

The Health Industry Forum: State Approaches to Addressing the Effects of Provider Consolidation



Karen C. Tseng
Chief, Health Care Division
MA Attorney General's Office
November 9, 2015

Disclaimer:

This presentation is intended for discussion purposes only. It does not constitute guidance or official policy of the Massachusetts Attorney General's Office ("AGO") or its Health Care Division ("HCD") and should not be relied on as guidance with respect to the issues discussed. While the AGO may consider and discuss health care policy issues from different perspectives, including the perspectives of multiple divisions in the AGO, this presentation focuses on the work of the HCD. Nothing in this presentation is meant as an opinion within the meaning of M.G.L. c. 12, §§ 3, 6, 9, and statements, views, or opinions expressed during this presentation are solely those of the speaker and do not represent the statements, views, or opinions of the Attorney General, HCD, or any other government official or agency.



PROGRESSION OF HEALTH CARE REFORM IN MASSACHUSETTS

YEAR	MASSACHUSETTS HEALTH CARE REFORMS		
1990s	Insurance Market Reforms <ul style="list-style-type: none"> • Guaranteed Issue • Modified Community Rating • Pre-Existing Condition Limitations 		
2006	Expansion of Insurance Coverage <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"> <ul style="list-style-type: none"> • Individual Mandate • Employer Responsibility </td> <td style="width: 50%;"> <ul style="list-style-type: none"> • Medicaid Expansion • Insurance Exchange </td> </tr> </table>	<ul style="list-style-type: none"> • Individual Mandate • Employer Responsibility 	<ul style="list-style-type: none"> • Medicaid Expansion • Insurance Exchange
<ul style="list-style-type: none"> • Individual Mandate • Employer Responsibility 	<ul style="list-style-type: none"> • Medicaid Expansion • Insurance Exchange 		
2008	Chapter 305 – Cost Containment Legislation I <ul style="list-style-type: none"> • AG Authority to Examine Cost Trends 		
2010	Chapter 288 – Cost Containment Legislation II <ul style="list-style-type: none"> • Transparency • Tiered/Limited Network Products • Reform of Unfair Contracting Practices 		
2012	Chapter 224 – Cost Containment Legislation III <ul style="list-style-type: none"> • Oversight of Payment Reform & Provider Registration • Benchmark Health Spending to Gross State Product • Price Transparency for Consumers 		



MASSACHUSETTS ATTORNEY GENERAL'S MARKET EXAMINATIONS

- *Confidentially Reviewed Documents:* Insurers and providers produced contracts and performance data.
- *Examined Health Care Leaders:* Took testimony from financial and medical leaders at insurers and providers.
- *Team of Experts:* Engaged experts in health care contracting, actuarial sciences, economics, and clinical quality measurement.
- *Examination Reports:* March 16, 2010; June 22, 2011; April 24, 2013; June 30, 2015; September 18, 2015.



EXAMINATION HIGHLIGHTS

1. Prices paid by health insurers to hospitals and physician groups vary significantly.
2. These variations are not explained by quality, patient complexity, or other common measures of consumer value.
3. Variations in prices are correlated to provider and insurer market leverage.
4. Global budgets vary significantly and globally paid providers do not have consistently lower medical spending.
5. Price increases, not utilization, have been the primary driver of health care cost growth over the last decade.



MARKET TRANSPARENCY

- Annual reporting of provider *relative prices* and *global budgets*, including variation in prices by payer and provider
- Annual reporting of *total medical expenses* by provider and geography
- Real-time information on price and *consumer cost-sharing* by service
- **APCD** and corresponding database of *provider organizational structure and affiliations* (Registration of Provider Organizations)
- *Real-time updates* to provider organizational structure and affiliations (Provider Material Change Notices)
- Database of *standardized quality metrics* used to evaluate provider performance (Standard Quality Measure Set)



