A Missed Opportunity:
How Massachusetts Nearly Addressed Its Hospital Pricing Problem

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Background

The roots of health care reform in Massachusetts stretch back to at least 2004, a time when lawmakers and industry experts were concerned with increasing uninsured rates, rising costs, free-riders, and the problem of adverse selection. The health care reform law that passed in 2006 under then-Governor Mitt Romney was intended to make the Commonwealth the first U.S. state to achieve near-universal health insurance coverage, and it was based on the idea of managed competition.[1] This concept combines the benefits of the private sector with a highly-regulated artificial marketplace. Within this regulated marketplace, consumers can choose their providers and their insurers. In addition, health insurance companies are permitted to compete on price, cost sharing, and additional benefits.[2]

Despite the landmark health care legislation and subsequent amendments in 2008 and 2010, insurance premiums in Massachusetts continued to rise. A study of the Massachusetts insurance market conducted by the Massachusetts Division of Health Care Finance and Policy found that from 2007 to 2009, private group health insurance premiums in Massachusetts increased roughly 5 to 10% annually, when adjusted for benefits.[3] These premium increases burdened both employees and employers with higher premium contributions and cost-sharing charges. The study concluded that "[t]he continued growth in health insurance premiums threatens the welfare of the Massachusetts economy."[4]

In 2012, the Massachusetts legislature tackled the problem of rising health care costs by passing a law which aimed to align increases in health care spending with growth in the state's domestic product. To accomplish this, the bill encouraged the creation of accountable care organizations ("ACOs"), eliminated unnecessary testing, expanded oversight and transparency in provider markets, provided incentives for value-based purchasing, and gave residents easier access to their medical records.[5] Overall, the legislation did address many delivery and payment issues; however, it failed to confront a persistent problem with health care in the Bay State: price variation.

The Health Policy Commission, a watchdog group created by the 2012 legislation to monitor medical spending, cited data showing that some hospitals, specifically large teaching hospitals,

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[1] *Massachusetts Health Care Form: Six Years Later*, 8311 KAISER FAM. FOUND., at 1 (2012), *available at* https://kaiserfamilyfoundation.files.wordpress.com/2013/01/8311.pdf.
[2] Michael Tanner, *The Grass Is Not Always Greener: A Look at National Health Care Systems Around the World*, 613 CATO INSTITUTE, at 7 (2008), *available at* http://www.cato.org/publications/policy-analysis/grass-is-not-always-greener-look-national-health-care-systems-around-world.
[3] *Massachusetts Health Care Cost Trends: Premium Levels and Trends in Private Health Plans: 2007-2009*, DIV. OF HEALTH CARE FIN. & POL'Y, at 3 (2011).
[4] *Id.* at 6.
[5] Josh Archambault, *Now for the Rest of the Story on Massachusetts Cost Control*, HEALTHAFFAIRS BLOG (Feb. 25, 2013), *available at* http://healthaffairs.org/blog/2013/02/25/now-for-the-rest-of-the-story-on-massachusetts-cost-control/.

are paid significantly more than others for providing essentially the same care. For example, the data revealed that patients who received routine maternity care at Massachusetts General Hospital were charged an average of $18,500, while those who received similar care at smaller, regional hospitals were charged under $10,000.[6] As a result of this disparity, smaller hospitals are having trouble competing with larger teaching hospitals. Since large teaching hospitals have much more market power, they tend to treat more patients. Consequently, the most expensive providers are treating the most patients. This reality is costing Massachusetts taxpayers millions of dollars each year.

The Ballot Question

In November 2015, the Service Employees International Union ("SEIU"), Local 1199 authored a proposed ballot initiative for 2016 that would have drastically changed health care financing in Massachusetts. It would have limited the range in prices for all hospital services, including for notoriously price-inflated diagnostic procedures such as CAT scans. Specifically, no hospital would have been paid more than 20% above or 10% below a health insurer's average price. This would have effectively redistributed hundreds of millions of dollars from some of the most prominent medical institutions in Massachusetts to lower-paid hospitals and to consumers through their insurance companies.[7]

SEIU estimated that closing the gap in payments would have meant taking an estimated $463 million away from high-priced hospitals like Massachusetts General Hospital, Brigham and Women's, and South Shore and boosting payments to places like Norwood Hospital, Heywood Hospital, and Beth Israel Deaconess Medical Center in Boston. Consumer groups claimed the ballot initiative could have eventually lowered health care premiums for Bay State residents because of reduced hospital reimbursement rates.

The initiative was largely designed to curb the influence of the state's largest and most expensive health care system, Partners HealthCare ("Partners"). Partners is the parent company of ten Bay State hospitals, including the prestigious Massachusetts General Hospital and Brigham and Women's. SEIU estimated that Partners would have lost $440 million a year if voters had approved the ballot question. Some health care industry watchers claimed that SEIU was using the proposed ballot question to pressure Partners into providing more union jobs in Partners' Hospitals. The President of SEIU dismissed that implication.[8]

The larger goal of the ballot initiative was to force the health care industry to contend with these price disparities. By proposing the ballot initiative, SEIU gave the legislature the chance to address the price disparity problem. If the legislature failed to act, the voters would have been able to force changes.

