

# Trends and Approaches to Health Care Industry Consolidation

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Cost Containment: Key Policy Considerations for California  
Assembly Committee on Health Informational Hearing  
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UC Hastings Law  
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# What if the price of food increased like the price of health care?

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\$48



\$55



\$134

Source: Institute of Medicine, Best Care at Lower Cost: The Path to Continuously Learning Health Care in America (2013)

Figure 1: Medical Prices in 2017 as a Percent of US Prices



“Prices are the primary reason why US spends more on health care than any other country”

- Gerard F. Anderson, Peter Hussey, and Varduhi Petrosyan, *It's Still The Prices, Stupid: Why The US Spends So Much On Health Care, And A Tribute To Uwe Reinhardt*, Health Affairs 38:1 (2019)

Source: John Hargraves and Aaron Bloschichak, International comparisons of health care prices from the 2017 iFHP survey, Health Care Cost Institute’s #HealthyBytes Blog (Dec. 17, 2019), <https://healthcostinstitute.org/blog/entry/international-comparisons-of-health-care-prices-2017-ifhp-survey>

# What Happened to US Health Care Prices?

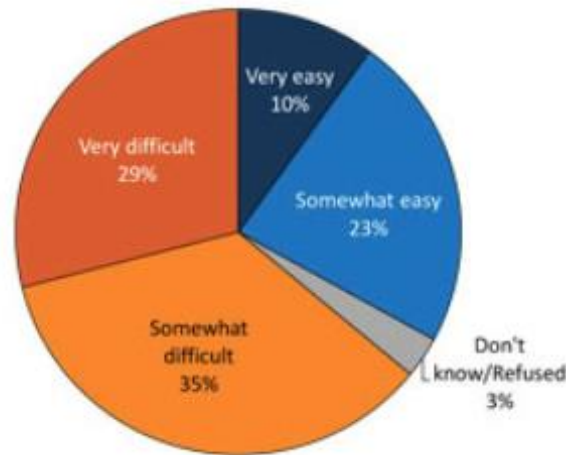
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- *Failure to protect essential elements of a free market system – price transparency.*
- *Failure to protect competition and rigorously enforce antitrust laws.*
- *Failure to regulate to control prices when competition no longer exists.*

# Failure to Protect Price Transparency

## Nearly Two-Thirds Say It Is Difficult To Find Out What Medical Care Will Cost

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?