TYPES OF MARKET CHANGES IN MASSACHUSETTS

April 2013 to Present

Type of Transaction	Frequency
Physician group acquisition or affiliation	26%
Acute hospital acquisition or affiliation	20%
Clinical affiliation	20%
Formation of contracting entity	15%
Acquisition or affiliation of other provider type (e.g., post-acute)	11%
Change in ownership or merger of corporately affiliated entities	7%
Affiliation of provider and carrier	2%



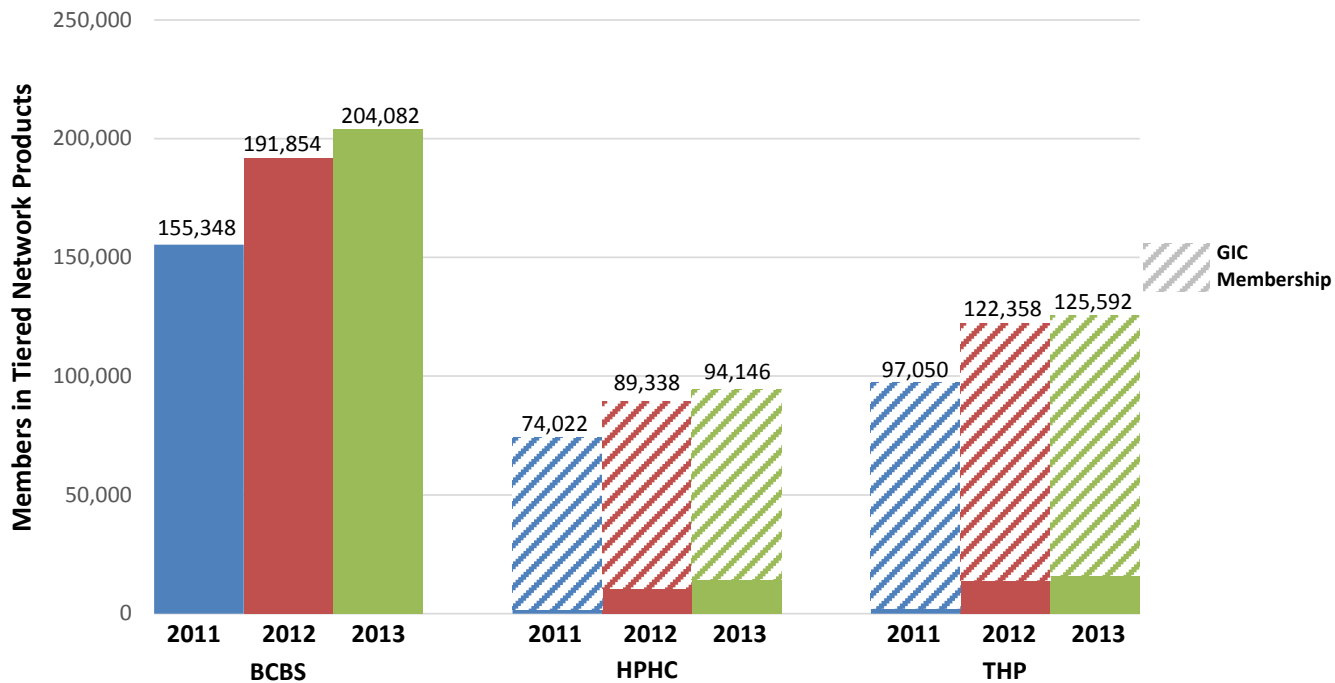
MARKET ORIENTED INITIATIVES

- Prohibiting unfair contracting practices
- Regularly reporting standardized metrics of provider cost and quality
- Evaluating and rewarding providers based on those metrics
 - Developing tiered and limited network products that differentiate providers based on standardized cost and quality metrics
 - Certifying PCMHs and ACOs based on standardized cost and quality metrics
 - Awarding care delivery transformation grants based on standardized cost and quality metrics



GROWTH IN TIERED NETWORK PRODUCTS IN MASSACHUSETTS

Commercial Membership in Tiered Network Products at the Major Massachusetts Insurers (2011 - 2013)



Tiered Members As % of Insurer's Total Membership:

