

TESTIMONY to the Insurance and Real Estate Committee
February 21, 2023

RE: Support for HB-6620, An Act Promoting Competition in Contracts Between Health Carriers and Health Care Providers and for SB-983, An Act Limiting Anticompetitive Health Care Practices

Ellen Andrews, PhD, Executive Director

Thank you for the opportunity to express the CT Health Policy Project's strong support for SB-983 and HB-6620. Since 1999, the CT Health Policy Project has worked to expand access to high quality, affordable healthcare for every state resident. We are a nonpartisan, nonprofit organization that advocates by providing detailed analysis of policy options to improve the health of our state.

In sum, Connecticut's healthcare markets are increasingly consolidated and less competitive, driving up prices and premiums, reducing access to care, with no improvement in quality. SB-983 and HB-6620 can level the playing field, support competition, lower premiums, support value-based purchasing, improve access to critical services such as birthing centers and overcrowded emergency departments, and reduce overall healthcare costs. We also support SB-983's limits on out of network bills to Medicare payment rates. I urge you to support them.

Healthcare consolidation is complex and it's getting worse. Connecticut's hospital markets are among the [most consolidated](#) in the US. There is also [growing concentration in Connecticut's physician market](#). Mergers in [Connecticut's healthcare market](#) are growing as hospitals and practices merge. There is [overwhelming evidence](#) that provider consolidation [drives up prices](#) for healthcare and precipitates service cuts, [without improving quality](#), as described in a Connecticut [legislative forum](#) in September 2021 that included experts on the impact of consolidation and other concerns.

Consolidation also harms already-stressed hospital clinical staff working in unsafe and understaffed conditions, who have no place else to work in their area. The [Federal Trade Commission recently intervened](#) in a Rhode Island merger citing this concern, and the hospitals abandoned the proposed merger.

The higher costs caused by consolidation are passed onto consumers in higher premiums, lost wages, higher taxes, and more cost sharing. In addition, mergers limit consumer choice of providers and payers' levers to choose better quality for their members.

While Connecticut has adopted some measures to promote competition in the marketplace, it isn't enough. Two lawsuits were filed last year against Hartford Healthcare for anti-competitive behavior. A [class action suit](#) was filed on behalf of consumers who pay more for healthcare and insurance because of anti-competitive action, and [St. Francis Hospital filed suit](#) claiming anti-competitive practices intended to put that hospital out of business. Earlier this month the [Court allowed](#) St. Francis's suit to go forward.

[State regulation of mergers isn't working](#). We also cannot rely on litigation to ensure competitive markets. Litigation requires that attorneys are notified of anti-competitive mergers, require strong evidence of harm, are

expensive, can take a decade or more, and only resolve the single case. The results of the two lawsuits against Hartford Healthcare will only apply to that system and will likely take years to decide.

Connecticut's healthcare market is already so consolidated that legislation and legislative oversight are needed to protect and encourage competition. There are [legislative options](#) to improve the competitiveness of Connecticut's healthcare market. The most promising **prohibit anti-competitive provider/payer contract clauses**. [Other states](#) have adopted these options and are lowering premiums. **Passage of HB-6620 and SB-983 would allow Connecticut to join these states and lower costs in our state.**

All-or-nothing clauses are used by health systems dominant in one market to leverage that clout to reduce competition across all their markets. With all-or-nothing clauses, a large health system requires that if insurers want to include a "must have" provider from one market they must contract with all their affiliated providers in other markets, regardless of quality or cost. "Must have" providers are critical to building a sufficient panel because they are the only option in the area to comply with network adequacy laws. Consequently, those providers in competitive markets can charge whatever they like, even though there are lower cost/higher quality providers available in the area. All-or-nothing contracts often include nondisclosure provisions, so it is hard to connect them to market failures and higher prices. Nevada and Massachusetts prohibit all-or-nothing clauses for all (NV), or some plans (MA) and [other states](#) are considering legislation.

