

Fiduciary Check In

The Sutter Decision: Lessons For Plan Sponsors

February 18, 2021

Speakers



Michael Thompson
President & CEO
National Alliance of Healthcare
Purchaser Coalitions



Elizabeth Mitchell
President & CEO
Purchaser Business
Group on Health



Drew Kallestad
Co-Founder Health Plan
Fiduciary Compliance

WHAT DOES IT MEAN TO BE A FIDUCIARY?

- ERISA requires fiduciaries to discharge their duties
 - For the EXCLUSIVE BENEFIT of plan & participants
 - Using the skills of a prudent person
 - In accordance with the plan's documents

The threshold for behavior of a healthcare plan fiduciary is a "Good Faith Compliance Effort", which unlike in the retirement plan arena, is much more subjective



Sutter Decision: Lessons for Plan Sponsors

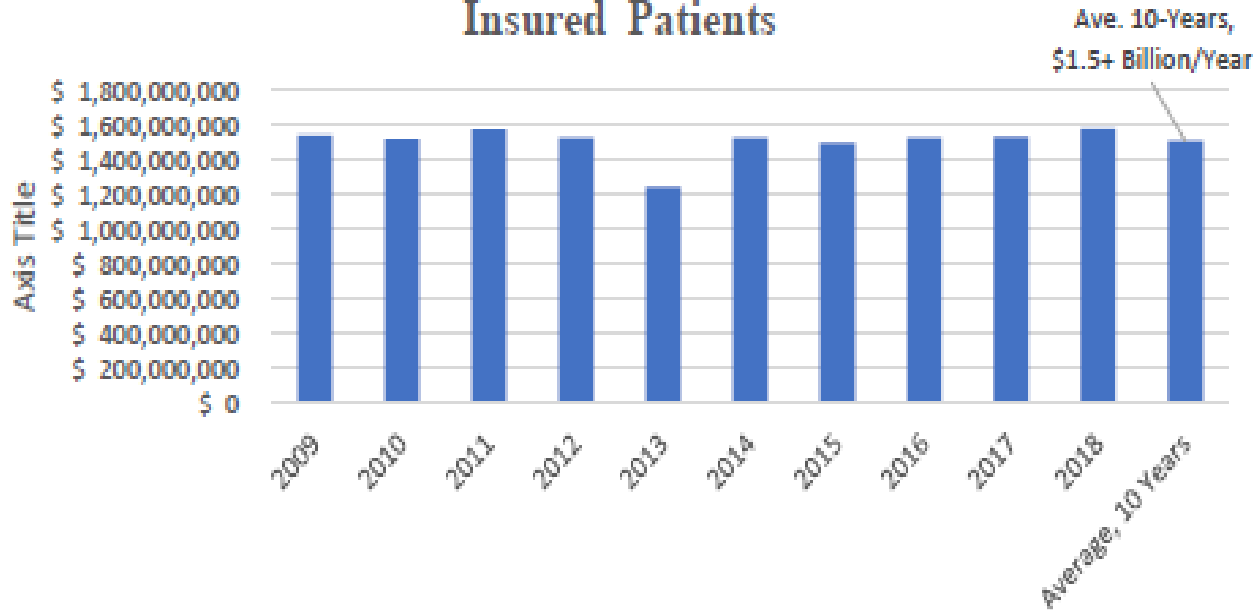
Fiduciary Check-In



Purchaser Business
Group on Health

Sutter's Overcharge

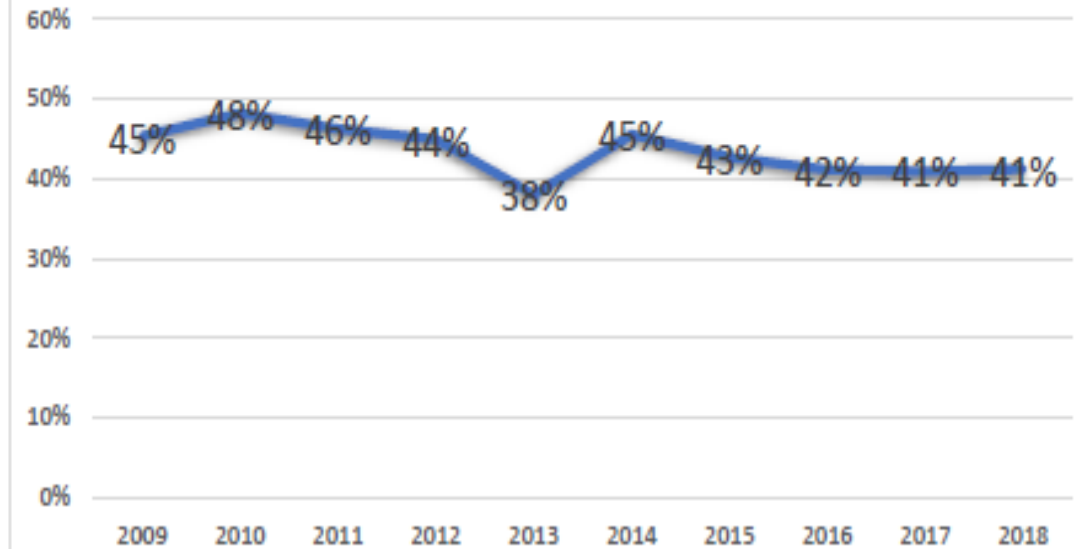
Sutter's Profits from Commercially Insured Patients



Note: Calculated as: Reported Excess of Revenue over Expenses, Other Third Parties, Acute Care Hospitals

Source: OSHPD Financial Pivot Data 2009-2018 (2018 most recent year Pivot Data are available)

Sutter's Profit Margin from Commercially Insured Patients, 2009-2018



Note: Calculated as: Reported Excess of Revenue over Expenses/Net Revenue, Other Third Parties

Source: OSHPD Financial Pivot Data 2009-2018 (2018 - most recent year Pivot Data are available), Acute Care Hospitals

Settlement Terms: Injunctive Relief

- Pay \$575 million
- Limit charges for out-of-network services under a fixed cap
- Increase transparency via access to pricing, quality and cost information
- Halt contracting tactics that prevent health plans and employers from steering members to lower cost plans
- Stop all-or-nothing contracting deals
- Cease anticompetitive bundling of services and products
(Palo Alto Medical Foundation, Brown & Toland Medical Group)
- Cooperate with a court-approved compliance Monitor
- Set definitions on clinical integration and patient access

<https://oag.ca.gov/news/press-releases/attorney-general-becerra-state-unions-employers-and-workers-reach-settlement>

