

STATE EFFORTS TO ADDRESS HEALTH CARE CONSOLIDATION AND COSTS

September 24, 2021

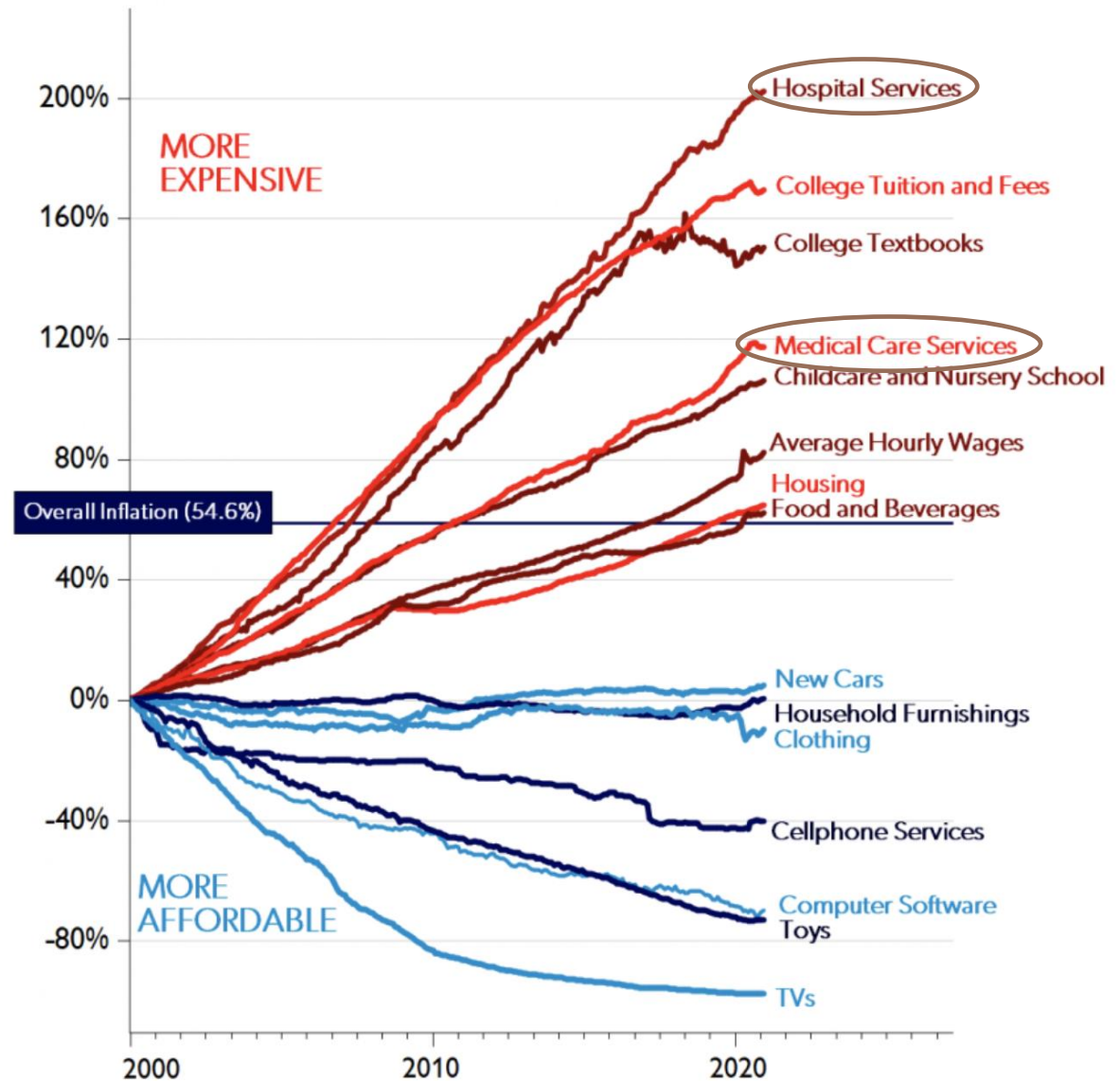
Katherine L. Gudiksen, Ph.D., M.S.