2011: 9.4%
2012: 11.9%
2013: 12.6%

2011: 11.9%
2012: 14.4%
2013: 15.4%

2011: 20.6%
2012: 26.2%
2013: 28.2%



REGULATORY INITIATIVES

- Pegging statewide health care cost growth to growth in potential gross state product
- Insurance rate review
- Establishing a Provider Price Variation Commission to “recommend the maximum reasonable adjustment to a commercial insurer’s median rate . . . for each acceptable factor [contributing to price variation]”



ONGOING MONITORING

- Analyzing and reporting on health care cost drivers in connection with annual cost trend hearings
- Evaluating the impact of market changes on cost, quality, and access (Cost and Market Impact Reviews)
- Monitoring payer and provider performance under the statewide cost growth benchmark (Performance Improvement Plans)



OVERVIEW OF COST AND MARKET IMPACT REVIEWS

The Health Policy Commission tracks proposed “material changes” to the structure or operations of provider organizations and conducts Cost and Market Impact Reviews of:

1. Transactions anticipated to have a significant impact on costs or market functioning
2. Providers identified as having excessive cost growth relative to the statewide cost growth benchmark

What it is

- Comprehensive, multi-factor review of the providers and their proposed transaction
- Consists of a preliminary report, an opportunity for the providers to respond, followed by a final report
- Promotes transparency and accountability, encouraging providers to address negative impacts and enhance positive outcomes of transactions
- Proposed changes cannot be completed until 30 days after the HPC issues its final report, which may be referred to the state Attorney General for further investigation

What it is not

- Differs from Determination of Need reviews by Department of Public Health
- Distinct from antitrust or other law enforcement review by state or federal agencies







EXEMPLAR QUESTIONS FOR EVALUATING MARKET IMPACT

	Costs	Quality	Access
What do we know from the terms of the transaction?	<ul style="list-style-type: none"> Will prices change? Will care shift to lower or higher priced providers? 	<ul style="list-style-type: none"> What areas are identified for quality improvement? How do the parties propose to address these areas? 	<ul style="list-style-type: none"> Any proposed changes in services? How do any changes affect any shortages/ oversupply of services?
How will provider and market structure change?	<ul style="list-style-type: none"> Will market share or concentration increase/decrease? What is the anticipated impact on bargaining leverage? 	<ul style="list-style-type: none"> How are the parties aligning incentives? Does the proposed structure support greater clinical integration/population care management? 	<ul style="list-style-type: none"> Will the resulting organization have higher or lower public payer mix? Higher or lower mix of low/negative margin services?
Ongoing evaluation of the parties' goals and plans	<p>Continued evaluation with additional data, production, and interchange. E.g.,</p> <ul style="list-style-type: none"> Are the parties' plans internally consistent/supported by historic results? Are proposed changes both necessary and sufficient? Are cost savings likely to be passed on to purchasers? 		




EXAMPLES OF HEALTH POLICY COMMISSION MARKET MONITORING

Four Cost and Market Impact Reviews Conducted

 <p>COMMONWEALTH OF MASSACHUSETTS HEALTH POLICY COMMISSION</p> <p>REVIEW OF PARTNERS HEALTHCARE SYSTEM'S PROPOSED ACQUISITIONS OF SOUTH SHORE HOSPITAL (HPC-CMIR-2013-1) AND HARBOR MEDICAL ASSOCIATES (HPC-CMIR-2013-2)</p> <p>PURSUANT TO M.G.L. c. 6D, § 13</p> <p>FINAL REPORT FEBRUARY 19, 2014</p>	 <p>COMMONWEALTH OF MASSACHUSETTS HEALTH POLICY COMMISSION</p> <p>REVIEW OF PARTNERS HEALTHCARE SYSTEM'S PROPOSED ACQUISITIONS OF SOUTH SHORE HOSPITAL (HPC-CMIR-2013-1) AND HARBOR MEDICAL ASSOCIATES (HPC-CMIR-2013-2)</p> <p>PURSUANT TO M.G.L. c. 6D, § 13</p> <p>FINAL REPORT FEBRUARY 19, 2014</p>	 <p>COMMONWEALTH OF MASSACHUSETTS HEALTH POLICY COMMISSION</p> <p>REVIEW OF LAHEY HEALTH SYSTEM'S PROPOSED ACQUISITION OF WINCHESTER HOSPITAL (HPC-CMIR-2013-3)</p> <p>PURSUANT TO M.G.L. c. 6D, § 13</p> <p>FINAL REPORT MAY 22, 2014</p>	 <p>COMMONWEALTH OF MASSACHUSETTS HEALTH POLICY COMMISSION</p> <p>REVIEW OF PARTNERS HEALTHCARE SYSTEM'S PROPOSED ACQUISITION OF HALLMARK HEALTH CORPORATION (HPC-CMIR-2013-4)</p> <p>PURSUANT TO M.G.L. c. 6D, § 13</p> <p>FINAL REPORT SEPTEMBER 3, 2014</p>
--	--	--	--

