Charles Miller,
Senior Policy Advisor

charles.miller@texas2036.org

@CharlesTXPolicy
Assessing Texas’ performance against competitors

Peer states identified based on index including **15 factors** across 3 domains

- Competing for Business
- Competing for Talent
- Similar Size

Together, Texas and its peers account for **58% of the total U.S. population** and **62% of total U.S. GDP**
Market Background & Texas
Hospital Market Consolidation

Among peer states, Texas has the highest percentage of its population in Highly or Very Highly Concentrated Markets.
Commercial Prices vs Breakeven Prices

All Hospitals State-wide

Small Hospitals (<50 Beds)
Policy Options to Address Consolidation

Know your state’s environment – not all options are a good fit

1. **Government Rate Setting**
   - **Directly**
     Direct rate setting can take several forms, including global budgets, out-of-network rate caps, service line rate caps, etc...
   - **Indirectly**
     Rate setting can be done indirectly through oversight over insurance premiums, or as a part of network adequacy reviews.

2. **Deconsolidation**
   - **Forced Break-ups**
     A government agency requires consolidated entities to divest into smaller entities.
   - **Incentivized Break-ups**
     Rather than forcing consolidated entities to break up, the government imposes rate-setting in markets that are overly consolidated.

3. **Anti-Competitive Contracting**
   - **Prohibition**
     Prohibit the use of anti-competitive contracting clauses such as “all or nothing,” “all products clauses,” “vertical tying clauses,” “anti-steering/tiering,” “gag clauses,” “most-favored nation,” and “in-house referrals.”
   - **Targeted Prohibition**
     Enforcement or prohibition could be targeted only at entities that have more than a designated threshold of market share.
Our Approach & Messaging

HEALTHY MARKETS FOR HEALTHY TEXANS

INFORMED
Markets require transparency.
Increase access to data on price and quality for health care.
Research Transparency: Improving the APCD
(HB 144 by Oliverson)
(SB 2046 by Hancock)
Require providers to provide meaningful price estimates
(HB 3218 by Klick)

COMPETITIVE
Markets require options.
Options for coverage and care that all compete on a level playing field to meet Texans’ health care needs.
Fee Neutrality
(HB 1692 by Frank)
(SB 1275 by Hancock)
Consumer Choice
Benefit Plans
(HB 1001 by Capriglione)
(SB 605 by Springer)

ENGAGED
Markets require aligned incentives.
Reward those who choose high-quality, low-cost options.
Smart Shopper
Protections
(HB 2002 by Oliverson)
Empowering Employers to Design
Smart Networks
(HB 711 by Frank)

Support Healthy Markets in Texas

Texas employers and families are struggling to pay rising hospital and health care costs.

Texas has a highly-concentrated health care market.
A majority of Texas’ population (61%) lives in “highly” or “very highly concentrated” hospital market concentration, as compared to 3% in California and 10% in Illinois.

Texans are concerned about the cost of health care.
In a recent Texas Association of Business poll, Texans shared that health care cost increases were a greater concern than inflation.

On average, employer-sponsored health insurance now costs $22,000 per covered family, which is about one-third of the median wage of a Texas household.
Harnessing the NASHP Cost Tool
Individualized Legislative District Reports

Operating Profit Margin

Commercial

Medicaid

Medicare

Medicare Adv.

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Commercial & Breakeven

RAND 2016-2020, NASHP 2019

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The point and the bar in the chart represent the median value for the selected hospitals. The error bars and numbers in parentheses represent the interquartile range.
HB 711: A Broad Coalition of Support
Industry Responses & Thoughts

**Hospitals**
- Strongly Opposed “All or Nothing.”
- Unsuccessfully tried to water down anti-steering & anti-tiering
- Asked for delayed effective date
- Association was negotiated to neutral, but individual CEOs called legislative leadership in opposition

**Doctors & Providers**
- Strongly Opposed All or Nothing
- Lightly asked for inclusion of “all products clauses”
- Disorganized politically on these issues
- Some physician legislators were so angry at hospitals for other bills that they voted yes on this bill out of spite

**Insurers**
- Were generally supportive
- Played a background role
- Were strongly opposed to imposing a fiduciary duty on PBMs that steer or tier
- Also sought changes to state laws to allow fully-insured products to steer and tier (open to fiduciary duty)
HB 711 restores competition to Texas' health care markets by prohibiting contracts that include:

- **Anti-steering clauses** that restrict employers and health plans from encouraging enrollees to obtain services at a competitor or from offering incentives to use specific providers
- **Anti-tiering clauses** that require employers and health plans to place all physicians, hospitals, and other facilities associated with a hospital system in the most favorable tier of providers
- **Gag clauses** that prohibit any party from disclosing relevant price or quality information to the government, enrollees, treating providers, plan sponsors, and potential enrollees and plan sponsors
- **Most favored nation clauses** that prevent providers from offering prices below those contracted with a particular carrier

HB 711 also imposes a **fiduciary duty on health benefit plans**: If they encourage enrollees to obtain a service from a particular provider, including offering incentives to encourage specific providers, introducing or modifying a tiered network plan, or assigning providers into tiers, they must do it for the primary benefit of the enrollees, not themselves.
Political Notes

a. Differing Republican Leadership
b. House Select Committee & Report
c. COVID Impact, Data, & Trust
d. Invested Legislative Champions
e. Flood the Zone & Other Legislation
Thank You!

Charles Miller
Senior Policy Advisor
charles.miller@texas2036.org
574.315.1358
@CharlesTXPolicy