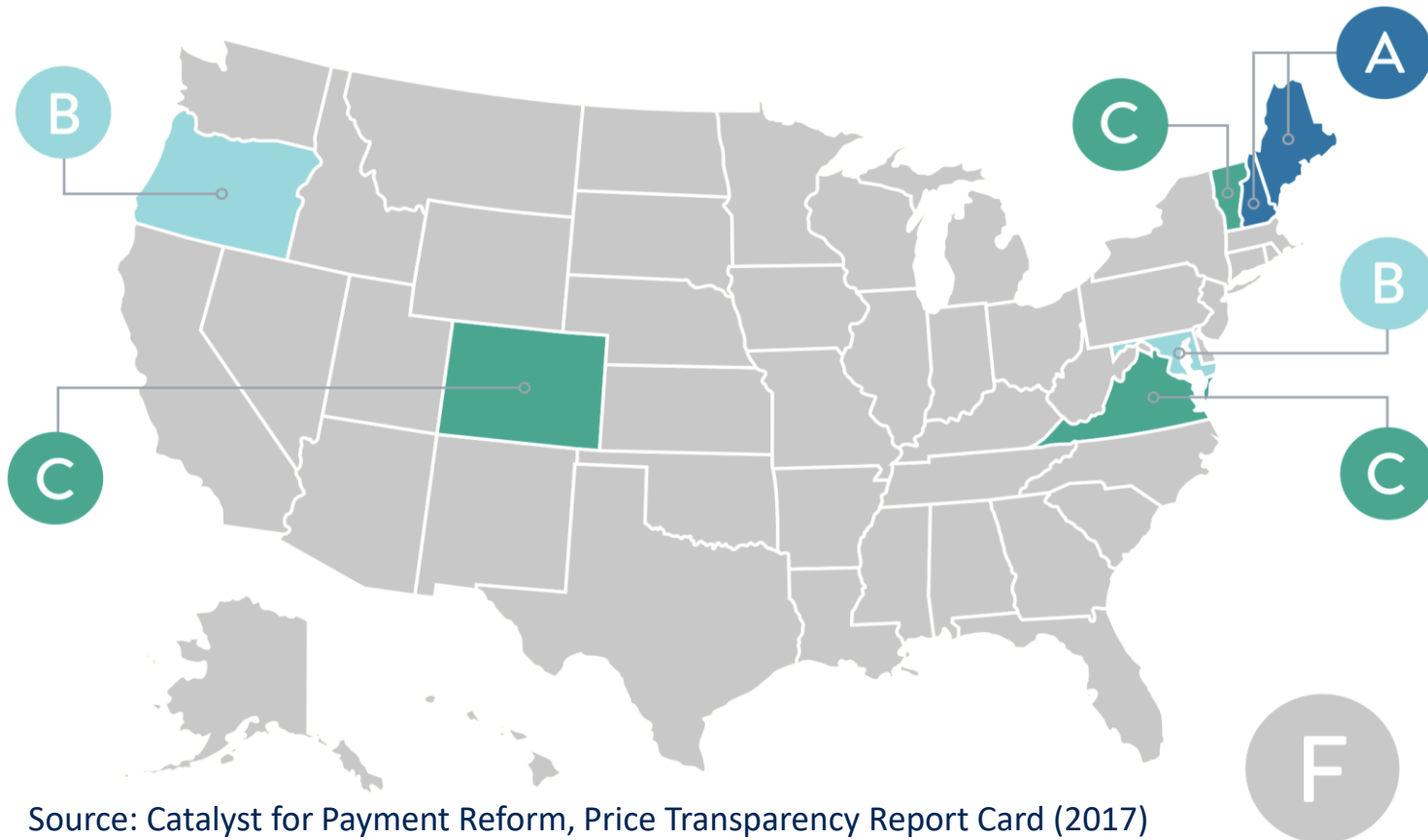


SOURCE: Kaiser Family Foundation Health Tracking Poll (conducted April 8-14, 2015)



# Failure to Protect Price Transparency

TRANSPARENCY SCORE



Source: Catalyst for Payment Reform, Price Transparency Report Card (2017)

# Antitrust Enforcement Losses Fuel Consolidation

Table 1  
Litigated Hospital Merger Cases

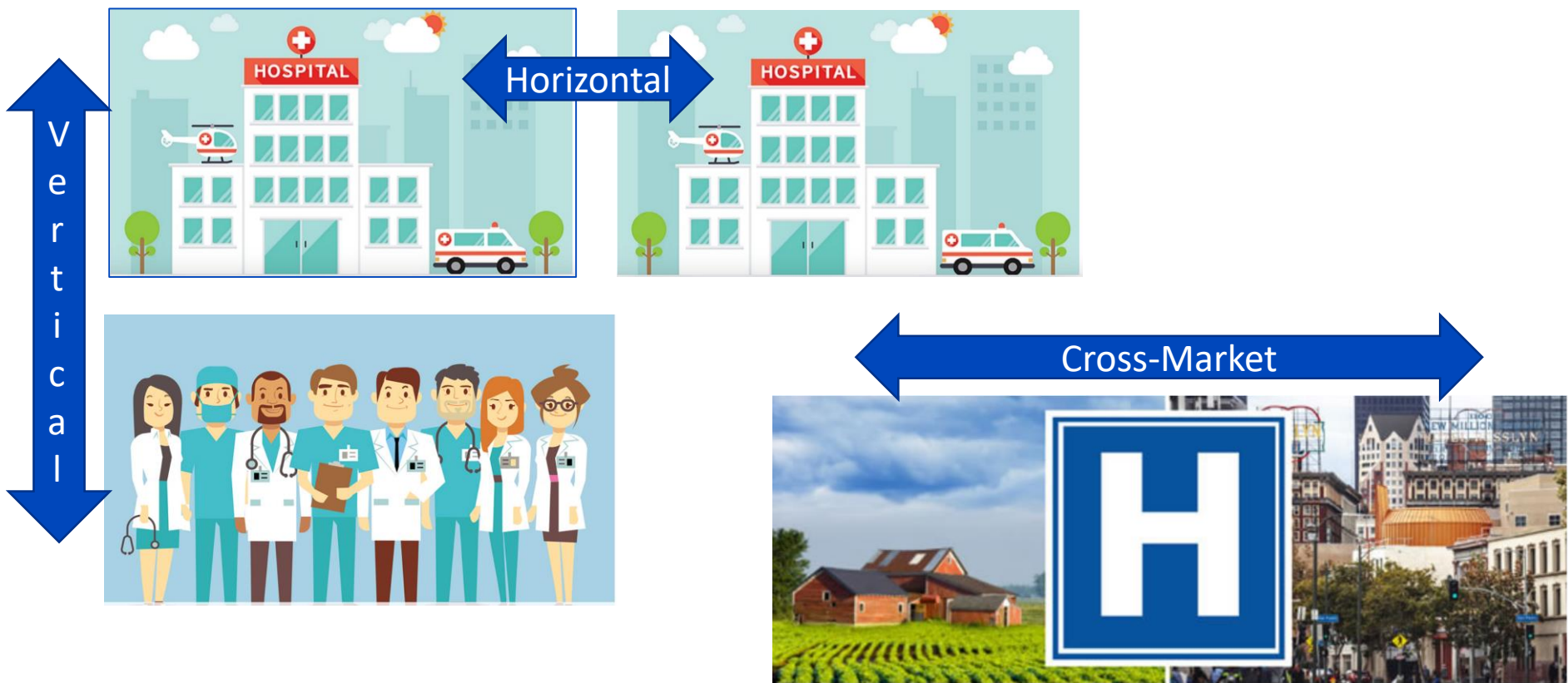
	Year	Case	Location	Blocked?
1	1989	United States v. Rockford Mem. Hosp., 717 F. Supp. 1251 (N.D. Ill. 1989), <i>aff'd</i> , 898 F.2d 1278 (7th Cir.).	Rockford, IL	Yes
2	1991	FTC v. Univ. Health, 1991-1 Trade Cases ¶ 69,400 (S.D. Ga.) and 1991-1 Trade Cases ¶ 69,444 (S.D. Ga.), <i>rev'd</i> , 938 F.2d 1206 (11th Cir. 1991).	Augusta, GA	Yes
3	1994	<i>In re</i> Adventist Health Sys. (Ukiah), 117 F.T.C. 224 (1994).	Ukiah, CA	No
4	1995	FTC v. Freeman Hosp., 911 F. Supp. 1213 (W.D. Mo. 1995), <i>aff'd</i> , 69 F.3d 260 (8th Cir. 1995).	Joplin, MO	No
5	1995	United States v. Mercy Health Serv., 902 F. Supp. 968 (N.D. Iowa 1995), <i>vacated as moot</i> , 107 F.3d 632 (8th Cir. 1997).	Dubuque, IA	No
6	1996	FTC v. Butterworth Health Corp., 946 F. Supp. 1285 (W.D. Mich. 1996), <i>aff'd per curiam</i> , No. 96-2440 (6th Cir. July 8, 1997).	Grand Rapids, MI	No
7	1997	United States v. Long Island Jewish Med. Ctr., 983 F. Supp. 121 (E.D.N.Y. 1997).	New Hyde Park, NY	No
8	1998	FTC v. Tenet Healthcare Corp., 17 F. Supp. 2d 937 (E.D. Mo. 1998), <i>rev'd</i> 186 F.3d 1045 (8th Cir. 1999).	Poplar Bluff, MO	No
9	2000	California v. Sutter Health Sys., 84 F. Supp. 2d 1057 (N.D. Cal.), <i>aff'd mem.</i> , 2000-1 Trade Cas. (CCH) U 87,665 (9th Cir. 2000), <i>revised</i> , 130 F. Supp. 2d 1109 (N.D. Cal. 2001).	Oakland, CA	No
10	2004	<i>In re</i> Evanston Nw. Healthcare Corp., No. 9315 (F.T.C. Aug. 6, 2007).	Evanston, IL	N/A
11	2008	<i>In re</i> Inova Health Sys. Found., No. 9326 (F.T.C. May 8, 2008).	Manassas, VA	Abandoned
12	2011	<i>In re</i> ProMedica Health Sys., No. 12-3583 (6th Cir. Apr. 22, 2014).	Toledo, OH	Yes
13	2011	FTC v. Phoebe Putney Health Sys., No. 11-12906 (11th Cir. Dec. 9, 2011), <i>rev'd</i> , No. 11-1160, slip op. (U.S. Feb. 19, 2013).	Albany, GA	No
14	2012	FTC v. OSF Healthcare Sys., No. 11 C 50344 (N.D. Ill. Apr. 5, 2012).	Rockford, IL	Yes