THE SOURCE
ON HEALTHCARE PRICE & COMPETITION



COST OF HEALTH CARE INCREASED MUCH FASTER THAN INFLATION

Selected US Consumer Goods and Services, Wages



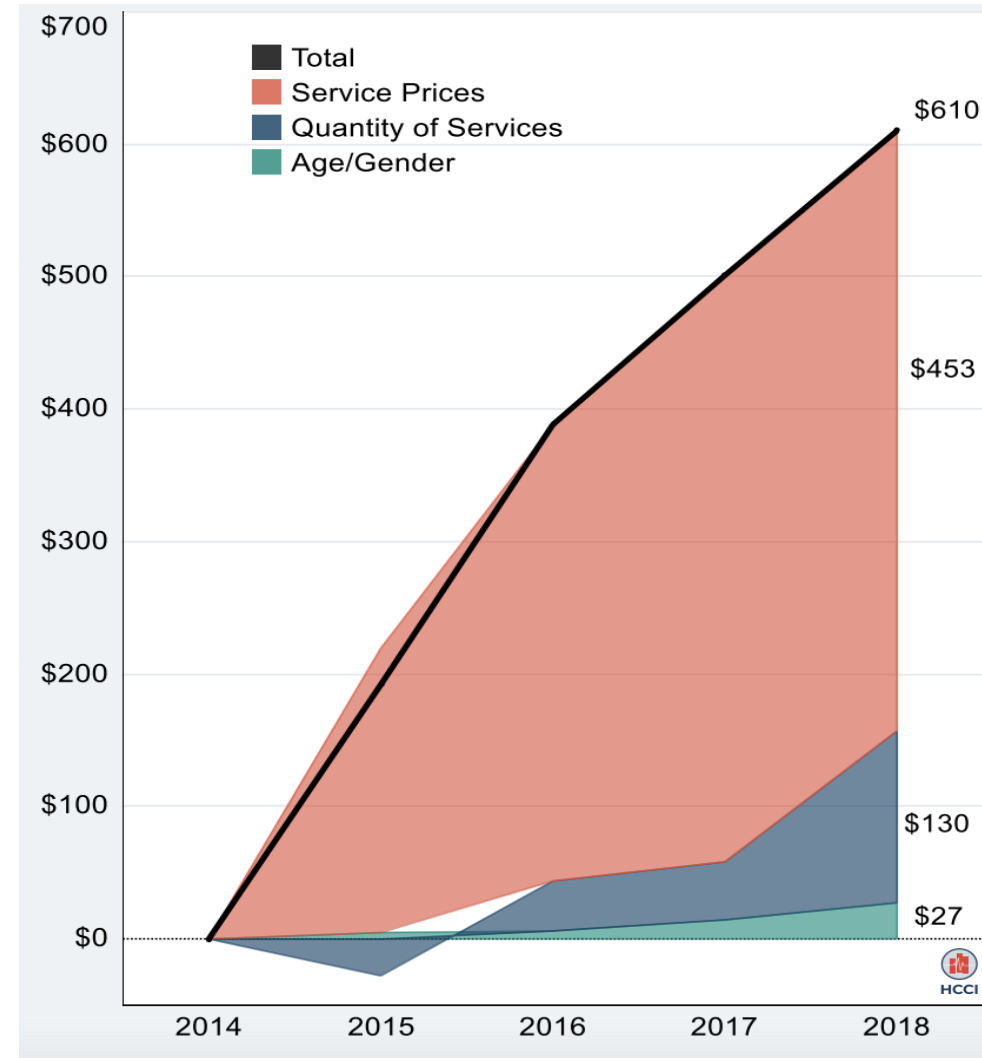
Source: Bureau of Labor Statistics

Carpe Diem **AEI**

“PRICES ARE THE
PRIMARY REASON
WHY US SPENDS
MORE ON HEALTH
CARE THAN ANY
OTHER COUNTRY”

— GERARD F. ANDERSON HEALTH
AFFAIRS 38:1 (2019)

Growth in Health Care Spending per Person (2018 dollars)



Source: Health Care Cost Institute, 2018 HEALTH CARE COST AND UTILIZATION REPORT,
https://healthcostinstitute.org/images/pdfs/HCCI_2018_Health_Care_Cost_and_Utilization_Report.pdf.



\$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 to competition and rigorously enforce antitrust laws
- Failure of policymakers to act when competition no longer restrains prices

FAILURE TO PROTECT COMPETITION AND RIGOROUSLY ENFORCE ANTITRUST LAWS

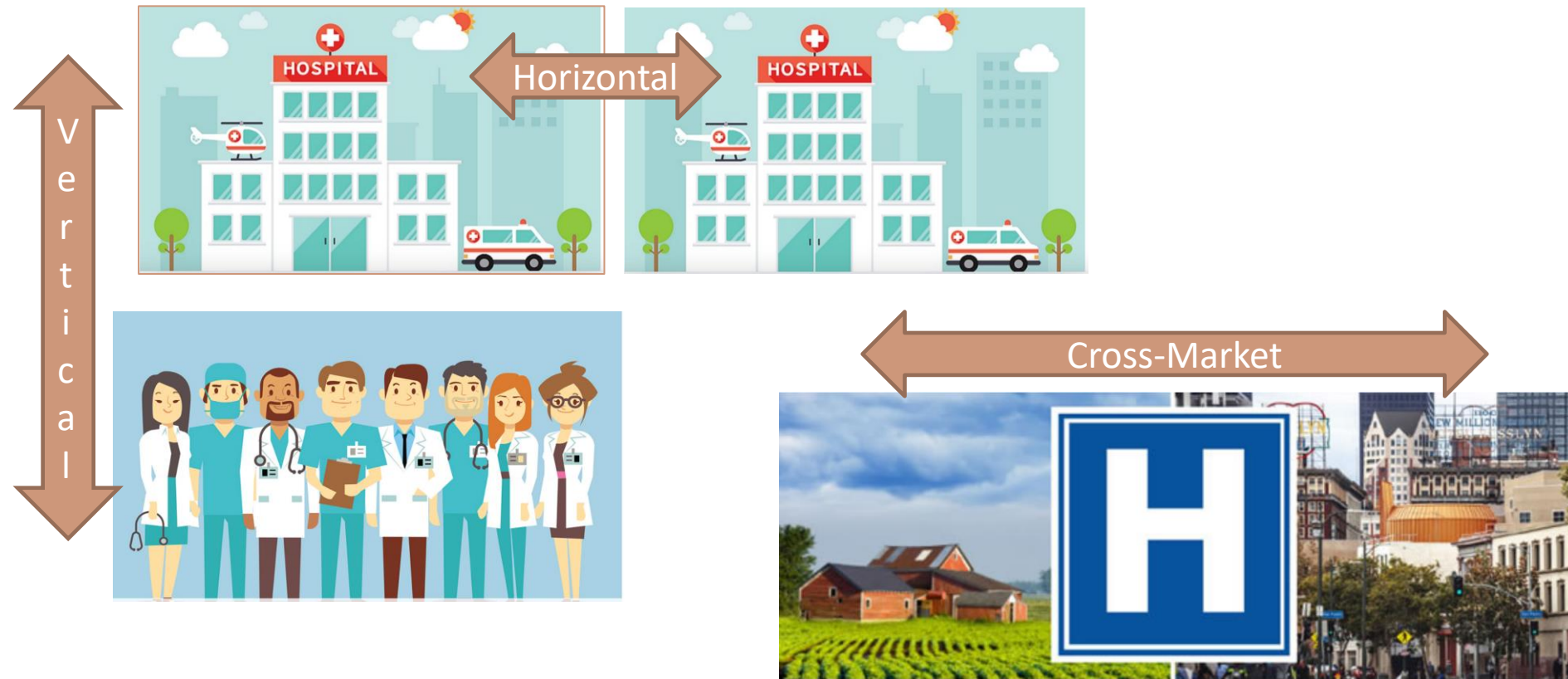
Table 1
Litigated Hospital Merger Cases

	<i>Year</i>	<i>Case</i>	<i>Location</i>	<i>Blocked?</i>
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. (<i>Ukiah</i>), 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).

