ Nevada SB 329

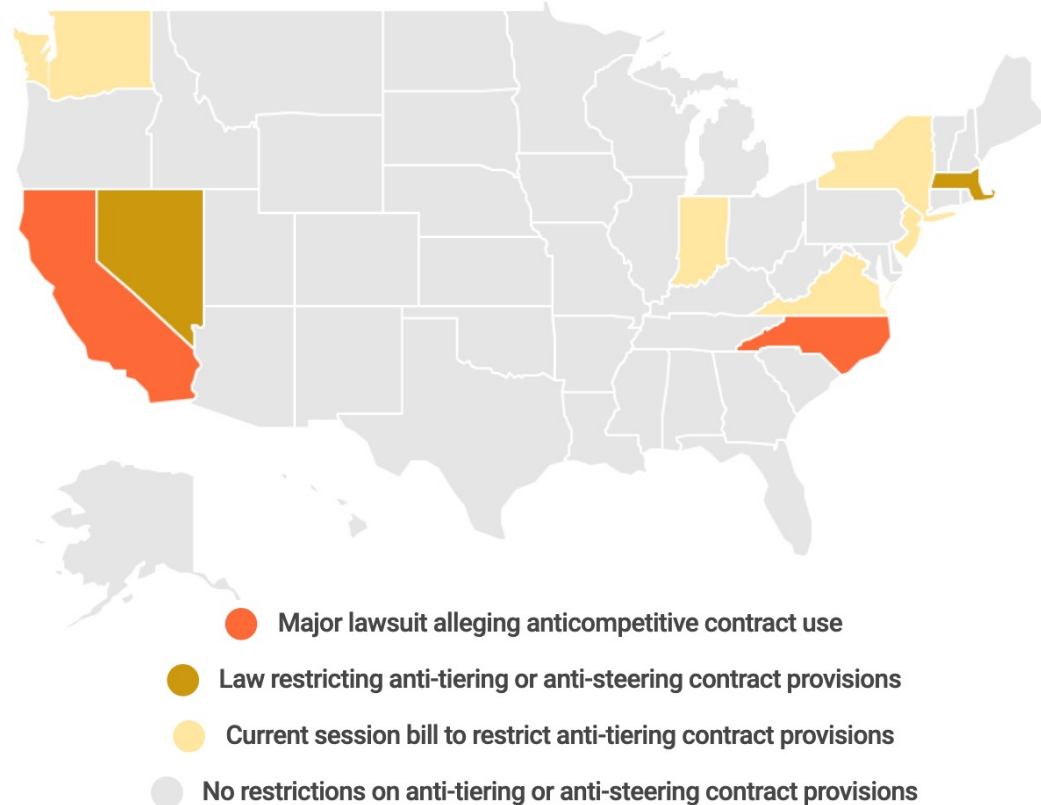
■ Introduced Bills

- California AB 1132
- Indiana HB 1421
- New Jersey AB 3527 / SB 1108
- New York SB 7199 and AB 3659
- Mississippi HB 1203 / SB 2775
- Virginia HB 2274
- Washington HB 1160

