

Health Policy in Transit: Anti-Competitive Contracting Legislation

On November 2, 2021, Senators Tammy Baldwin (D-WI) and Mike Braun (R-IN) introduced the Healthy Competition for Better Care Act ([S. 3139](#)), bipartisan legislation that would ban anti-competitive contracting between providers and health plans. The goal of this legislation is to make health care better for patients by ensuring that contracts between health insurance issuers, including employer plan sponsors, and health systems advance quality and affordability.

Specifically, the Healthy Competition for Better Care Act would:

- Allow discounts or incentives for enrollees who choose high-quality and low-cost providers;
- Allow insurers and employers to contract with the best hospitals and providers for their patients, without requirements to enter into additional contracts with other affiliated providers or hospitals;
- Allow purchasers to negotiate their own rates with other providers who are not party to the contract of the provider involved; and
- Allow hospitals and purchasers to freely negotiate prices, without requirements to pay higher amounts for items or services than other issuers have agreed to.

The bill includes exceptions for certain group model issuers, including health maintenance organizations, and value-based network arrangements, such as an exclusive provider network or accountable care organization. The legislation—which has been referred to the Senate Committee on Health, Education, Labor and Pensions (HELP) for consideration—comes amid increased scrutiny of hospital mergers and practices.

Many of the provisions in the legislation target tactics used by dominant health systems and Senators Baldwin and Braun pointed to Sutter Health as an example. The Northern California-based healthcare system reached a \$575 million settlement over price-gouging allegations, including that it required insurers and payers to sign “all-or-nothing” contracts that required payers to include in its network all its affiliated providers or none of them. This bill would eliminate those types of practices by health systems.

The National Alliance, together with its sister organizations, is strongly supportive of this legislation. Advocating against harmful contracting practices is a core component of the [Fair Health Costs Project](#) and we are working to raise awareness of the [negative effects of anti-competitive contracting](#).

We are following this legislation closely and will provide updates as the bill reaches important milestones.