HEALTHCARE MERGER MANIA



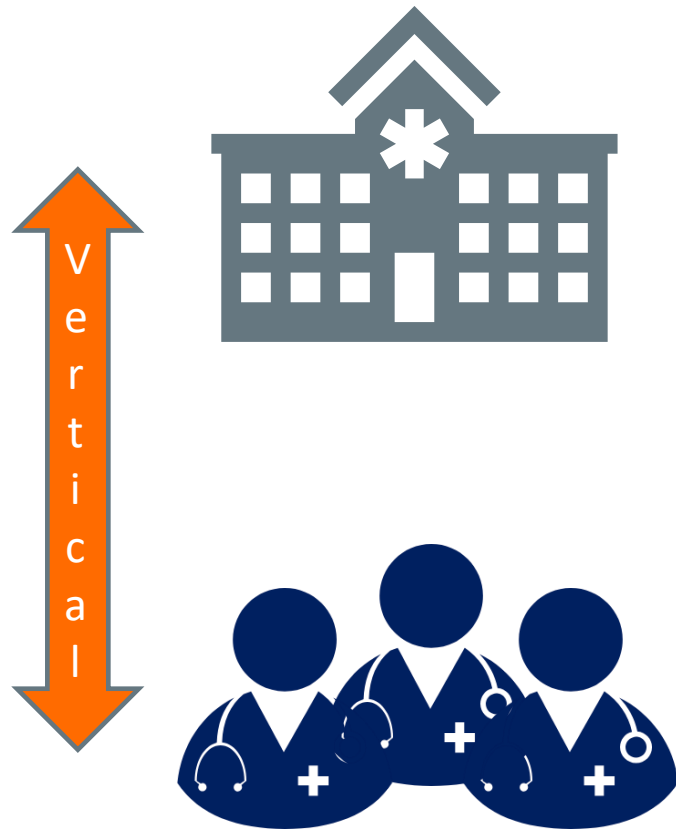
DATA ON RESULTS FROM HEALTHCARE MERGERS



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%
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)
- **Increased Imaging and Lab Services** (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)

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)

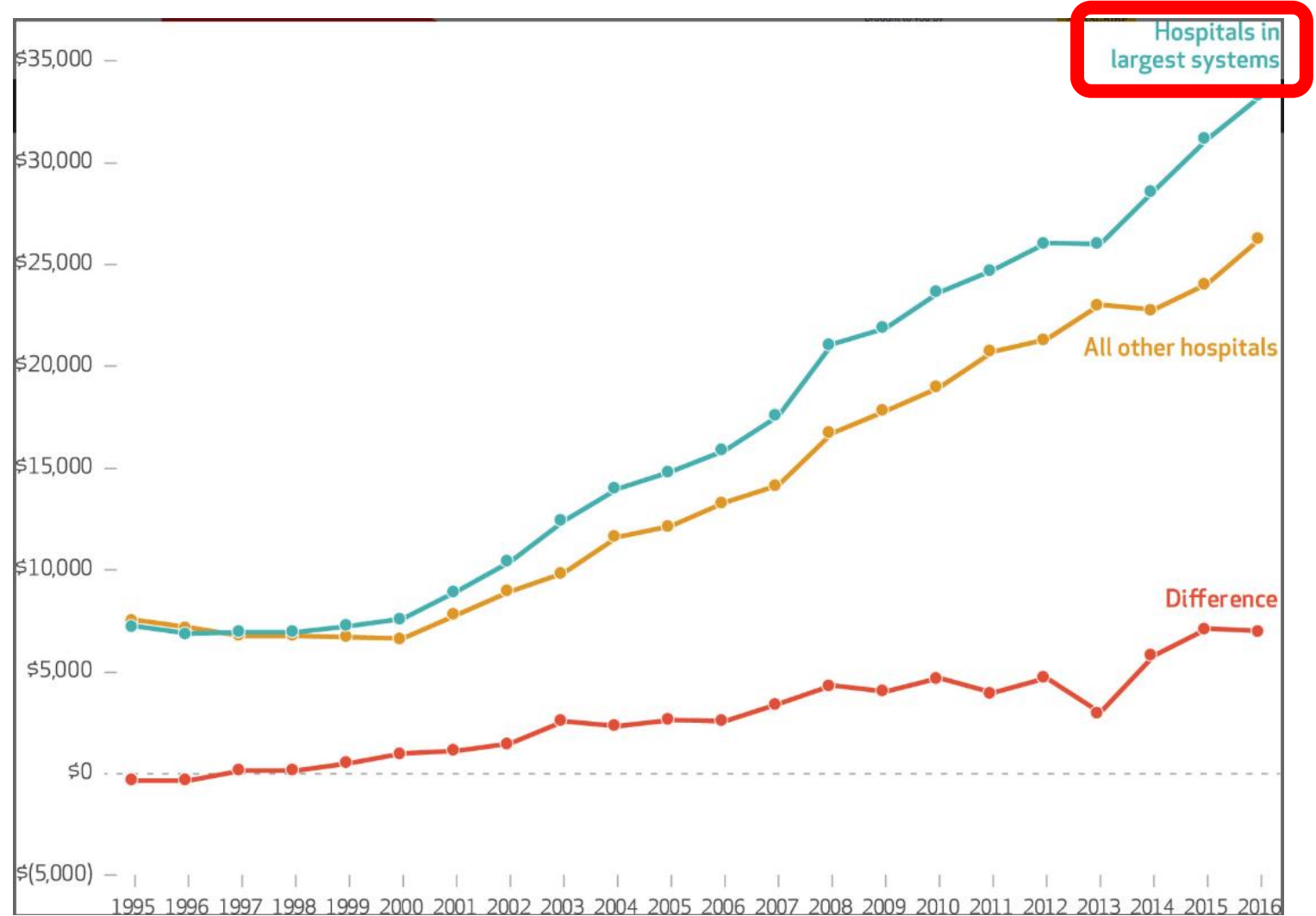
- **Increased Prices at Other Hospitals:** Price increases by 7.8% in nearby rival hospitals

