Executive Summary -- Putting Patient's First in Healthcare Contracts

Consolidation in the healthcare sector, especially among payers and providers, is rapidly decreasing the number of market participants, consolidating power, limiting choice, and increasing healthcare cost. This consolidation is part of a tug of war between payers and providers to get the upper hand in contract reimbursement negotiations—but has led to these entities using their dominant market power to utilize anti-competitive contracting terms against the other party. This only serves to benefit the bottom line of dominant payers or providers, not patients, and drives up the cost of healthcare for everyone.

This is not to say that there cannot be positive advantages of consolidation—such as improved care coordination or more effective value-based arrangements. However, until the incentives are changed, the dominant payers or providers in these markets will leverage their size to drive up reimbursements or to obtain other highly favorable terms.

We must realign these incentives. To this end, Cicero supports legislation that can ban some of the more commonly used and harmful anti-competitive contracts. In 2020, The Source on Healthcare Price & Competition released a research report entitled "Preventing Anticompetitive Contracting Practices in Healthcare Markets" that highlights how such contract terms are used. The National Academy for State Health Policy used that report to develop Model Legislation to address the use of Anticompetitive Terms in Health Insurance Contracts. The Cicero Institute supported legislation in Texas based upon this model bill, which was signed into law in 2023.

The Cicero Institute has taken that model legislation and is building upon those efforts to offer state policy menu to ban or limit the use of an array of anticompetitive contract terms and practices used by payers, providers and other market participants. The Cicero Model Legislation uses the NASHP as the basis but also includes additional provisions—such as limiting non-compete provisions against physicians or healthcare workers that limit provider access.

The model bill bans or limits the following anticompetitive contract terms.

- Anti-Steering clauses restrict insurers from encouraging/incenting patients to obtain health care services from different doctors and hospitals, even if for price or quality.
- Anti-tiering clauses restrict insurers categorizing providers and incentivizing patients to pick the providers from the highest-performing tiers.
- Most-favored-nations clauses prohibit a health system/provider from offering a lower reimbursement rate to a competitive insurer.
- All or nothing clauses require insurers to include all of a provider's members (physicians) in their network plan.
- All-products clauses require providers to accept every insurance plan offered by a company, then existing or future, even if they have different reimbursement rates or financial terms.
- Non-compete provisions restrict physicians or other clinicians from going to competitive providers, limiting patient access should a physician/clinician want to leave his or her current employer.

Limiting the use of such clauses by large payers and providers changes the incentives. Instead of using their market size to negotiate terms that only serve to improve their bottom line—they can instead use their size for better care coordination and support to improve patient outcomes in value-based agreements.