



DISTRICT HOSPITAL LEADERSHIP FORUM



June 9, 2022

The Honorable Richard Pan, MD
Chair, Senate Health Committee
1021 O St., Room 3310
Sacramento, CA 95814

SUBJECT: AB 2080 (Wood) — OPPOSE

Dear Senator Pan:

When health care providers partner, access to vital health care services is preserved and improved for patients and communities. That is why our organizations strongly oppose AB 2080, which would (1) prohibit health care providers and payers from entering into many preferred provider and value-based

arrangements and (2) impose expensive, unpredictable, and unfair bureaucratic hurdles on health care providers and payers who seek to partner. Both parts of this bill would increase health care costs for all Californians.

Managed Care Contracting

The vast majority of Californians are now covered by managed care arrangements, in which health plans contract with health care providers for high-quality, coordinated care at a reduced cost. AB 2080 would impose broad contract prohibitions that would disrupt countless relationships between payers and hospitals, physicians, and other partners by banning long-standing arrangements that are fundamental to organizing coordinated care and reducing costs. For example, the bill would outlaw any contract term that prevents a plan from offering “incentives [such as lower copays] to encourage enrollees to utilize or avoid specific health care providers” — the very essence of a preferred provider arrangement. These prohibitions would limit the ability of integrated health systems to offer a seamless network of coordinated care to patients. Ultimately, this would result in fragmented patient care, duplicative services, and miscommunication — and end the ability of health care entities to enter into cost-saving, value-based contracts such as Centers of Excellence and Accountable Care Organizations.

In addition, this bill would allow health plans to cherry-pick among parts of integrated health systems, academic medical centers and their physicians, and hospital systems that are supporting financially struggling rural hospitals. This undermines the benefits these models are intended to confer to patients. AB 2080 would also prevent hospitals from requiring their plan partners to contract with hospital-based physicians, such as radiologists, pathologists, anesthesiologists, and others, which is beneficial so that patients don't receive out-of-network bills and potentially have to go through the payment dispute resolution process.

If enacted, this bill would unwind managed care in California and place the state on a path backward to illness-oriented and siloed health care, and increase health care costs.

Partnerships and Integration

AB 2080 would also prohibit physician groups, hospitals, skilled-nursing facilities, health plans, insurers, and others from making certain business decisions without the approval of the attorney general, making the attorney general the sole arbiter of accessibility and availability of health care in California. Specifically, the bill would require that any lease, sale, transfer, encumbrance, or other disposition of assets over \$15 million by a health care provider or payer be approved in advance by the attorney general. (As a point of reference, the size-of-transaction threshold for reporting proposed mergers and acquisitions to the Federal Trade Commission is \$101 million.)

Affiliations, sales, mergers, and other transactions are complex and expensive investments that require thousands of hours of work from legal, financial, operational, and clinical experts. AB 2080 would unnecessarily make these business decisions more expensive and time-consuming. Although the bill (and existing law for acquisitions and mergers by not-for-profit hospitals) impose a deadline on the attorney general to complete the review process, in reality the parties to the transaction are asked to give “voluntary” extensions — if they don't, the attorney general can simply deny the transaction within the required time frame. It is now routine to give the attorney general extensions, sometimes up to a year.

These lengthy extensions often result, and will continue to result, in delayed access to care or abandoned transactions that would have benefited patients.

The time and expense involved in seeking attorney general review, by itself, will dissuade many from pursuing health care partnerships that would have benefited Californians. In addition, because of the substantial investment of time and resources necessitated by these transactions, parties need some degree of certainty before undertaking such a risk. This bill would give so much arbitrary and absolute discretion to the attorney general that health care entities are likely to refrain from these critical transactions in the future, freezing the status quo in California while other states continue to drive toward efficiency and innovation. Investment dollars will flow to health care entities in other states instead. And this is entirely unnecessary, because the attorney general has long had the ability to investigate and prosecute anticompetitive behavior, as does the federal government.

We note that there is a lack of due process in AB 2080. The attorney general is not required to:

- Create an administrative record on which his or her decision is based
- Allow the parties to the transaction to review and potentially rebut evidence considered by the attorney general that may be incorrect or misleading
- Use an objective standard when determining whether to approve a transaction
- Provide an explanation or basis for his/her decision

In the past, the attorney general has issued decisions without any explanation and has issued decisions that have been overturned in the courts as an abuse of discretion.

In addition, the attorney general can impose any conditions whatsoever on an approval, without any limitations or guidelines. Although the bill was amended to include an appeal process if a transaction is denied, the amendment falls far short of due process given the absence of an evidentiary record, silence on conditions imposed by the attorney general, and lack of application to non-profit transactions, rendering this process meaningless. It's difficult to imagine how an administrative law judge could overturn an attorney general's decision on a transaction when the law gives the attorney general complete discretion to make a decision and impose conditions on a transaction. The attorney general has, in the past, imposed conditions so onerous that potential partners have abandoned their transaction, resulting in reduced access to care for Californians.

We understand the author's intent with AB 2080 is to address health care costs. This bill would not do that — quite the contrary, it would increase health care costs. The bill's creation of vast new attorney general jurisdiction and responsibilities will require a tremendous increase in direct costs to the state for implementation and hiring of staff to review the thousands of transactions involving California's very large and complex health care system. Some of the review costs may be charged to the parties in a transaction (including taxpayer-funded public entities such as hospitals owned by counties, health care districts, and the University of California). These costs will have to be passed on to patients and health care purchasers.

Finally, we note that the author has introduced another bill, AB 1130, that creates the Office of Health Care Affordability (OHCA) to address health care costs. AB 1130 also establishes a transaction review

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process within OHCA, subjecting health care entities to duplicative state reviews (one by the attorney general, another by OHCA) if both bills are enacted.

For these reasons, our organizations oppose AB 2080, which would prohibit important contracting practices, fragment care for millions of people, and increase the cost of health care for all Californians.

Sincerely,

California Hospital Association
Adventist Health
Alliance of Catholic Health Care
America's Physician Groups
Association of California Healthcare Districts
California Association of Health Facilities
California Children's Hospital Association
California Special Districts Association
CalChamber
Cedars Sinai
CVS Health
Dignity Health
District Hospital Leadership Forum
El Camino Health
Huntington Hospital
John Muir Health
Kaiser Permanente
Keck Medicine of USC
Kindred Hospitals
Loma Linda University Health
Private Essential Access Community Hospitals
Providence
Rady Children's
Scripps Health
Sharp HealthCare
Stanford Health Care
Sutter Health
Tenet Health
University of California
United Hospital Association

cc: The Honorable Jim Wood, DDS
The Honorable Members of the Senate Health Committee
Teri Boughton, Principal Consultant, Senate Health Committee
Joe Parra, Consultant, Senate Republican Caucus