SOURCE: Author's review of hospital merger cases. Inova abandoned its proposed acquisition after the FTC filed suit to block the deal.

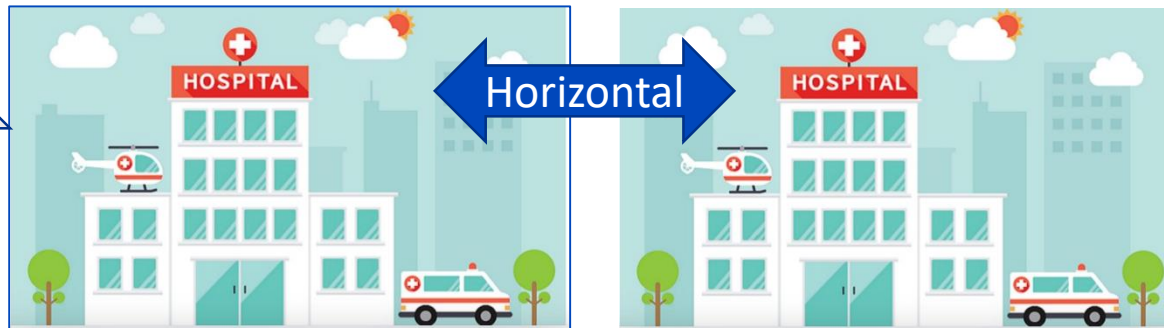
Source: Cory S. Capps, From Rockford to Joplin and back again: The impact of economics on hospital merger enforcement, 59 The Antitrust Law Bulletin 443, 449 (2014).