(Lewis & Pflum, 2016)



HIGHER
CONCENTRATION
LEADS TO HIGHER
PRICES

Hospital Prices in California

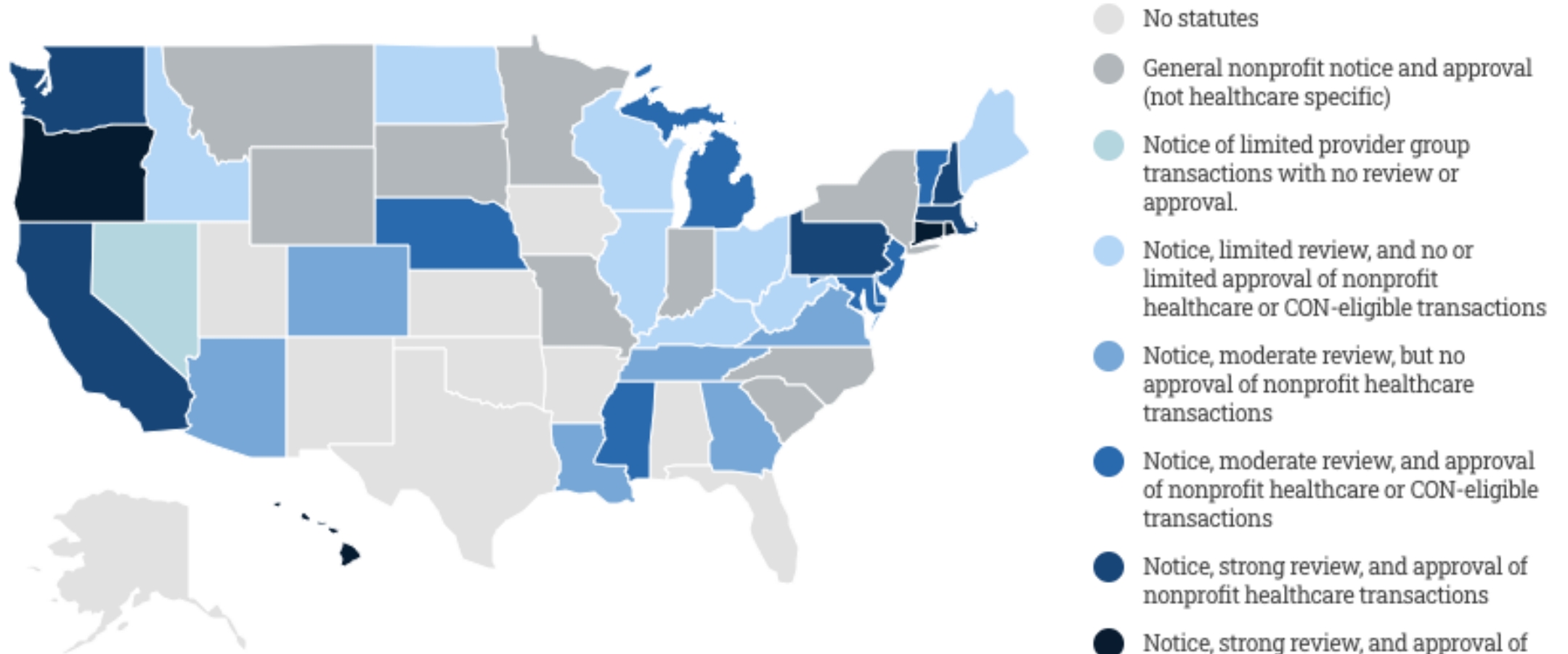


Source: Glenn A. Melnick, Katya Fonkych, and Jack Zwanziger, The California Competitive Model: How Has It Fared, And What's Next?, 37 Health Affairs 1417 (Sept. 2018)

WHAT CAN STATES DO TO PROTECT REMAINING COMPETITION?