Two Court Submissions Regarding Proposed Expansion by Partners HealthCare System

 **The Commonwealth of Massachusetts Health Policy Commission**
2 Boulevard Street, 6th Floor
Boston, Massachusetts 02114
(617) 879-1400

Stewart H. Aitman
Clerk

October 21, 2014

Enrico M. Stizz
Executive Director

The Honorable Janet L. Sankin
on Andrew DeWitt
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Re: *Commonwealth of Massachusetts v. Partners HealthCare System, Inc., South Shore Health and Educational Corp., and Harbor Medical Corp.*, Superior Court Civil Action No. 14-2013-BL3.

Dear Judge Sankin:


As a Chair of the Health Policy Commission (HPC), I submit this comment regarding the parties' September 25, 2014 filing with the court. Through information submitted to the court on July 17 and September 4, 2014, the HPC has sought to provide important factual context for the court's and parties' ongoing consideration of the parties' proposed Consent Judgment. I now submit this further comment for the limited purpose of clarifying those materials already provided to the court.¹

As set forth in Chapter 22A of the Acts of 2012 (Chapter 22A) and further described in our reports, the Commonwealth's newly established Cost and Market Impact Review (CMIR) are intended to provide for public assessment of a broad spectrum of potential impacts from health care market changes, ranging from changes in cost, quality, and market performance to impacts on the availability and accessibility of services.² This broad, prospective review is consistent with the Commission's mission.

¹ Unless as a part stated by the parties' filing, should describe and be defined in a legal agreement or judgment, and such point. I direct the court to the HPC's submission on July 17, 2014 and September 4, 2014.

² Mass. Health Policy Commission, Review of Partners HealthCare System's Proposed Acquisition of South Shore Hospital (HPC-CMIR-2013-1) and Harbor Medical Associates (HPC-CMIR-2013-2), Pursuant to M.G.L. c. 6D, § 13, Final Report at introduction, 3-4 (Feb. 19, 2014), available at <http://www.mass.gov/hpc/cmirs/2013-1-2-final-report>; Mass. Health Policy Commission, Review of Lahey Health System's Proposed Acquisition of Winchester Hospital (HPC-CMIR-2013-3), Pursuant to M.G.L. c. 6D, § 13, Final Report at introduction, 3-7 (May 22, 2014), available at <http://www.mass.gov/hpc/cmirs/2013-3-final-report>; Mass. Health Policy Commission, Review of Partners HealthCare System's Proposed Acquisition of Hallmark Health Corporation (HPC-CMIR-2013-4), Pursuant to M.G.L. c. 6D, § 13, Final Report at introduction, 3-7 (Sept. 3, 2014), available at <http://www.mass.gov/hpc/cmirs/2013-4-final-report>.