HOSPITAL MERGER ENFORCEMENT : 449

# Healthcare Merger Mania



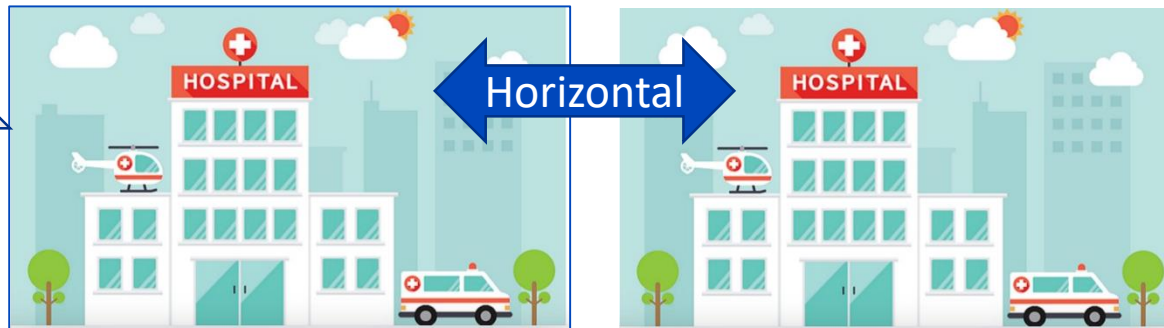
# Healthcare Merger Mania



## Horizontal (Part 1)

- **Increased Prices:** Post-merger hospital prices increased 20-44% (Dafny, 2009; Haas-Wilson & Garmon, 2011; Tenn, 2011; Gaynor & Town, 2012)
- **Reduced Quality:** Hospital acquisition associated with modestly worst patient experiences or reduced quality (Gaynor et al. 2013; Koch et al. 2018; Short and Ho, 2019; Beaulieu, Dafny, et al., 2020)
  - California hospital mergers associated with higher inpatient mortality rates among heart disease patients (Hayford, 2011)

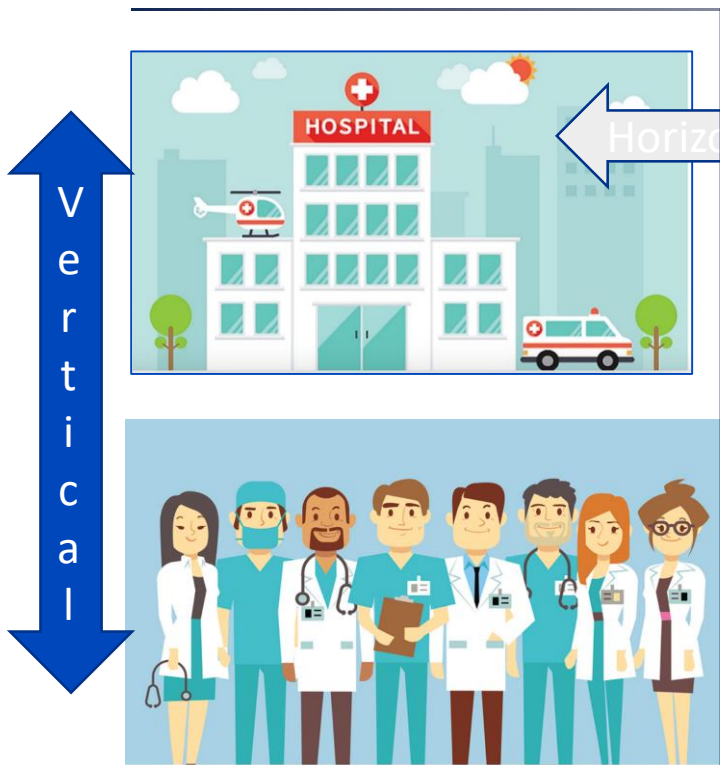
# Healthcare Merger Mania



## Horizontal (Part 2)

- **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)
- **Higher Costs:** Hospitals in smaller systems have lower costs than hospitals in larger systems (Burns et al., 2015)

# Healthcare Merger Mania



## Vertical

- **Higher Physician Prices:** Physician prices increase post-merger by an average of 14% (Capps, Dranove, & Ody, 2018)
  - Cardiologist prices increased by 33.5% (*Id.*)
  - 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)
- Unlikely to trigger federal antitrust review

