AV POLICY FOCUS: COMMERCIAL SECTOR PRICES

Arnold Ventures

State Policies to Lower Commercial Health Care Prices

Problem: States are facing rising health care costs for commercial health insurance hurting families, businesses, and state budgets.

Solution: States should implement policies aimed at lowering the high and rising prices charged by hospitals and other providers – the main driver of health care cost growth in commercial insurance, including for state employee health plans. Solutions should address THREE KEY ISSUES:

1 Transparency and Accountability

States know health care costs are high, but lack visibility into the prices being charged for care and the finances of hospital systems in their state, including their costs and revenues, and for non-profit hospitals, their community benefit spending. Additionally, some hospital systems take advantage of the lack of transparency and accountability to engage in predatory billing practices that can harm patients and their communities, leading to increasing levels of medical debt.

2 Market Consolidation and Distortions

States have seen ongoing consolidation of their health care markets leading to growing market power for dominant hospital systems. Those systems can use their leverage to demand higher prices, ultimately increasing costs for consumers, employers, and taxpayers. Hospital systems are also incentivized to shift patients to higher priced settings by moving care from physician offices to hospital outpatient departments, where they can add on facility fees and charge higher prices.

3 Excessive Provider Prices

The system for determining the amount we pay for hospital and physician services leads to irrational and often excessive prices in the commercial insurance market. States see wide variation in prices, both within and across markets. Data on hospital system finances has shown that for many hospital systems, commercial prices significantly exceed the cost of care resulting in higher premiums and out-of-pocket costs for privately insured consumers.

1. TRANSPARENCY AND ACCOUNTABILITY

Transparency

- **Implement a state all-payer claims database** that provides data on the prices all payers in the state pay for specific services in each market, with the option for self-insured plans to opt-in to sharing their data.
- **Ensure financial transparency of hospital systems by requiring financial disclosures** on their fiscal health, including reporting on revenues, costs, charges, and prices at both the system and individual hospital level.
- **Require nonprofit hospitals to publish data on community benefit spending** to increase transparency around how hospitals are meeting community benefit requirements and using their tax benefits to better the communities in which they are located.

Predatory Business Practices

- **Stop hospitals from using predatory debt collection practices,** such as garnishing wages and seizing assets of low-income patients who cannot afford to pay high-priced medical bills.
- **Limit the price hospitals can charge patients that are low-income and uninsured.** In many cases, uninsured patients are charged prices that far exceed the amount typically negotiated between an insurer and provider. States should limit prices for uninsured patients to a percent of Medicare or in-network commercial prices.

2. MARKET CONSOLIDATION AND DISTORTIONS

Merger Review

- **Require merging providers to notify relevant state agencies** prior to the transaction and allow state agencies to collect additional information.
- **Expand state merger review authority** by lowering the financial threshold for mergers subject to review and broadening state authority to include all providers to improve oversight of small acquisitions that would previously escape regulatory review.
- **Provide state regulators with authority to block mergers** administratively, without having to challenge those mergers in court, for transactions that will lead to higher commercial prices in the state.

Anticompetitive Behaviors

- **Prohibit anticompetitive contracting terms** between providers and insurers—including most-favored-nation, all-or-nothing, gag, anti-tiering or anti-steering clauses—that limit market competition.

Surprise Billing

- **Revert to the federal No Surprise Act** in cases where state law uses a more inflationary approach for resolving surprise out-of-network bills.
- **Add protections for services and providers not covered by the federal law,** such as ground ambulance providers, to further protect consumers.

Shifting Care to Higher Cost Settings

- **Eliminate facility fees** at off-campus hospital outpatient departments and for certain services that could safely be performed in a physician's office. States can reduce the incentive for health systems to purchase physician practices for financial reasons and shift services to higher cost settings.

3. EXCESSIVE PROVIDER PRICES

Cost Growth Benchmark

- **Implement a cost-growth benchmark to limit growth of health care costs in the state.** Disaggregate the data to identify health care providers exceeding the benchmark and require those providers to pay back the amount by which they exceed the threshold.

Insurance Rate Review

- **Require prior approval of insurance premiums by state insurance commissioners and provide authority to protect consumers from high prices,** such as through an affordability standard that limits growth in health care prices paid by insurers to hospitals.

Introduce More Affordable Coverage Options

- **Enact a public option** to constrain costs by increasing competition among health plans and limiting provider prices, for example, by tying prices to Medicare rates. States should consider expanding access to the public option to the employer markets.
- **Create a public program buy-in** such as a Medicaid buy-in program that allows more people to purchase affordable coverage that leverages the payment rates used in public programs.

Direct Limitations on Prices

- **Use reference pricing for state employee health plans and other commercial insurers in the state** by tying commercial prices to a percentage of Medicare rates.
- **Cap excessive provider prices** such as through a cap on prices at the top of the commercial price distribution (e.g., above the 75th percentile statewide) or a cap on hospital prices in consolidated markets.
- **Implement all-payer rate setting or global budgets** for hospital systems in the state, including for both public and private payers.

For more information: ArnoldVentures.org