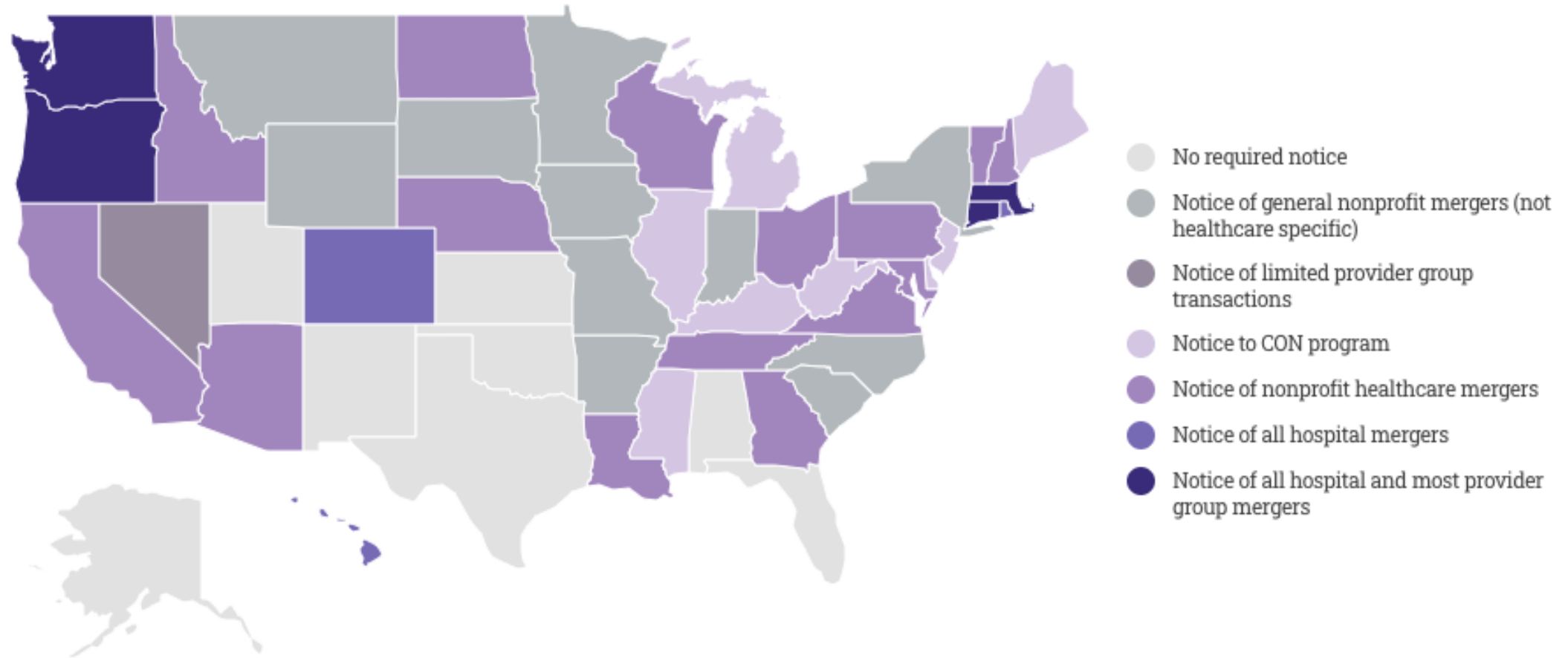
- Antitrust enforcers should consider unwinding problematic mergers, but “unscrambling the egg” is very difficult
- Antitrust enforcers need additional tools to improve merger review and block harmful mergers

50-STATE SURVEY OF STATE LAWS ON HOSPITAL MERGER REVIEW



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

STATE NOTICE REQUIREMENTS FOR PHYSICIAN PRACTICE ACQUISITIONS



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



IN MANY HEALTH CARE 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

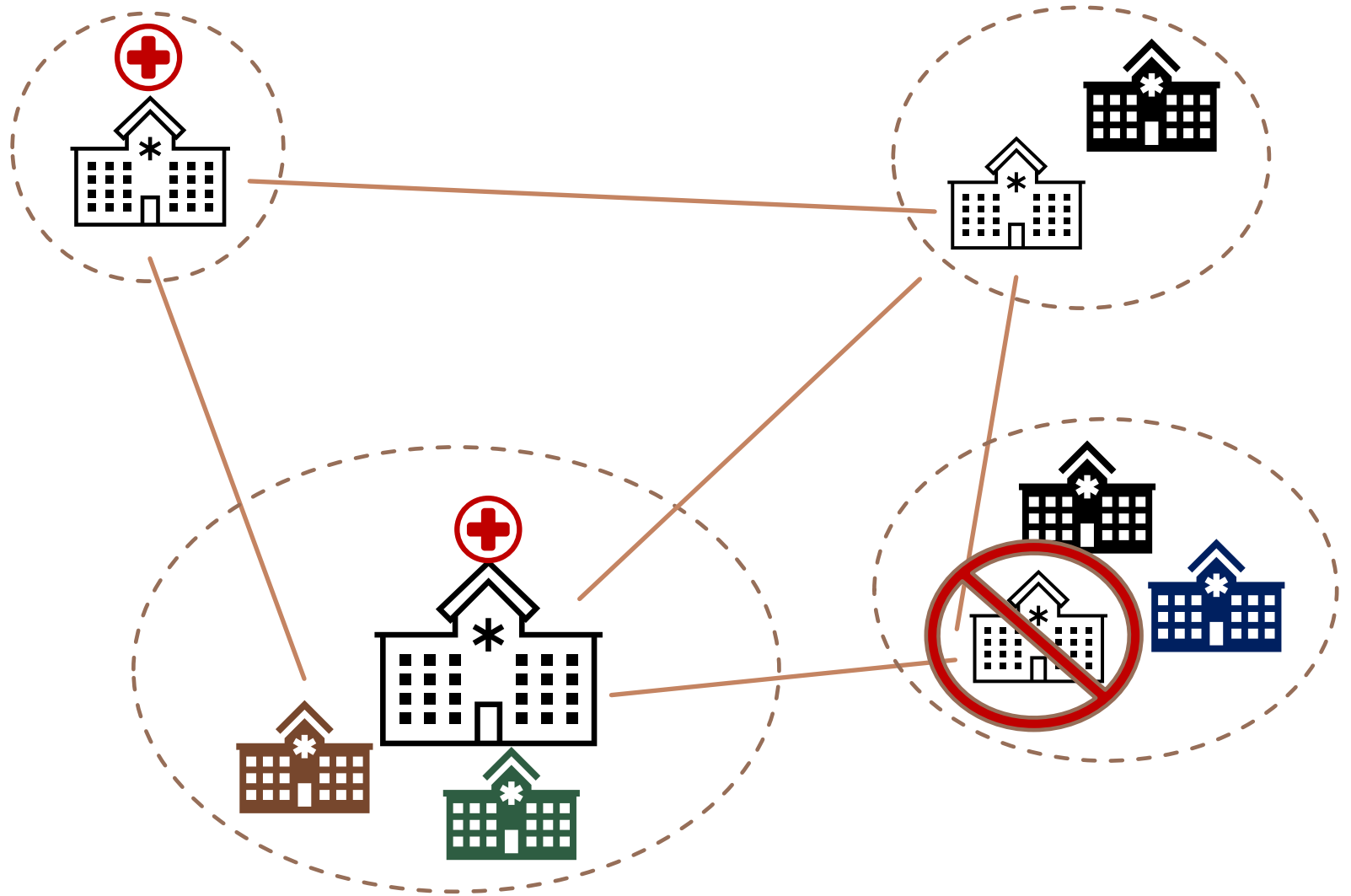
Contracts with insurers allow hospitals to hide prices from consumers, add fees and discourage use of less-expensive rivals