Anti-tiering or anti-steering clauses are used by dominant health systems requiring that they be placed in the least restrictive tier for consumer cost sharing, regardless of their quality or cost performance. Better provider tiers attract consumers with lower costs and are meant to reward provider groups who provide better quality or better prices. A [recent study](#) found that members in Massachusetts plans with tiered networks had 5% lower costs than other plans. [Another study](#) found savings of 8 to 17% from tiered plans within three years. Connecticut's state employee plan is now implementing tiers. Massachusetts and Nevada restrict these anti-tiering contract provisions in law. Lawsuits in California and North Carolina have restricted this practice. [Other states](#) are considering this legislation.

Concerns have been raised about limiting consumers' access to care if these clauses are prohibited. It is **very important to note** that the language does not prohibit payers from contracting with **all** health system entities **or** from creating tiers and steering patients to better quality, lower cost options. In fact, the bills encourage both. If the language passes into law, payers will still be able to, and likely will, contract with all available providers, especially hospitals, to form robust panels that attract businesses and consumers. They just won't have to pay whatever price the health systems demand. Payers will also be able to create tiers that steer patients to better value providers and share the savings with consumers. Tiers and steering will become meaningful if these provisions become law.

While the CT Health Policy Project strongly supports SB-983 and HB-6620, we recommend changes to strengthen them.

Our **greatest concern** is with similar provisions in both bills that would exempt an "accountable care organization, exclusive provider organization or network, that tiers providers by cost or quality or that steer enrollees to centers of excellence or any other pay-for-performance program." All of Connecticut's health systems fit easily into this exception. In practical terms, including this section would invalidate the law. It was meant to encourage these practices and alternative payment models (APMs). But as all Connecticut health systems have and are continuing to adopt these models, it is not needed here in Connecticut. **Just passing the bill removes a very large barrier to value-based purchasing**, by prohibiting contract clauses that bypass value, and creating a level playing field that allows APMs to function. In conversations with healthcare payment experts, we could not develop an exception in the bill that would encourage APMs, as they evolve, but would not also invalidate the law and undermine the function of APMs. There are other tools and levers that can, and are, being used to encourage adoption of APMs.

We are also **concerned about the prohibition against a private right of action** in SB-983. While bringing a lawsuit such as the two filed against Hartford Healthcare for anti-competitive behavior is expensive, lengthy, and only applies to the single case, this must remain an option. While it is hoped that all future administrations will faithfully and strongly enforce the letter and spirit of these bills, it is critical to have this option in the event that future administrations are not vigilant.

For similar reasons, we are **concerned about the potential for a waiver** from the Connecticut Insurance Department in HB-6620. As noted above, concerns about access to care will be eased by passage of these bills. There is no need for waivers to protect access to care, and there are other, less risky options to support fragile critical providers.

We are also concerned about HB-6620's provision to **exempt the state employee and Partnership plans**. It's hard to imagine why those plans would want to be exempted from these protective provisions. As very large pools in the state's commercial healthcare market, an exemption could undermine the purpose of the bills. These pools also represent very large taxpayer expenditures. This law would strengthen the state's position in negotiations with health systems offering substantial savings to the state budget, while improving the value of care.

We also strongly support the out of network payment rate limit at Medicare levels in SB-983. This bill builds on and strengthens the federal [No Surprises Act](#) that passed in 2020. It will improve access and affordability of healthcare. It would also eliminate a large contributor to medical debt, bankruptcy, and financial stress on Connecticut households. Federal law that limits out of network physician and hospital payments to Medicare rates has [worked well in Medicare Advantage plans](#). There is also evidence that it has acted to lower in-network prices for Medicare Advantage plans and for private plans in California which has a state out of network payment law.

In sum, Connecticut's healthcare markets are increasingly consolidated and less competitive, driving up prices and premiums. These bills can level the playing field, protect vital services, support competition, lower premiums, and control overall healthcare costs. Thank you again for the opportunity to offer our strongest support for both bills and I urge you to vote for them.