Health Plan Declarations: UnitedHealthcare and Health Net

- **“United’s proposal included the amendment of contract provisions that United believed violated the Proposed Final Judgment as agreed**
 - Sutter did not respond to those amended terms, thereby rejecting anti-tiering and anti-steering provisions.
 - Sutter informed United that it did not want to negotiate provisions United believes violate the Proposed Final Judgment because the final judgment might be amended and would likely be delayed ...”
- **“Health Net believes that its new contract with Sutter should comply with the provisions of the Proposed Final Judgment (“PFJ”) in this case ...** excluding these provisions from its new contract with Sutter would promote competition in Northern California healthcare markets and would allow Health Net to negotiate more competitive prices with Sutter and other Northern California providers.”

July 10, 2020.

Judge denies Sutter Motion

60
MINUTES

Modern
Healthcare



The New York Times

Sutter Health's Request to Delay \$575 Million Settlement Is Denied

The large California hospital system wanted to postpone an agreement reached in a state antitrust case, as coronavirus cases rise.

Employers, which joined with unions and the attorney general to bring the case against Sutter, argued that it should not be allowed to use its market power to raise prices, despite the pandemic. “What Sutter seems to have overlooked is the people paying these bills,” said Elizabeth Mitchell, the chief executive of the Pacific Business Group on Health, which represents employers that purchase coverage for their workers.

The crisis has made it much more difficult for employers, including state governments, and individuals to afford care, she said. “We do not believe price gouging and continued inflation of prices beyond what is necessary is sustainable,” she said. “Families and business can’t absorb those costs.”

Center for Functional Health Care Markets



Purchaser Business
Group on Health



National Alliance
of Healthcare Purchaser Coalitions
Driving Innovation, Health and Value

Questions?



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