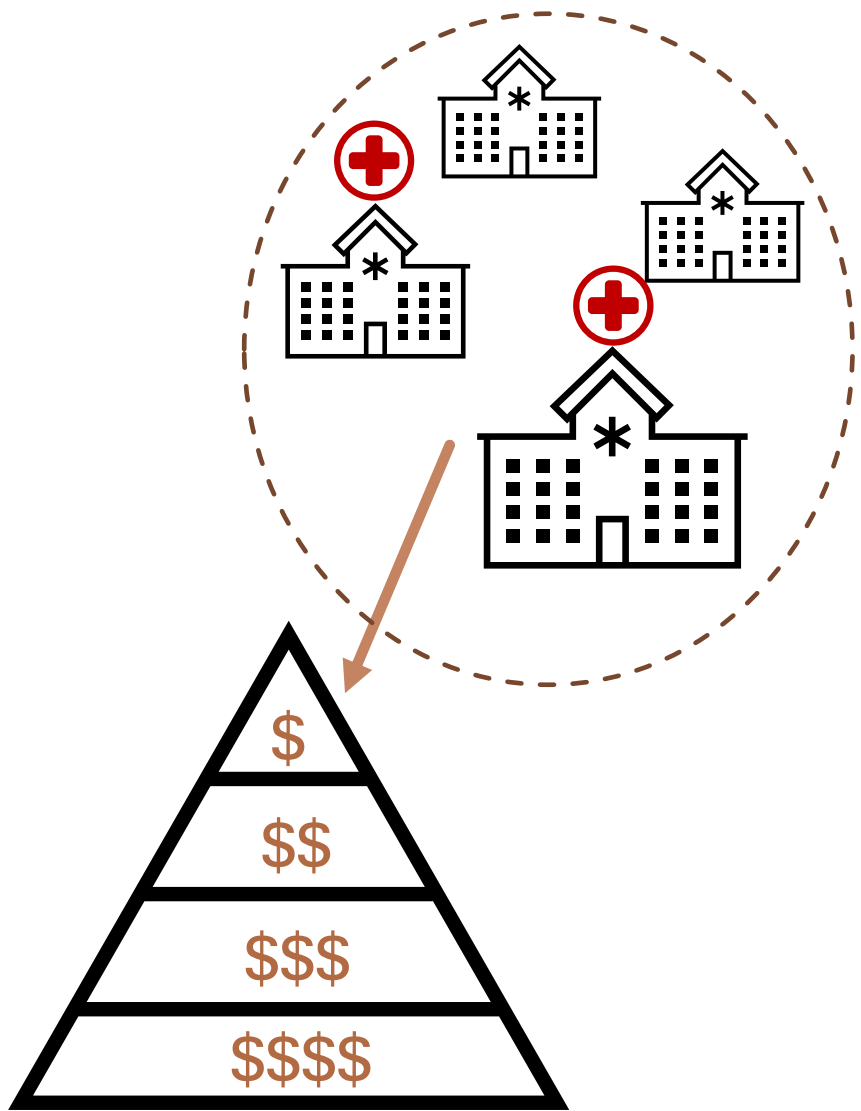
ANTICOMPETITIVE CONTRACT CLAUSES

- All-or-Nothing or Affiliate Contracting
- Anti-Tiering/Anti-Steering 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

A large, modern multi-story hospital building with a curved facade and many windows. The Sutter Health logo and name are visible on the upper part of the building.