Chapter 22A sets forth a broad list of factors which the HPC may consider in a CMIR, including a provider's cost and market share, price, total medical expense, quality of services, provider costs, the availability and accessibility

 **The Commonwealth of Massachusetts Health Policy Commission**
2 Boulevard Street, 6th Floor
Boston, Massachusetts 02114
(617) 879-1400

Stewart H. Aitman
Clerk

October 21, 2014

Enrico M. Stizz
Executive Director

The Honorable Janet L. Sankin
on Andrew DeWitt
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Re: *Commonwealth of Massachusetts v. Partners HealthCare System, Inc., South Shore Health and Educational Corp., and Harbor Medical Corp.*, Superior Court Civil Action No. 14-2013-BL3.

Dear Judge Sankin:

As a Chair of the Health Policy Commission (HPC), I submit this comment regarding the parties' September 25, 2014 filing with the court. Through information submitted to the court on July 17 and September 4, 2014, the HPC has sought to provide important factual context for the court's and parties' ongoing consideration of the parties' proposed Consent Judgment. I now submit this further comment for the limited purpose of clarifying those materials already provided to the court.¹

As set forth in Chapter 22A of the Acts of 2012 (Chapter 22A) and further described in our reports, the Commonwealth's newly established Cost and Market Impact Review (CMIR) are intended to provide for public assessment of a broad spectrum of potential impacts from health care market changes, ranging from changes in cost, quality, and market performance to impacts on the availability and accessibility of services.² This broad, prospective review is consistent with the Commission's mission.

¹ Unless as a part stated by the parties' filing, should describe and be defined in a legal agreement or judgment, and such point. I direct the court to the HPC's submission on July 17, 2014 and September 4, 2014.

² Mass. Health Policy Commission, Review of Partners HealthCare System's Proposed Acquisition of South Shore Hospital (HPC-CMIR-2013-1) and Harbor Medical Associates (HPC-CMIR-2013-2), Pursuant to M.G.L. c. 6D, § 13, Final Report at introduction, 3-4 (Feb. 19, 2014), available at <http://www.mass.gov/hpc/cmirs/2013-1-2-final-report>; Mass. Health Policy Commission, Review of Lahey Health System's Proposed Acquisition of Winchester Hospital (HPC-CMIR-2013-3), Pursuant to M.G.L. c. 6D, § 13, Final Report at introduction, 3-7 (May 22, 2014), available at <http://www.mass.gov/hpc/cmirs/2013-3-final-report>; Mass. Health Policy Commission, Review of Partners HealthCare System's Proposed Acquisition of Hallmark Health Corporation (HPC-CMIR-2013-4), Pursuant to M.G.L. c. 6D, § 13, Final Report at introduction, 3-7 (Sept. 3, 2014), available at <http://www.mass.gov/hpc/cmirs/2013-4-final-report>.

Chapter 22A sets forth a broad list of factors which the HPC may consider in a CMIR, including a provider's cost and market share, price, total medical expense, quality of services, provider costs, the availability and accessibility



