Testimony of Trevor Putnoky
to the Joint Standing Committee on Innovation, Development, Economic Advancement and Business

Neither for Nor Against

LD 1815, An Act to Protect Maine's Consumers by Establishing an Abuse of Dominance Right of Action and Requiring Notification of Mergers

January 9, 2024

Good afternoon, Senator Curry, Representative Roberts, and Members of the Joint Standing Committee on Innovation, Development, Economic Advancement and Business.

My name is Trevor Putnoky. I'm the President and CEO of the Healthcare Purchaser Alliance of Maine and I'm here today to testify neither for nor against LD 1815. The HPA is a nonprofit that represents the purchasers of health care in Maine. Our mission is to advance healthcare value and to support and incentivize high-quality, affordable care. We have over 60 members, including some of the largest public and private employers and health trusts in Maine. Collectively, our members spend over a billion dollars annually providing health care for nearly one quarter of the commercially insured population in the state.

Like Representative Millett, we support efforts to protect Mainers from the potentially negative impacts of market concentration. As you consider LD 1815 and policies to address market consolidation, we want to share with you some of the possible impacts that consolidation could have on a market that affects all Maine consumers and businesses: health care.

Maine has a concentrated healthcare market, with nearly half of the state's hospitals owned by two large health systems, and many primary care and specialty practices system owned as well. In many parts of the state, there is only one provider option available for certain healthcare services, meaning that insurance carriers must have those providers in their networks to maintain adequate access. This essentially creates situations where those "must have" providers have near monopolistic power when it comes to contract negotiations.

And while mergers and acquisitions of healthcare entities are often touted as ways to improve efficiencies, lower costs, and enhance quality, studies have found that prices in consolidated markets are actually higher than in competitive markets, with one study estimating average prices are 12 percent higher at monopoly hospitals, compared to markets with robust competition.[1] Results from that same study suggest that bargaining leverage is an important component in price variation.[2] Nor do mergers necessarily result in improved quality. In fact, another study of hospital acquisitions found that they were "associated with modestly worse patient experiences and no significant changes in readmission or morality rates."[3]

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[1]Zack Cooper, Stuart Craig, Martin Gaynor & John Van Reenen, *The Price Ain't Right? Hospital Prices and Health Spending on the Privately Insured*, 134 Q.J. ECON. 51 (2019). Available at: https://healthcarepricingproject.org/sites/default/files/Updated_the_price_aint_right_qje.pdf.

[2] Ibid.

[3] Nancy Beaulieu, Leemore Dafny, Bruce Landon, Jesse Dalton, Ifedayo Kuye & J. Michael McWilliams, *Changes in Quality of Care after Hospital Mergers and Acquisitions*, 382 NEW ENG. J. MED. 51 (Jan. 2, 2020). Available at: https://www.nejm.org/doi/pdf/10.1056/NEJMsa1901383?articleTools=true.

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When this sort of market imbalance exists, dominant healthcare systems can insist on provisions in their contracts with carriers and plan sponsors that limit competition and ultimately increase costs to consumers. All-or-nothing clauses, for instance, require carriers to include all of a system's providers in their network or none of them, even when some of those system providers may be low value or high cost, or when more affordable or higher value non-system providers are available in a region. Anti-steering clauses prohibit carriers from offering lower copays to incentivize members to use non-system providers who offer higher value or more affordable services. When these sorts of provisions are included in contracts, they hurt consumers who may end up paying more for care due to such anti-steering and all-or-nothing provisions.

For example, an analysis of lab and CT scan claims from HPA members found that the average price of a comprehensive metabolic panel is five to six times higher in a hospital or outpatient setting than in stand-alone or office settings. And the average price of CT scans of the abdomen and pelvis in a hospital outpatient setting is more than twice as high as the price of the same CT scan at a free-standing site of care—$1,697 vs. $722. Given those price differences, employers and consumers can benefit from narrow networks or lower copays that encourage employees to use more affordable sites of care—particularly if employees are on a high deductible plan. But such strategies would be off limits if their carrier was forced to include anti-steering provisions in its contracts with dominant health systems.

Here in Maine, businesses and families are already facing unsustainable increases in healthcare costs that are leaving Mainers increasingly unable to afford care and employers searching for ways to absorb double digit premium increases. These rising costs have eaten into wage increases,[4] and led to higher premiums, more cost sharing, and higher deductibles for Maine families. In fact, Maine currently has the highest individual deductibles in the country, and the fifth highest family deductible.[5] There's no undoing the consolidation that has already occurred in Maine's healthcare market. But as Maine employers and consumers continue to struggle with healthcare affordability, policies that protect against the potential for anticompetitive practices—and the price increases that research finds often accompany market concentration—are increasingly important.

I realize that the impact of LD 1815 would extend beyond Maine's healthcare sector, and as we aren't expert on the implications of those broader market impacts, we are testifying neither for nor against the bill.

Thank you for the opportunity to provide HPA's feedback; I hope that it will be helpful as you consider policies to address market consolidation here in Maine. I'd be happy to answer any questions and will be available for the work session.

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[4] Bob Herman, "The Cost of health insurance is skyrocketing, and it's a big reason you aren't getting much of a raise," *Business Insider,* August 5, 2019. Available at: https://www.businessinsider.com/the-cost-of-health-insurance-is-skyrocketing-and-eating-wages-2019-8.

[5] Kaiser Family Foundation, *Average Annual Deductible per Enrolled Employee in Employer-Based Health Insurance for Single and Family Coverage*, 2021. Available at: https://www.kff.org/other/state-indicator/average-annual-deductible-per-enrolled-employee-in-employer-based-health-insurance-for-single-and-family-coverage/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Average%20Single%20Deductible%22,%22sort%22:%22desc%22%7D.