Sutter Health
Sutter Medical Center

**ALLEGED ABUSE OF
MARKET POWER:**

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

SIDIBE V. SUTTER HEALTH

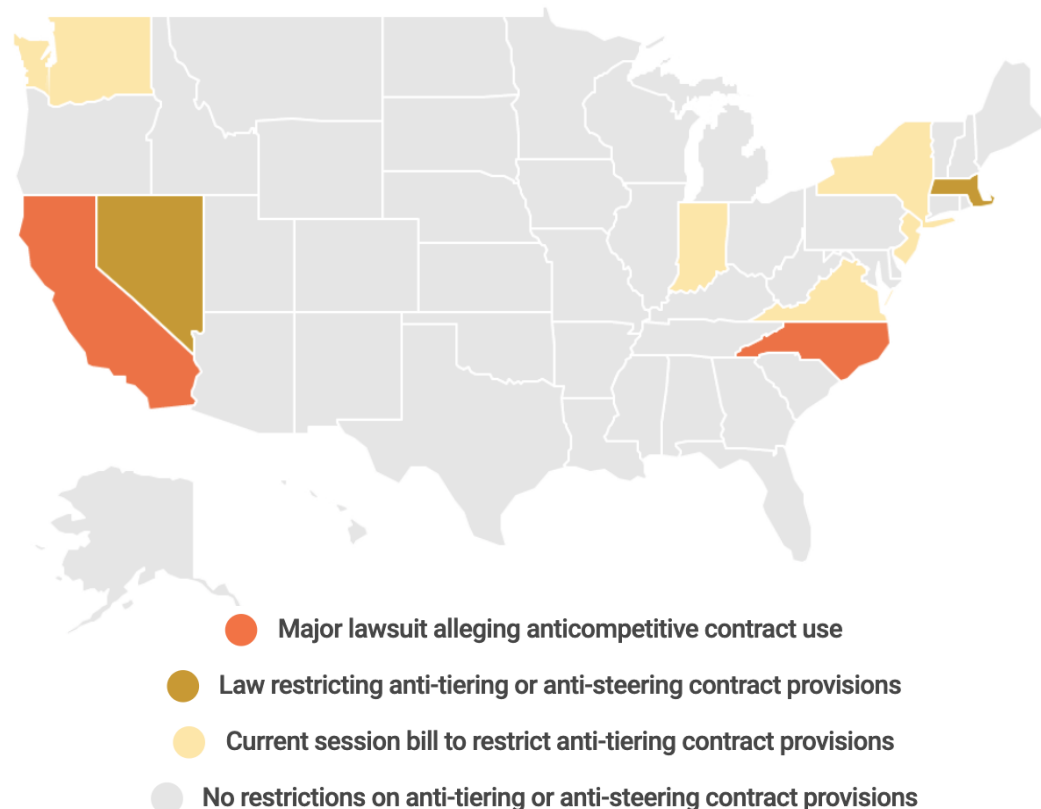
McChetti
Children's Center

A large center pivot irrigation system is shown in a lush green field. The system consists of multiple long metal arms supported by a series of wheels, with numerous smaller pipes and nozzles extending from them. The background features rolling hills under a clear blue sky. A dark grey banner with white text is overlaid at the bottom of the image.

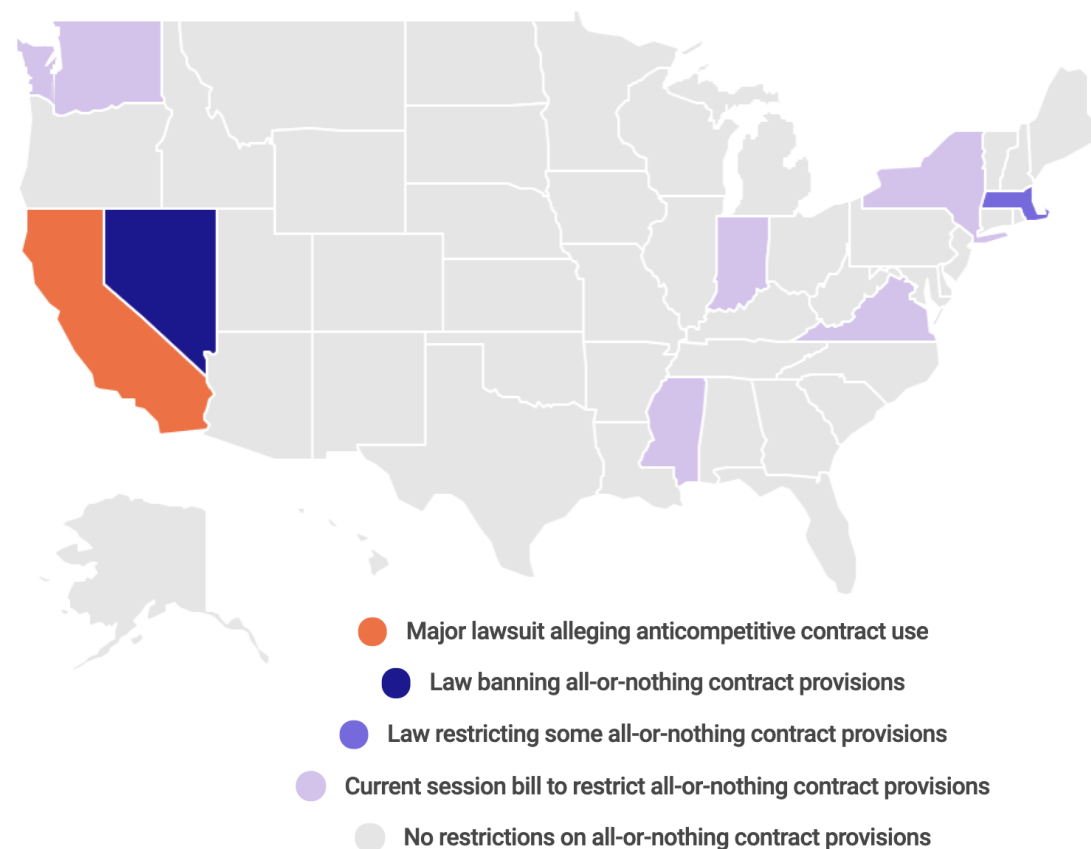
ANTITRUST ENFORCEMENT SEEDS OTHER INTERVENTIONS