# Healthcare Merger Mania

## Cross-Market

Rising number of cross-market mergers

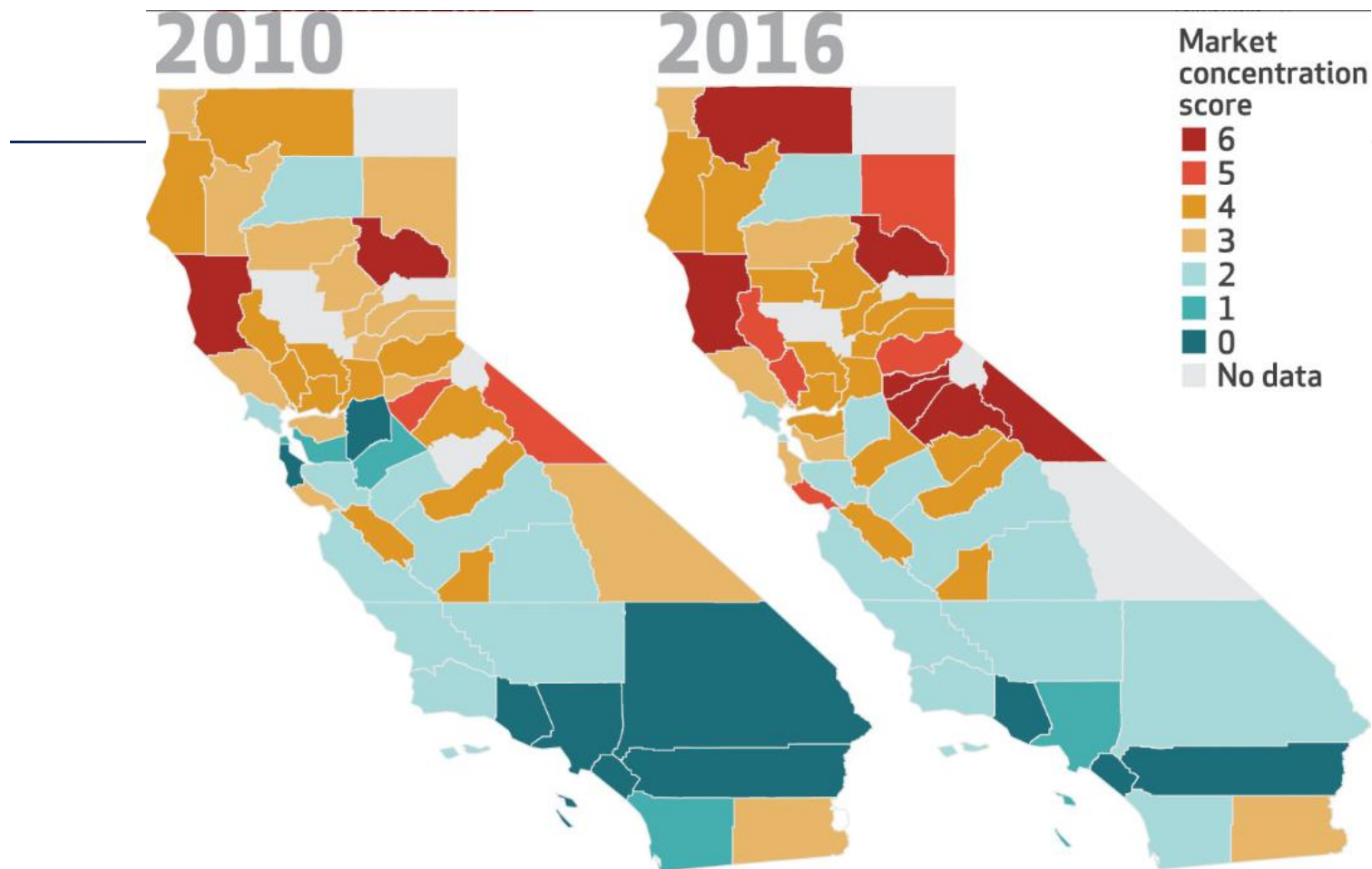
**Increased Prices:** 7-17% increases in prices for independent hospitals purchased by out-of-market systems (Lewis & Pflum, 2016; Dafny, Ho, & Lee 2019)

**Increased Competing Hospital Prices:** Price increases by 7.8% in nearby rival hospitals (Lewis & Pflum, 2016)



Cross-Market

# Increasing Consolidation in California



Richard M. Scheffler, Daniel R. Arnold, & Christopher M. Whaley, Consolidation Trends In California's Health Care System: Impacts On ACA Premiums And Outpatient Visit Prices, 37 Health Affairs 1409 (Sept. 2018)

# Health Care in Northern California Costs More than in Southern California by 33%

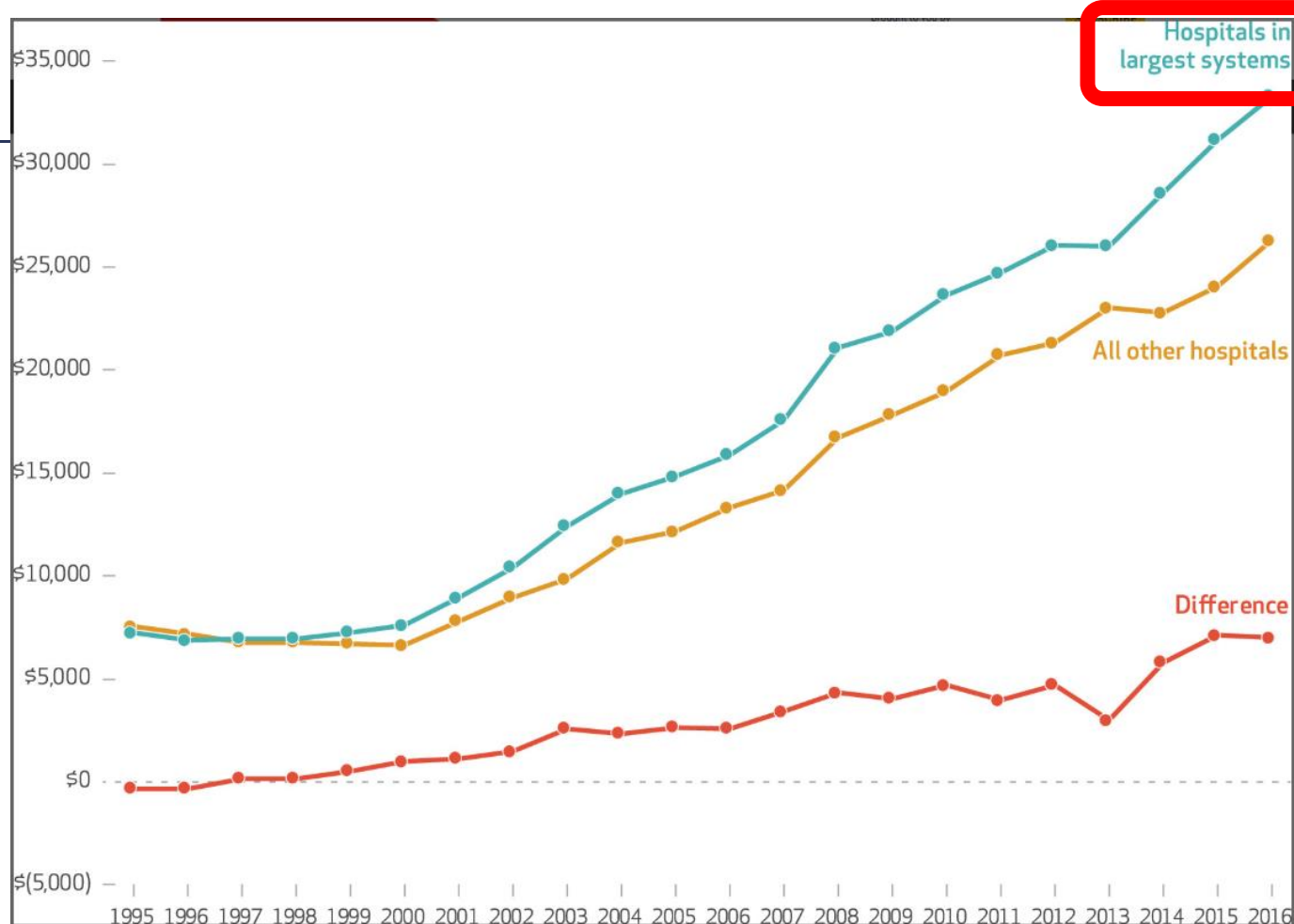
**Table H-1**  
**Cost Index Area Summary**