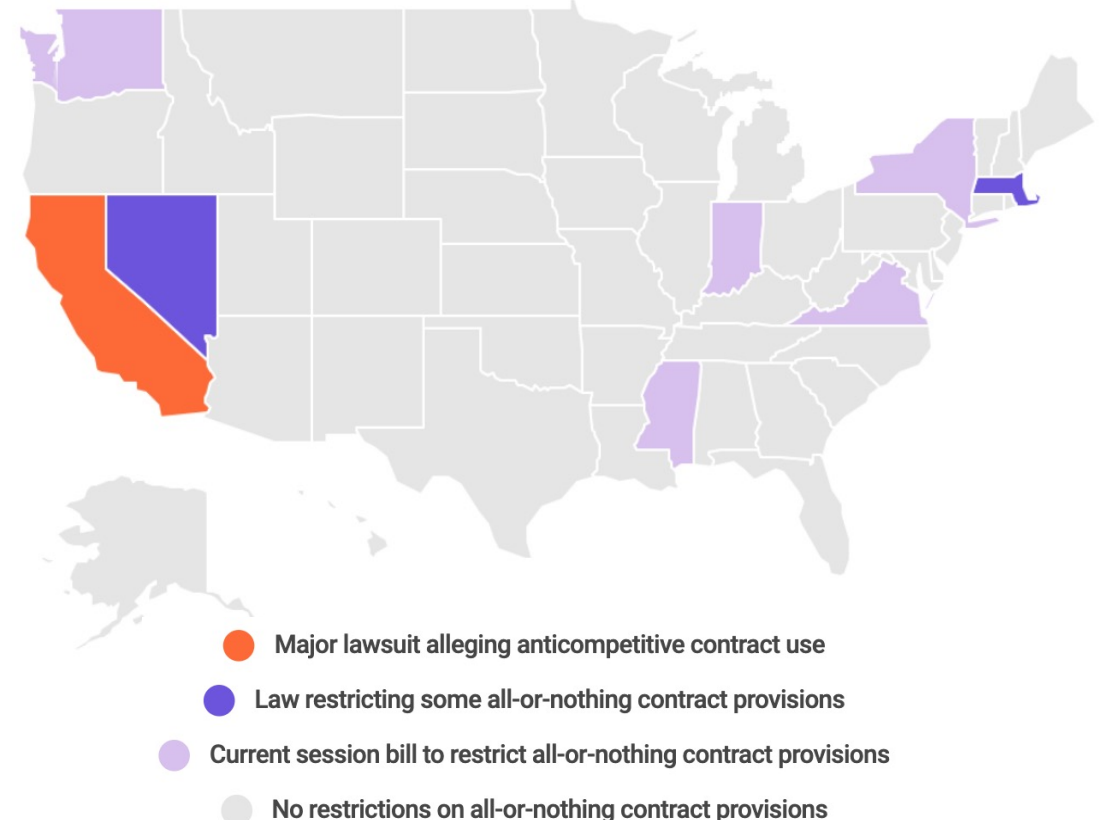


STATES WITH LAWS RESTRICTING USE OF SPECIFIC CONTRACT TERMS

Anti-tiering/anti-steering Restrictions

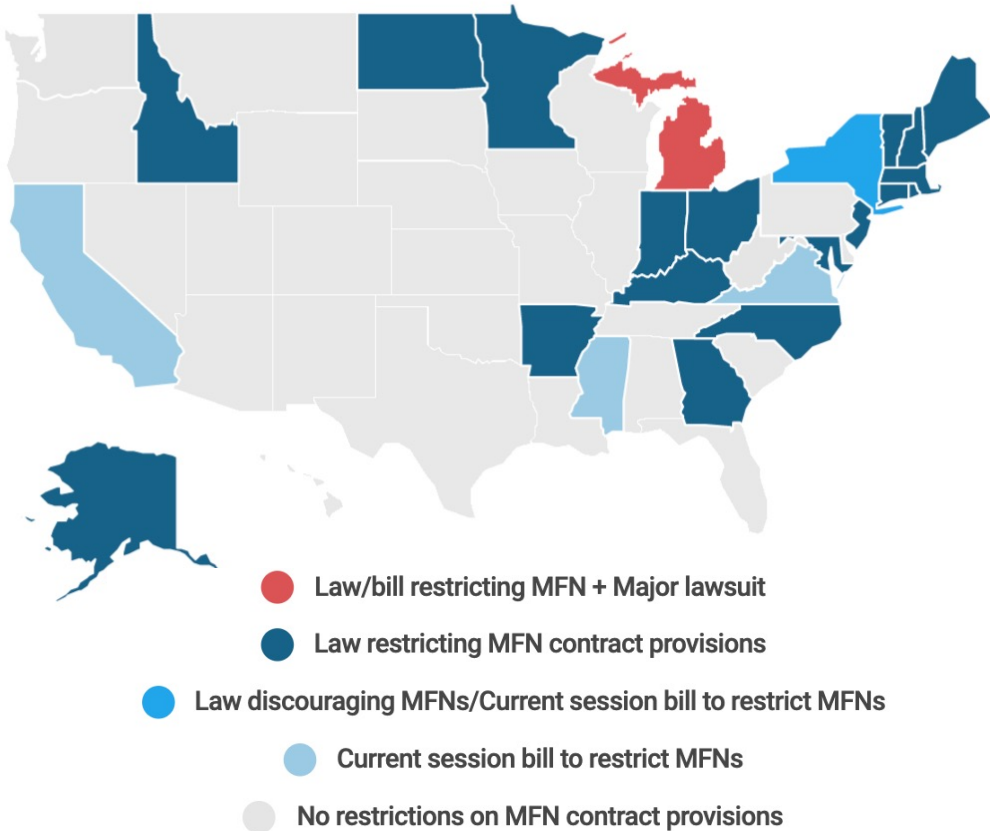


All-or-nothing or Affiliate Contracting Restrictions

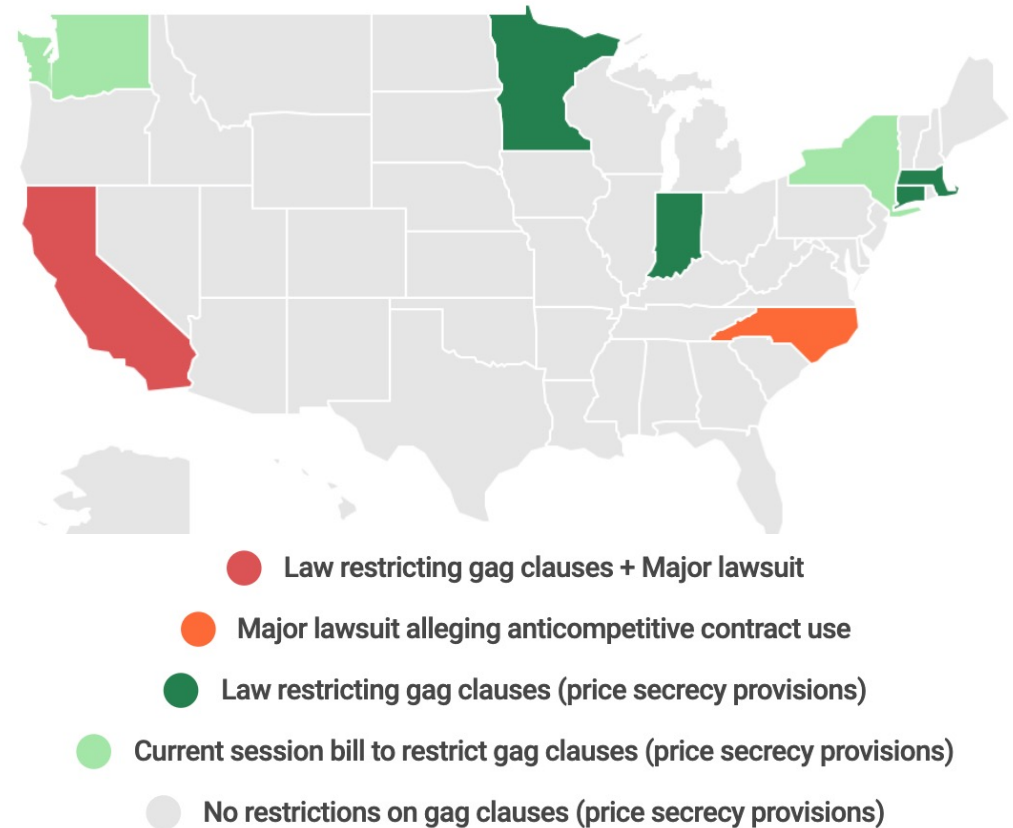


STATES WITH LAWS RESTRICTING USE OF SPECIFIC CONTRACT TERMS

Most-favored Nation Restrictions



Gag Clause or Price Secrecy Restrictions



USE OF LEGISLATION TO ADDRESS ANTICOMPETITIVE CONTRACTING

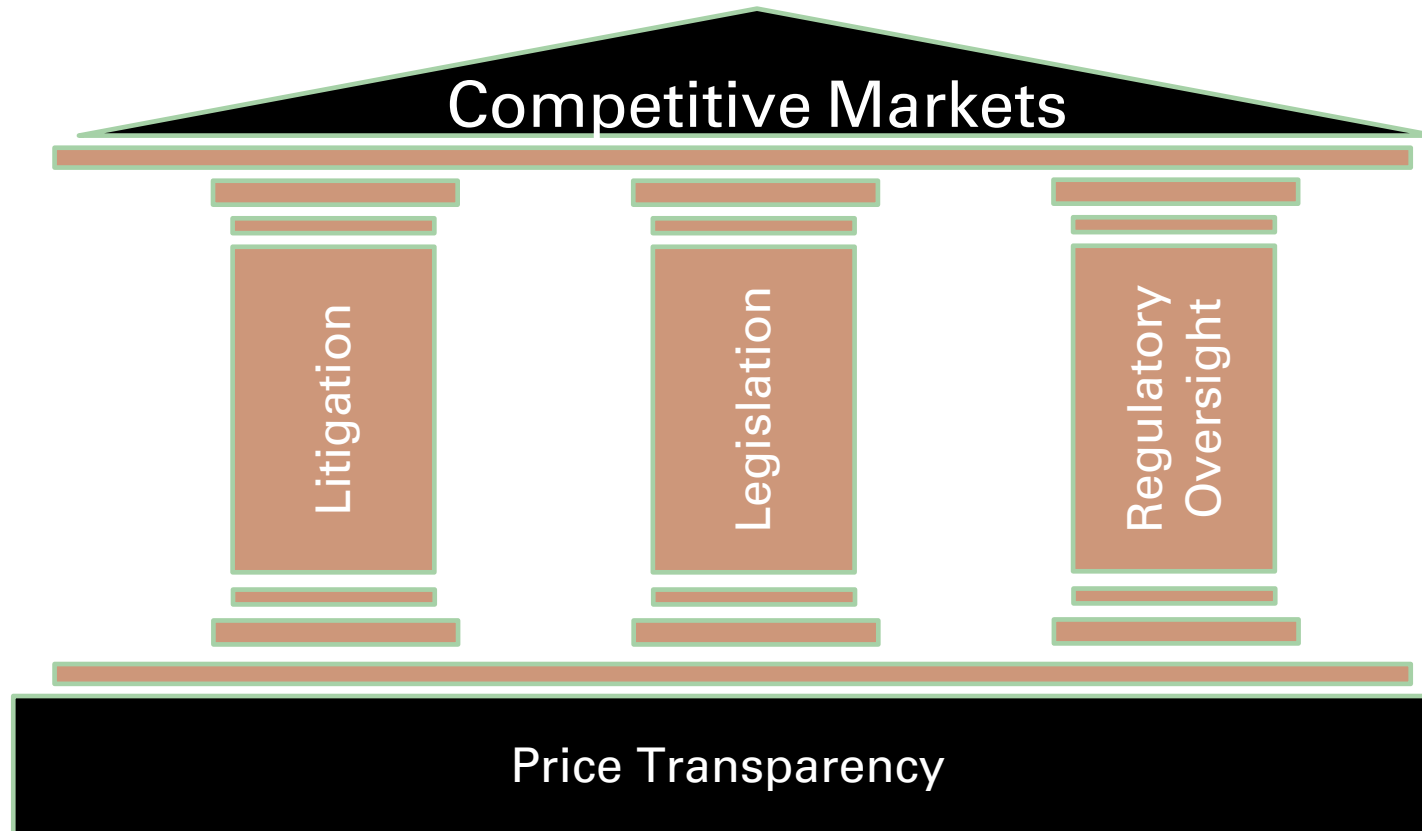
Benefits

- Industry-wide regulation
- Does not require fact-specific determination of market-power by economic experts
- Eases burden on antitrust enforcers and reduces required resources for enforcement
- Gives insurers increased ability to contract for high-value providers

Drawbacks

- Procompetitive use may be stifled
- “Contract Provisions” are not “Contracting Practices”
- Requires action by the state legislature for each term

COMPETITIVE MARKETS NEED SUPPORT



REGULATORY OVERSIGHT

- Comprehensive Oversight by State Agency
 - Health Policy Commission
 - Department of Health
 - Insurance Commissioner
 - Attorney General
- Review of proposed mergers, contracts, and rates
 - Can create triggered responses
 - Excessive rates trigger further Review





PROVIDER MARKET POWER: A PROBLEM THAT IS NOT GOING AWAY

- Price increases are the result of failures to ensure price transparency, rigorously enforce antitrust laws, and intervene when competition failed.
- Increased merger review is critical to protect remaining competition
- States need multipronged approach to restricting anticompetitive contract practices by dominant health systems
 - Litigation
 - Legislation
 - Regulatory Oversight

THANK YOU!

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<https://sourceonhealthcare.org/>

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