HB 1416

Patient Choice

• House Human Services Committee
• February 6th, 2023
North Dakotans for Open Access Healthcare

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The genesis of the bill is patient choice of health care provider.

HB 1416 allows patients to choose the providers they know and trust.

Our rural state, our small resident population, and our small population of health care providers makes insurance plans with ZERO out-of-network coverage difficult on consumers.
• 2021 Legislative Session similar bill – HB 1465

• HB 1465
  • DO PASS out of Human Services Committee. Passed House Floor.
  • Was converted to study after significant debate in the Senate Human Services Committee. Passed as a study on the floor
What did we learn?

• Significant discussions:
  • Patients
  • Providers
  • Independent Critical Access Hospitals
  • Independent medical practices
  • Independent medical facilities
  • Medical Associations
  • Insurance carriers
What did we learn?

• We learned the common concern was the Vertically Integrated Healthcare Delivery Network in North Dakota
• Vertically Integrated Network (VIN)
What is a Vertically Integrated Network (VIN)?
Vertically Integrated Network (VIN)

VIN houses the health plan, the health system, the providers and services provided
Distinct Advantages of VIN in North Dakota, Large Foundation
Distinct Advantages of VIN in North Dakota, Health Maintenance Organization (HMO)

- HMO
  - Can sell plan with ZERO out-of-network option
- Health System
- Providers
Distinct Advantages of VIN in North Dakota, HMO

Patients pay higher premium to get out-of-network option
Distinct Advantages of VIN in North Dakota, HMO

“Bargain” plan provides zero out-of-network option and traps the patient in the network.
Financial Disparity Should NOT handcuff a patient's ability to choose a health care provider

• In 2014, a similar bill (Measure 17) was passed in South Dakota, with 61.81% of South Dakotans support.

• “Those who want more choice and are willing to pay more for it have that option.”
  Dave Hewett, South Dakota Associations Of Healthcare Organizations.

• That comment should resonate....and so should the following question......what if you are unable afford to pay more for that choice?

• What if your employer doesn’t allow an out-of-network option?

• HB 1416 answers these questions
Question from last session..can HB 1416 Apply to HMOs?

- 2013 Wyoming Statutes
  TITLE 26 - INSURANCE CODE
  CHAPTER 34 - HEALTH MAINTENANCE ORGANIZATIONS
  26-34-134. Written agreement with providers; discrimination prohibited.

  Universal Citation: WY Stat § 26-34-134 (2013)
  26-34-134. Written agreement with providers; discrimination prohibited.

  In no event shall any Wyoming provider willing to meet the established terms and conditions be denied the right to enter into any written agreement.

  Wyoming: https://law.justia.com/codes/wyoming/2013/title-26/chapter-34/section-26-34-134
Question from last session...can HB 1416 apply to Employee Retirement Security Act plans (ERISA)?

SUPREME COURT OF THE UNITED STATES

No. 00–1471

KENTUCKY ASSOCIATION OF HEALTH PLANS, INC., ET AL., PETITIONERS v. JANIE A. MILLER, COMMISSIONER, KENTUCKY DEPARTMENT OF INSURANCE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[April 2, 2003]

http://supct.law.cornell.edu/supct/html/00-1471.ZS.html

https://www.crowell.com/NewsEvents/AlertsNewsletters/all/US-Supreme-Court-Upholds-Kentucky-Any-Willing-Provider-Laws-that-Restrict-HMOs-Ability-to-Select-Providers
Question from last session:
Can HB 1416 apply to ERISA plans?

• YES, There is legal precedence that HB 1416 can be applied to HMOs and self-insured ERISA plans.
What is the main argument against HB 1416?:

Increase cost
“Competition stimulates innovation – lower prices and better quality. Competition is the ultimate consumer protection because it allows a consumer to walk away from a transaction to find a better partner”

North Dakota Legislative Management
Interim Healthcare Study, Final report January 2021
Does the VIN model in North Dakota promote competition?
Is Vertical Integration Bad for Health Care Consumers?

Stories that caught our attention this week

JUNE 21, 2019

Is Vertical Integration Bad for Health Care Consumers? - California Health Care Foundation (chcf.org)
Summary to article:

• “vertical integration can easily enable market power to use in an anticompetitive manner, allowing the merged firm to use its new structure to the disadvantage of others, and in some cases, to the harm of consumers.”

Is Vertical Integration Bad for Health Care Consumers? - California Health Care Foundation (chcf.org)
Summary to article:

• “hospital ownership of physician practices leads to higher prices and higher levels of hospital spending.”