<i>Cost Index Area</i>	<i>North / South Area</i>	<i>Facilities</i>	<i>(Allowed Based) Buyer Cost Index</i>
Alameda-Contra Costa-Solano	North	21	1.246
Central	North	35	0.897
North	North	11	1.038
Sacramento	North	13	1.322
San Francisco-San Mateo-Marin	North	13	1.184
Sonoma-Napa	North	8	1.193
South Bay	North	13	1.345
Central Coast	South	17	0.793
Los Angeles-NE	South	25	1.058
Los Angeles-NW	South	13	0.770
Los Angeles-SE	South	15	0.813
Los Angeles-SW	South	15	0.788
Orange	South	26	0.889
Riverside-San Bernardino	South	28	0.822
San Diego	South	23	0.917
<b>Total</b>		276	1.000
	North	114	1.178
	South	162	0.885

**33% difference**

Source: Will Fox & John Pickering, Cost Efficiency at Hospital Facilities In California: A Report Based On Publicly Available Data, Milliman (Oct. 2017)

# In CA, As Concentration Increases, So Do Prices



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)

# Provider and Insurer Market Concentration

		Health care provider market concentration				
		Unconcentrated	Moderately concentrated	Highly concentrated	Super concentrated	Total
<b>Health insurer market concentration</b>	Unconcentrated	0.0%	0.6%	1.1%	1.9%	3.6%
	Moderately concentrated	0.0%	5.5%	16.5%	14.9%	36.9%
	Highly concentrated	0.3%	3.3%	27.5%	23.4%	54.5%
	Super concentrated	0.0%	0.3%	1.9%	2.8%	5.0%
	Total	0.3%	9.6%	47.1%	43.0%	100.0%

Source: Fulton, Scheffler, and Arnold, Market Concentration Variation of Health Care Providers and Health Insurers in the United States, To The Point, Commonwealth Fund Blog, July 30, 2018