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[6] Priyanka Dayal McCluskey, *Hospitals Aim to Stop Vote on How They're Paid*, BOSTON GLOBE, May 5, 2016, https://www.bostonglobe.com/business/2016/05/05/partners-union-hold-talks-over-ballot-initiative/aecwWZk9CxdXEUIpSVdZyM/story.html.
[7] *Id.*
[8] *Id.*

Reaction to the Initiative

Unsurprisingly, hospital executives were vehemently opposed to the ballot initiative. Partners warned that the initiative could have forced thousands of job cuts and led to instability in the hospital system. The Executive Vice President of the Massachusetts Hospital Association was also opposed, despite the fact that many of the association's members would have benefited if the initiative passed. Some members claimed they could not determine how the pricing caps would have worked. They were also opposed to the government setting their payments and troubled by allowing voters to unilaterally overhaul health care financing.[9]

In addition to provider pushback, some economists raised concerns over this fast-handed approach. Stuart Altman, chairman of the state Health Policy Commission and a health care economist at Brandeis University went as far as to say, "You would destroy institutions overnight."[10] Many key consumer groups such as the Massachusetts Association of Health Plans and Health Care for All did not support the fix in the ballot proposal, but urged the legislature to come up with a plan to distribute hospital payments more evenly.[11]

Compromise Proposals

A primary goal of this ballot initiative was to help struggling community hospitals, many of which are worried about having to close. Some industry players suggested that the state could have increased payments for patients in the MassHealth program, many of whom visit community hospitals more frequently than large teaching hospitals. Since this idea would have drastically increased health care costs for the state, it was unlikely to prove viable.

Instead, some Beacon Hill lawmakers suggested that redistributing money between hospitals made more sense. One idea to reduce the payment spread across hospitals was to take the state's soft cap on health care spending, currently 3.6%, and hold high-priced hospitals to a tighter standard (such as 2%), but let low-paid hospitals grow (to as much as 5%). None of these ideas came to fruition, however, because the legislature acted swiftly to settle the dispute.[12]

Governor Baker Signs a Compromise Bill

The union, the health care industry, and Beacon Hill legislators conducted a series of secret meetings in the last few weeks in an attempt to reach a compromise between SEIU and Partners. As a result of these meetings, lawmakers proposed a bill which was swiftly approved by the Massachusetts House and Senate. On March 31st, Governor Charlie Baker signed the emergency

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[9] McCluskey, *Could a State Ballot Initiative Destroy Hospitals?*, BOSTON GLOBE, May 20, 2016, https://www.bostonglobe.com/business/2016/05/19/state-official-warns-ballot-initiative-could-destroy-hospitals/BiGCQ8XgVR1es3344mANkI/story.html.

[10] *Id.*

[11] McCluskey, *Union Seeks to Shift Hospital Payments; Ballot Initiative in 2016 Could Help Community Institutions*, BOSTON GLOBE, August 5, 2015, https://www.bostonglobe.com/business/2015/08/04/union-seeks-redistribute-insurance-payments-smaller-hospitals/pyOc7d2xpD76Lg0kbBjDGK/story.html.

[12] McCluskey, *Deal Reached to Avert Ballot Question on Hospitals*, BOSTON GLOBE, May 25, 2016, https://www.bostonglobe.com/business/2016/05/25/deal-reached-avert-ballot-question-hospitals/xDPLHx13YRUq89Qz8FMCXK/story.html

measure to provide millions of dollars to struggling hospitals, effectively sidelining the proposed ballot question.

The bill redistributes $45 million over five years from the Center for Health Information and Analysis into the newly-created Community Hospital Reinvestment Trust-Fund to help struggling community hospitals. The funds will be distributed in such a way that hospitals that charge lower prices to insurers will receive more money. In addition, it creates a new state tax on all hospitals and redistributes the expected $15 million in revenue to hospitals that serve the greatest number of patients on MassHealth. Finally, the agreement calls for the formation of a 23-person Special Commission to Review Variation in Prices among Providers. The commission will be comprised of industry leaders and stakeholders, and make policy recommendations by March 15, 2017. Finally, Partners announced that it will allow SEIU to lobby technicians, janitors, and cafeteria workers at some Partners hospitals to join the union.[13]

A Missed Opportunity

Massachusetts paved the way for the nation when it passed comprehensive health reform in 2006. As the primary goal of the legislation was to expand access to care, many amendments were needed to address the rising cost of care. Yet, insurance premiums in Massachusetts continued to rise steadily through 2011, to the point where a state agency concluded that the economic well-being of the Commonwealth was imperiled. The 2012 legislation came in response to the rising cost of care, and it created a watchdog group that rediscovered the enormous problem of hospital price variation. The Health Policy Commission considered various cost control proposals and recommended that lawmakers resolve this issue by pushing for alternative payment methods and a value-based market approach. Ultimately, the state chose not to implement those recommendations.

Since lawmakers failed to act, SEIU sponsored a ballot initiative that would have allowed voters to force drastic changes in hospital pricing. Strategic ballot initiatives are potent public policy tools. Had voters been given the chance to vote on this initiative, they might have been able to provide a long-term solution for hospital price variation and provide lasting relief for struggling community hospitals around the Commonwealth. Instead, industry players and Beacon Hill legislators have kicked the proverbial can down the road by passing a bill which fails to address the persistent, underlying problem of price disparities among Massachusetts hospitals. The legislature has essentially affixed a Band-Aid to the problem of struggling community hospitals by shifting funds and creating a new tax on all hospitals. While the creation of a special commission to come up with long-term solutions is welcome, it is duplicative.

Absent a legislative fix, large teaching hospitals will likely continue charging significantly more than smaller community hospitals for essentially the same services. As a result, the largest health care system in the state will continue to enjoy a substantial advantage over its competition, smaller Bay State hospitals will likely find themselves in financial trouble again in the coming years, and Massachusetts residents will likely continue paying inflated prices. If lawmakers are

[13] Shira Schoenberg, *Massachusetts Health Care Pricing Compromise Reached to Avert Ballot Question*, MASSLIVE, May 25, 2016, http://www.masslive.com/politics/index.ssf/2016/05/health_care_pricing_compromise.html.

serious about addressing the rising cost of care, they will consider a policy model which levels the playing field for hospitals across the Commonwealth.