STATES WITH LAWS RESTRICTING USE OF SPECIFIC CONTRACT TERMS

Anti-tiering/anti-steering Restrictions

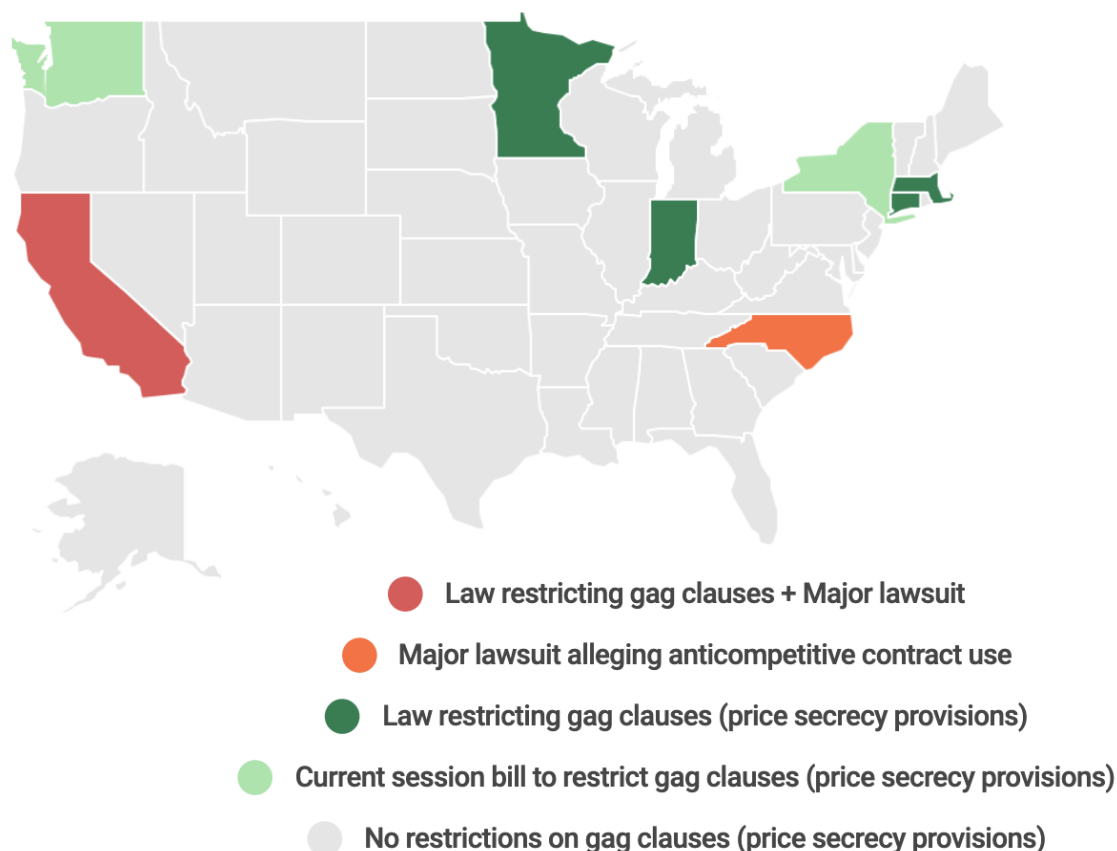


All-or-nothing or Affiliate Contracting Restrictions

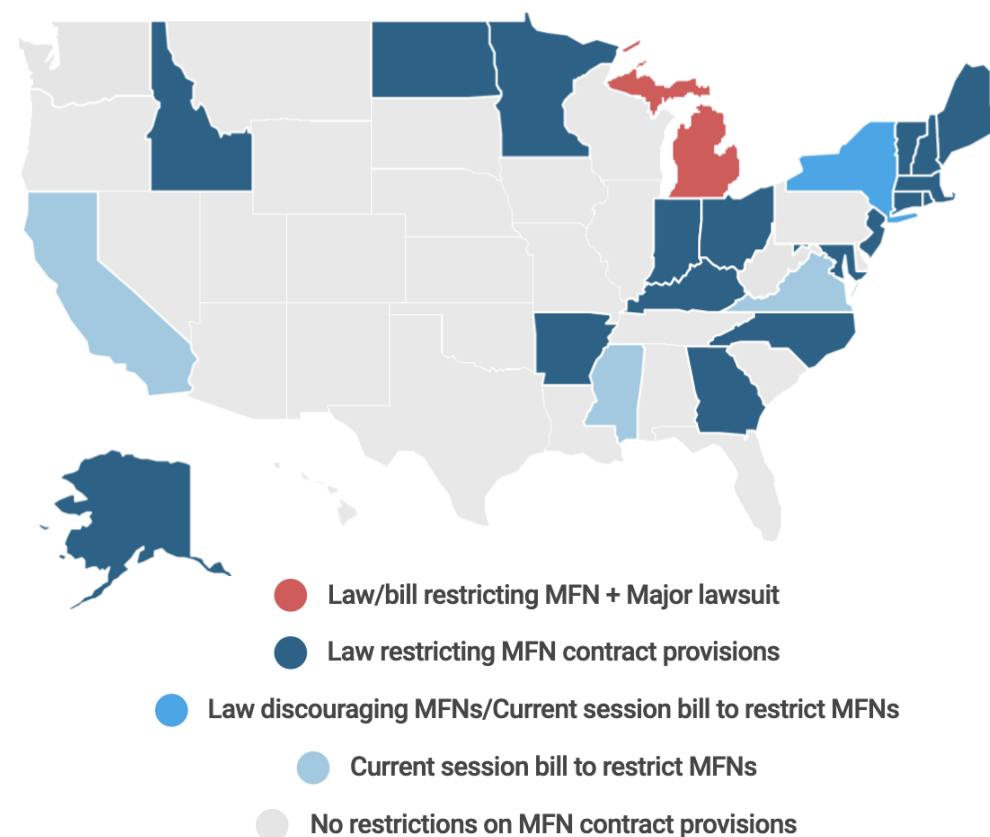


STATES WITH LAWS RESTRICTING USE OF SPECIFIC CONTRACT TERMS

Gag Clause or Price Secrecy Restrictions



Most-favored Nation Restrictions



COMPREHENSIVE REGULATORY OVERSIGHT

- Increased Agency Oversight
 - Review all proposed mergers of health care entities
 - Examine Access and Equity
 - Insurance Affordability Standards
- Provider Rate Regulation
 - Market-based caps
 - Inflationary caps
 - Out-of-network caps





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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