## Herfindahl-Hirschman Index

Unconcentrated Markets  $HHI < 1,500$

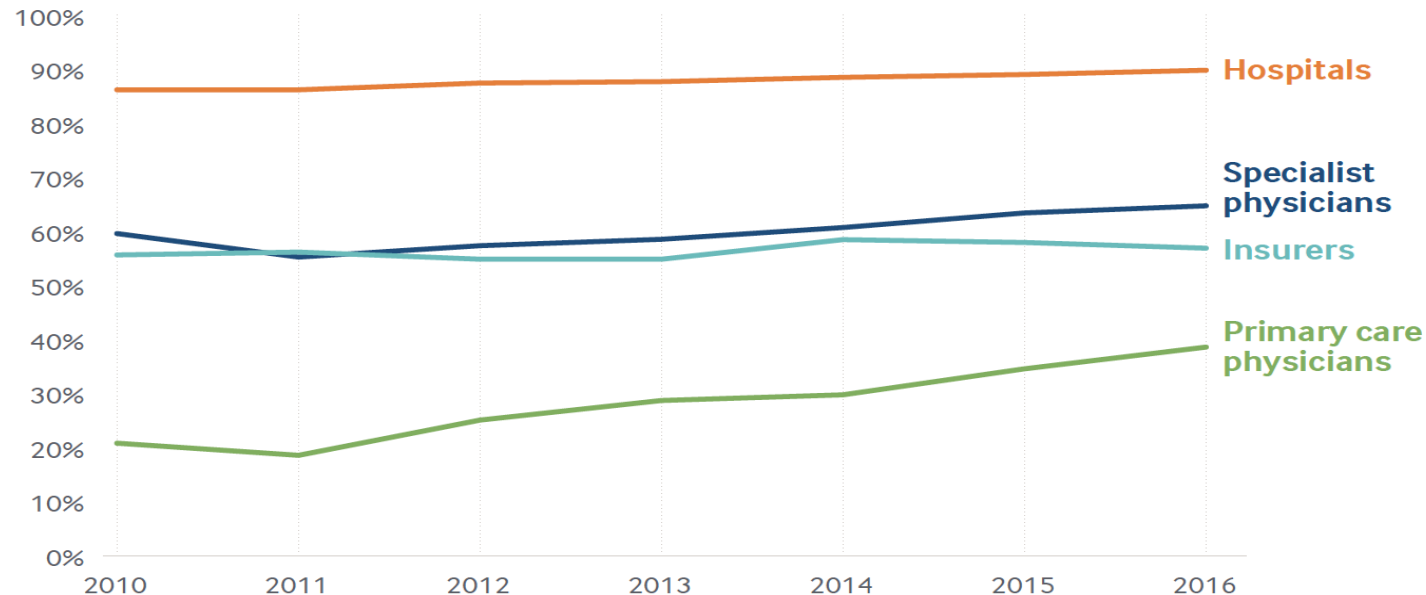
Moderately Concentrated Markets  $1,500 < HHI < 2,500$

Highly Concentrated Markets  $2,500 < HHI < 5,000$

Super Concentrated Markets  $HHI > 5,000$

# Health Care Consolidation

## Percentages of Metropolitan Areas with Highly Concentrated Markets for Hospitals, Physician Organizations, and Health Insurers, 2010–2016



Adapted from B. D. Fulton, "Health Care Market Concentration Trends in the United States: Evidence and Policy Responses," *Health Affairs*, Sept. 2017.

# What can be done?

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- *Get the data.*
- *Enhance antitrust enforcement.*
- *Pass legislation to support competition and address market deficiencies.*

# Uses for All Payer Claims Database Data

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## Consumers

- Inform selection of "shoppable" health care services
- Promote comparison of health plans and providers

## Policy and Enforcement

- Provide accurate information on functioning of health care markets
- Inform merger analysis and review
- Identify the drivers of cost and track prices post consolidation
- Track utilization and price trends
- Identify low value services
- Inform policy goals and monitor policy initiatives
- Facilitate analysis of price variation
- Establish benchmark pricing

# Litigation Options to Address Market Consolidation and Control Costs

Litigation/ Enforcement	Examples
<b>Pre-Merger Challenge</b>	St. Luke's (ID) Partners/South Shore (MA) Sanford Health (ND)
<b>Merger Review and Oversight</b>	Beth Israel/Lahey (MA) UPMC/Highmark (PA) CHI/Dignity Health (CA)
<b>Challenge Anticompetitive Behavior</b>	Becerra v. Sutter Health (CA) Atrium (NC) CHI/Franciscan (WA)

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# Consent Decrees

A Typology of Consent Decrees	Examples
1. Insurer-Provider negotiations requirements	Require access to binding arbitration
2. Limitations on contract terms	Prices, price increases, costs, or margins
3. Prohibit or require certain contract provisions	Prohibit most favored nations clauses, gag-clauses, anti-steering provisions
4. Prohibit or require conduct (release from noncompete clause, prohibit CON challenge)	Require release from a noncompete clause.
5. Ensure access to certain populations and certain services.	Ensure access to low income individuals and/or women's health services

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## Terms of Settlements

**Prohibit All or Nothing  
Contracting/Require Isolated  
Contracting**

(CHI Franciscan; Sutter Health)

**Prohibit Anticompetitive  
Contract Terms**

(Atrium Health; Sutter Health)

**Divestiture of Assets;  
Abandonment of Merger**  
(St. Luke's; Sanford Health; CHI Franciscan)

**Monetary Relief**  
Sutter Health - \$575 mil  
CHI Franciscan - \$2.5 mil

# Litigation Supplements Legislation

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# Legislative Options to Address Market Consolidation and Control Costs

Legislation Type	Examples
Address Specific Market Imperfections	Most Favored Nations Prohibitions Surprise Billing Laws Anti-Steering Prohibitions
Improve Market Function	Price Transparency Laws/APCDs Enhance Merger Review
Market Regulation	Rate Review Rate Caps Public Option Single Payer