CONTINUED MONITORING OF COST DRIVERS: PRICE VARIATION PERSISTS

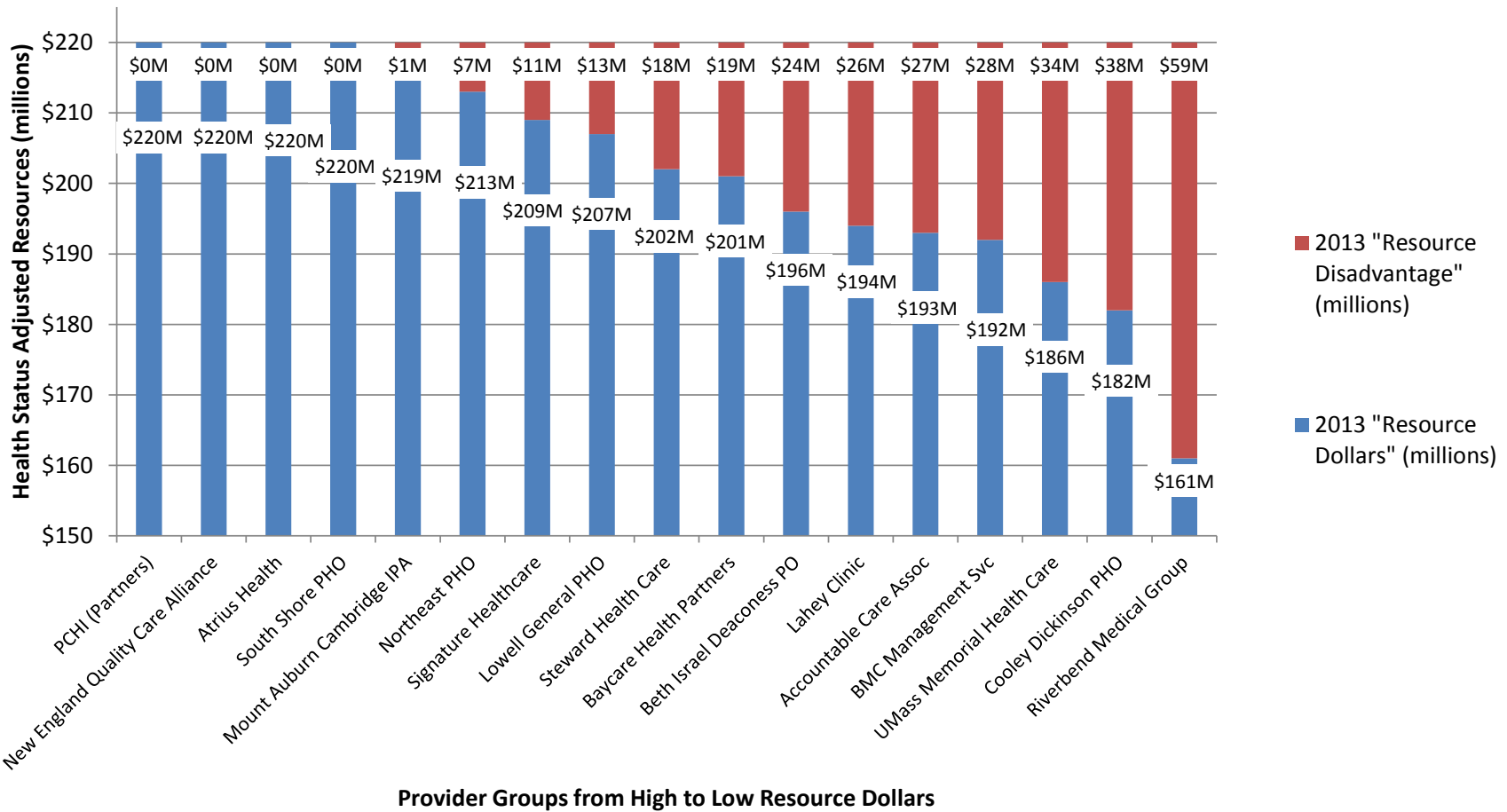
Change in Extent of Price Variation by Hospital Peer Cohort from 2010 to 2013

	AMCs		Teaching Hospitals		Community Non-DSH		Community DSH	
	% Variation in 2013	Change in Variation Since 2010	% Variation in 2013	Change in Variation Since 2010	% Variation in 2013	Change in Variation Since 2010	% Variation in 2013	Change in Variation Since 2010
BCBS	66%	None	58%	Slight Decrease	225%	Moderate Increase	107%	Slight Increase
HPHC	43%	None	94%	Moderate Decrease	107%	Slight Decrease	144%	None
THP	95%	None	77%	Slight Decrease	109%	Slight Decrease	129%	None



