Texas Hospital Association

Keep Hospitals In-Network and Preserve Patient Choice

Hospitals and health plans negotiate contracts with health insurance companies to set the terms of payments for patient care and determine what hospitals are "in-network" in an insurance coverage plan.

Contracting is a basic business function. Hospitals and health plans should be able to negotiate mutual contracts without the government advantaging one of the sides.

For instance, a hospital system could negotiate a single contract with a health insurance company for multiple hospital locations, and physicians may choose to negotiate network agreements for multiple clinical sites.

Why the Government Should Not Advantage Big Insurance Companies in Contract Negotiations

- Commercial health insurance is rapidly merging and exhibiting significant market strength. According to a November 2022 report by the Government Accountability Office, Texas' top three health insurers control more than 87% of the large-group insurance market.[1] The individual and small group markets are similarly concentrated, at 78.8% and 97.8%, respectively.[2] These enormous health insurance companies do not need the government's help in their contract negotiations.[2]

- The government's intrusion into private contracts in favor of commercial health plans – the party that already has most of the negotiating power – would be debilitating for hospitals and disastrous for patients because it would unravel networks.

- Hospitals cannot survive unless they are in-network with the health insurance plans in their communities. Major health insurance companies already successfully negotiate contracts with nearly all of Texas's 600 hospitals.

- As the cost of health insurance has increased, so have the profits of health insurance companies. In 2022, **insurers reported record profits.** In the meantime, **48% of Texas hospitals finished 2022 in the red,** with negative margins.

[1] https://www.gao.gov/assets/gao-23-105672.pdf (see page 49).
[2] *Id.* at page 35 (individual market) and page 43 (small group market).

How Contract Negotiations Become Anticompetitive

The National Academy for State Health Policy (NASHP) – an entity that counts **health plans as its top strategic partners – is the source of model legislation on anticompetitive contracts.**

The legislation interjects the government into negotiations between health insurance companies and providers by prohibiting five contractual provisions. **Under the NASHP model legislation, the following are not allowed** in contracts:

1. All-or-nothing clauses, which are contractual terms allowing providers with common ownership to negotiate a single contract with health insurance companies.

2. Anti-steering clauses, which bar health insurers from directing enrollees to specific providers, usually through a discount.

3. Anti-tiering clauses, which keep health insurers from ranking providers within a network to direct enrollees to specific providers through decreased cost-sharing.

4. Gag clauses, which restrict disclosure of price or quality information.

5. "Most favored nation" clauses, which restrict entities from contracting for a higher or lower rate in favor of one health plan or provider over another.

2023 Legislation on Contracting Excluded All-or-Nothing Clause

In 2023, the NASHP model legislation was filed in Texas as House Bill 711 by the chair of the House Human Services Committee, Rep. James Frank (R-Wichita Falls). As passed in the 88th Regular Session, HB 711 implemented all of these contractual prohibitions **except for the ban on the use of "all-or-nothing" clauses.**

Some providers use all-or-nothing clauses to negotiate network agreements, and some do not. However, taking the existence of these clauses off the table hurts providers and helps insurance companies because it deflates the ability of providers to negotiate with scale. Smaller hospital systems away from urban centers would be hit the hardest by a ban on all-or-nothing clauses.

Allowing hospitals and other providers to negotiate for an all-or-nothing contract clause with health insurance companies is essential to maintaining fairness as providers face already-diminished negotiating power.