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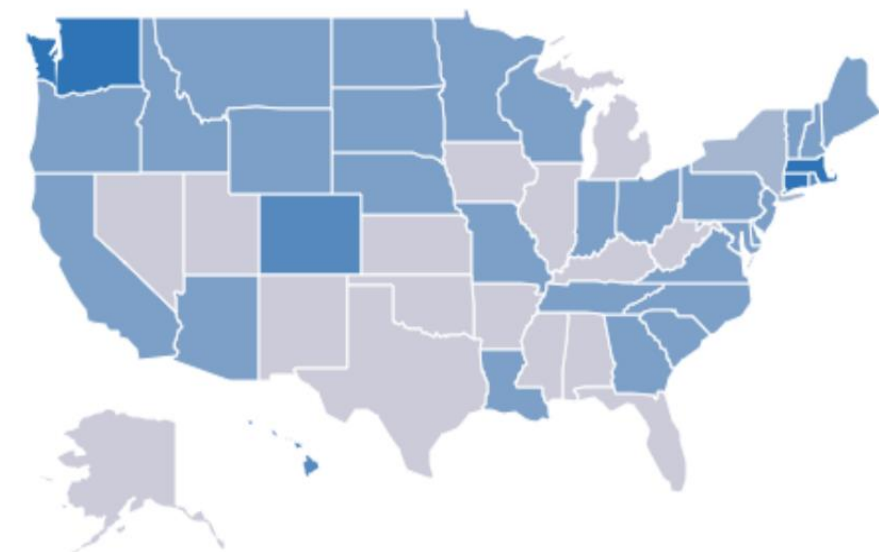
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# Current Oversight Authority over Health Care Transactions in California

State Agency	Statutory Authority	Type of Entity Regulated	Pre-Consolidation Notice and Approval	Conditional Approval Allowed	Review of Competition
AG	Cal. Corp. Code § 5914 et seq.	Nonprofit Hospitals	✓	✓	-
AG	Clayton Act, Section 7 (15 U.S.C. § 18)	All Mergers and Acquisitions	-	✓	✓
CDI	Cal. Ins. Code §§ 1215.1 et seq.	Domestic Insurers	✓	✓	✓
DMHC	Cal. Health & Safety Code §§ 1399.65 et seq.; 1339.70 et seq.*	Health Care Service Plans	✓	✓	✓

## Enhance Merger Review: *Notice Requirement to AG*



Level of Review - Click to View



### CO, RI, HI:

*Notify All Types of Hospital Mergers or Acquisitions*  
(for CO/RI: above a certain threshold)

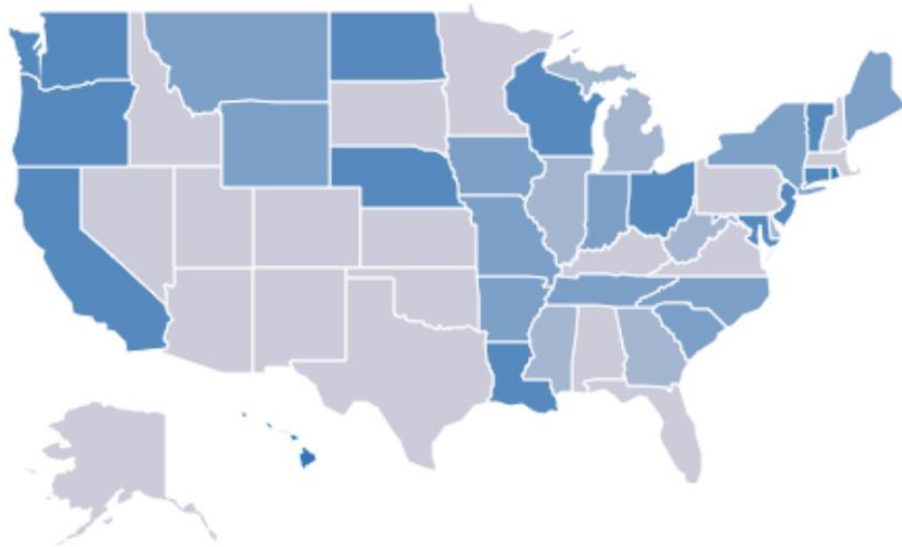
### CT, WA, MA:

*Notify Any "Material Change" (including contracting affiliation, merger or acquisition) of provider organization (CT is limited to physicians and hospitals)*

Source: Sammy Chang, Amy Gu, Katie Gudiksen, Jaime King, Market Consolidation Interactive, The Source on Health Care Price and Competition (2019), available at <https://sourceonhealthcare.org/market-consolidation/>.

< Hospital Merger Approval Requirement >

## Enhance Merger Review: *Hospital Merger Approval*



Level of Review - Click to View



### RI + HI:

*Requires All Types of Hospital Mergers and Acquisitions to be approved by state's Department of Public Health*

### 13 States:

*Explicitly Require Nonprofit Hospital Mergers or Acquisitions (including conversions) to be reviewed and approved by the AG, state court, or state agency*

Source: Sammy Chang, Amy Gu, Katie Gudiksen, Jaime King, Market Consolidation Interactive, The Source on Health Care Price and Competition (2019), available at <https://sourceonhealthcare.org/market-consolidation/>.

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# Options for Consideration

- ***Require AG Notification and Approval of All Health Care Consolidation Activity***
- ***Implement Tiered Levels of Pre-Merger Notice and Approval***
- ***Amend the state's antitrust law, the Cartwright Act, to allow AG to challenge in state court***
- ***Strengthen Post-Merger Review Authority***

# Takeaways

(1) Increasing consolidation in California lead to higher healthcare prices

(2) Litigation, like *Sutter Health*, alone cannot mitigate the effects of anticompetitive consolidation

(3) Initiatives like creation of an APCD and increased California Attorney General pre-merger oversight will help limit consolidation

# Thank You!

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