Is Vertical Integration Bad for Health Care Consumers? - California Health Care Foundation (chcf.org)
Summary to article:

- Vertical integration increased hospital’s bargaining power with the insurers, meaning the dominant hospitals can demand higher costs and limit competition.
Physician groups owned by large hospital systems were more than 50% more expensive than those owned exclusively by physicians.
Recent increases in vertical integration in California were associated with higher prices for primary care, more expensive specialty care, and higher health insurance premiums.
Summary to article:

“Physician-Hospital integration did not improve the quality of care for the overwhelming majority of quality measures.”

Is Vertical Integration Bad for Health Care Consumers? - California Health Care Foundation (chcf.org)
STATE EFFORTS TO ADDRESS HEALTH CARE CONSOLIDATION AND COSTS

September 14, 2021

Katherine L. Gudiksen, Ph.D., M.S.
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
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)
Hospital and Provider Consolidation: Negative Impact on Affordability for Consumers

November, 2014
AHIP Statement for Senate Hearing Highlights Concerns About Vertical Provider Consolidation

Article

PUBLISHED JUN 12, 2019 - BY AHIP
How Hospital Consolidation Hurts Americans

Lower hospital competition equals higher health care costs

Diminished quality of care
VERTICAL INTEGRATION AND THE MONOPOLY PROBLEM*

CORWIN D. EDWARDS
Bureau of Industrial Economics, Federal Trade Commission

VERTICAL INTEGRATION AND THE MARKET POWER CRISIS

ISSUE BRIEF BY ADIL ABDELA, KRISTINA KARLSSON, AND MARSHALL STEINBAUM
APRIL 2019

We define “market power” as the ability to skew market outcomes in one’s own interest, without creating value or serving the public good.

This “walled-garden” business model has harmed consumers, independent content creators, and innovation.

The real problem is the legalization of highly profitable business models that suppress competition and exploit stakeholders throughout the supply chain, no matter how large or small the parties to any given merger are.
Is ND at risk of a monopoly in healthcare? YES

1) Vertically Integrated Network
2) Large foundation to support anti-competitive growth
3) HMO with zero out-of-network options, with planned expansion across ND
4) Struggling health systems at risk for consolidation
5) Struggling provider practices at risk for consolidation
6) Difficulty to recruit to ND in an anti-competitive environment = less competition
Is ND at risk of a monopoly in healthcare?

YES

1) HB 1416 - Allowing patients to choose a trusted provider helps solve one small piece of the monopoly risk
“Competition stimulates innovation – lower prices and better quality. Competition is the ultimate consumer protection because it allows a consumer to walk away from a transaction to find a better partner”
How will HB 1416 control or even decrease cost?

1) HB 1416 – Is not “any willing provider” at “any willing price” - provider still needs to negotiate and meet the terms and conditions to participate

2) Fail First mechanisms employed by insurance companies

3) Independent provider practices cannot provider base bill (bill facility fee and professional fee)

4) Provide access to Ambulatory Surgery Centers vs Hospital Outpatient Departments (ASC up to 50% cost savings vs HOPD)

5) Patient access to the providers they need, avoid redundant visits

6) Value based contracting arrangements
Deloitte’s comments are limited to the scope of the uniform group insurance program. The legislation is anticipated to have a financial impact on the uniform group insurance program but the impact cannot be estimated with confidence because the costs will be dependent on provider contracting arrangements with the health insurer that administers the uniform group insurance program.
Conceptually, eliminating the ability for health insurers to exclude any providers from their networks removes some of the incentive for providers to agree to competitive reimbursements. The average discounts agree to by health systems (e.g., usually 30-40% for hospital care) could be reduced, or eliminated, IF providers could charge higher rates without any impact to patient volume. Any reduction in the discounts could lead to significant increase in health insurance premiums for all covered participants under the uniform group insurance program.”
Memo

Date: January 24, 2023

To: Scott Miller
   Executive Director, North Dakota Public Employees Retirement System

From: Tim Egan & Dan Plante & Drew Rasmussen, Deloitte Consulting LLP

Subject: ACTUARIAL REVIEW OF PROPOSED HOUSE BILL 1416

The program includes 100% of hospitals and over 96% of physicians in the State. Given the breadth of the network participation in the State, the legislation may not have the effect of expanding provider participation. Additionally, since there is such broad provider participation, the financial impact of the proposed legislation could be immaterial if provider reimbursement rates do not increase as a result of the legislation (since there are no hospitals and relatively few providers that are not under contract today).
What HB 1416 Does Do?

- Allows patient to see the provider of their choice, IF the provider agrees to the terms and conditions established by the insurer.

- Allows insurance companies to determine the terms and condition offered to the provider.

- Increases competition.

- Gives patients the choice to request access to a local provider instead of traveling great distances to see in network providers.
What HB 1416 Does Do

- Lowers cost by allowing patients to select lower cost centers
- Allows patients to select and out of network option when no option exists
- Decreases the risk of future health care monopolization in North Dakota
HB 1416
Patient Choice

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