IMPACT OF PRICE VARIATION ON POPULATION HEALTH MANAGEMENT

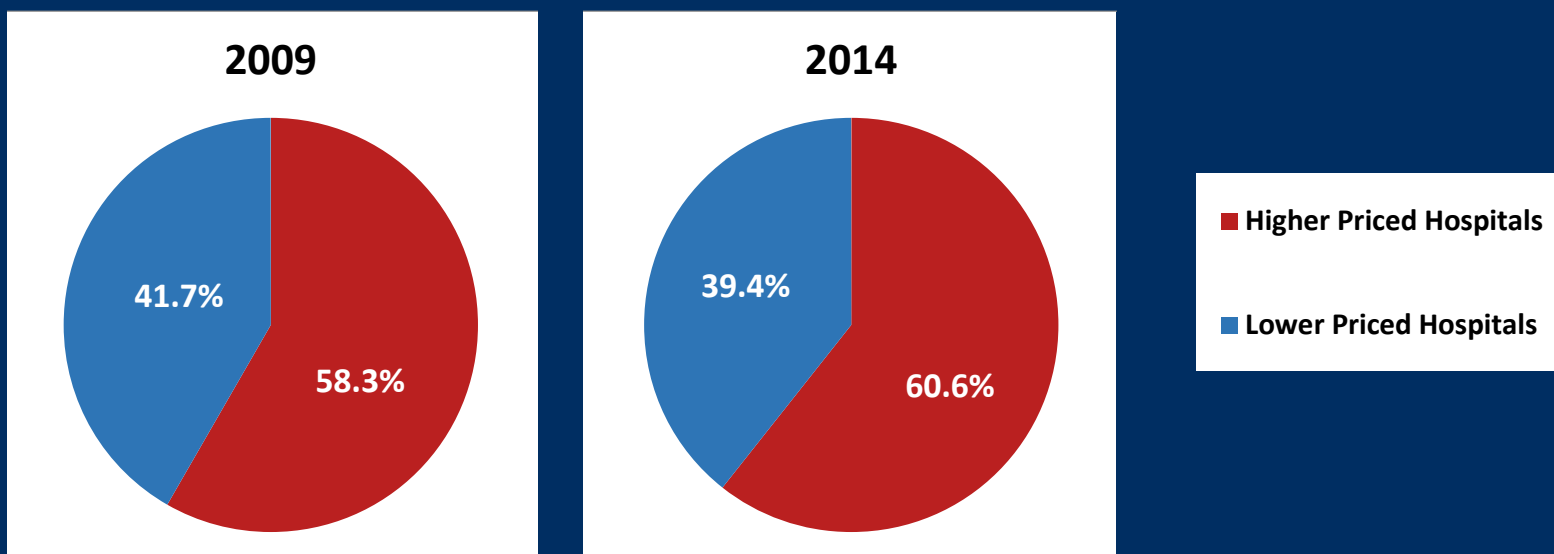
Variation in Provider Group Health Status Adjusted Resources Available to Care for HMO/POS Risk Patients under Risk Contracts for a Major Commercial Insurer (2013)





MORE HIGHLY PAID PROVIDERS CONTINUE TO DRAW GREATER PATIENT VOLUME

Share of Total Commercial Discharges in Massachusetts by Higher Priced and Lower Priced Hospitals



Notes:

1. Excludes discharges for normal newborns and specialty services not fully captured by available discharge data.
2. Higher priced hospitals defined as hospitals with above average prices (relative prices above 1.0) for the largest commercial insurer in 2013.
3. Hospitals without a relative price for 2009 or 2014 were excluded from this analysis.



MASSACHUSETTS RESOURCES

Attorney General's Market Examinations

- www.mass.gov/ago/docs/healthcare/2010-hcctd-full.pdf
- www.mass.gov/ago/docs/healthcare/2011-hcctd-full.pdf
- www.mass.gov/ago/docs/healthcare/2013-hcctd.pdf
- www.mass.gov/ago/docs/healthcare/cctcd5.pdf

Health Policy Commission Cost & Market Impact Reviews

- www.mass.gov/anf/budget-taxes-and-procurement/oversight-agencies/health-policy-commission/material-change-notices-cost-and-market-impact-reviews/hpc-cost-and-market-impact-reviews.html

Center for Health Information & Analysis Price Variation Reports

- www.chiamass.gov/relative-price-and-provider-price-variation

Massachusetts Health Care Cost Containment Legislation

- bluecrossmafoundation.org/chapter-288-acts-2010
- bluecrossmafoundation.org/publication/summary-chapter-224-acts-2012