

## COAKLEY SEEKS 'IMPACT REVIEW' OF PROVIDERS' MARKET CLOUT

By Kyle Cheney

STATE HOUSE, BOSTON, NOV. 18, 2011.....Hospitals and health care providers that dominate a substantial share of the health industry would be subject to a "market impact review" to ensure that their clout isn't hurting consumers, according to a plan outlined Friday by Attorney General Martha Coakley.

"Right now, there is no reporting mechanism in place to effectively monitor provider market size or clout," Coakley said during the annual meeting of the Massachusetts Association of Health Plans, according to a text of her prepared remarks. "When a provider does reach a certain level of market clout, it should trigger a market impact review to determine whether the provider's size is having a negative impact on consumer choice, access, or healthy market function."

In her speech, Coakley also laid out a framework for government intervention when "market efforts fail" to correct sharp variation in the price of health services that often exist from hospital to hospital but are not based on the quality of care provided or the outcome for patients.

"Starting in 2015, if the market has not corrected unwarranted price variation, the administration should be able to reject health plan contracts with excessive or inadequate provider price variations," she said.

Coakley also suggested that health insurers should be barred from paying providers rates that are excessively above or below their averages from a year earlier. Any savings as a result of these efforts should be directed to reducing premiums for consumers, she said, adding that government intervention should "sunset" once unwarranted price variation is eliminated.

Coakley's call for government intervention tracks closely with the recommendation of a special commission that issued a report earlier this month on price variation among hospitals, health centers and other providers. The Massachusetts Hospital Association rejected the commission's conclusion, arguing that market clout is being overvalued as a factor in the disparity of price variation and that much of it can be attributed to underpayment by government for Medicare and Medicaid services.

During her remarks, Coakley also suggested hospitals should provide patients with their maximum potential cost liability for their own care. "We are considering requirements that providers disclose the full amount that consumers could be liable to pay, so that patients know in advance what they are agreeing to."

Coakley's remarks add to a chorus of elected officials who have offered proposals and outlines for plans to reform the health care delivery system. So far, no legislative proposals have gathered momentum.

Gov. Deval Patrick has called for a system of "global payments" to hospitals and doctors to streamline care, incentivize healthy outcomes for patients and avoid unnecessary testing and duplication.

Patrick and Inspector General Gregory Sullivan have warned health care providers and insurers from preempting health care reform efforts by agreeing to long-term contracts with significant

price increases.

The pitfalls of pressuring to achieve price reduction were on full display this week when talks between Blue Cross Blue Shield of Massachusetts and Tufts Medical Center broke down in an acrimonious and public display of disagreement. Blue Cross notified its members that Tufts was preparing to cut the insurer out of its network, and Tufts responded by declaring that Blue Cross had walked away from the table, disrupting care for 200,000 patients.

The parties issued a joint statement Thursday afternoon to suggest they had gotten past the animus and will seek agreement with the help of a mediator.

"Tufts Medical Center, its community physician network and Blue Cross Blue Shield of Massachusetts are committed to reaching agreement on a new contract," the companies wrote. "Leadership of the organizations have spoken today and agreed to continue discussions and use a third party during this process. Both organizations are dedicated to negotiating a contract that ensures our members and patients can continue their relationships with their doctors and their health plan."

Senate President Therese Murray and House Speaker Robert DeLeo have both identified health care payment reform as a 2012 priority.

"That's not an easy fix. That's a very difficult issue to deal with and David Seltz from my office is our health care policy person. Most of the staff continue to work on that," she said.

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**Boston** Business Journal

## **Coakley: "Set the stage" for govt intervention against large health care providers**

**Boston Business Journal by Julie M. Donnelly, Reporter**

Date: Friday, November 18, 2011, 2:52pm EST

Attorney General Martha Coakley is calling for a trio of new regulatory actions designed to rein in hospital costs. Coakley is recommending that health care provider groups receive an automatic market power review once they reach a certain size, either from the Department of Public Health or another agency, to make sure their girth is not impeding choice, access or market function.

She is also recommending that hospitals be required to disclose the prices for health care procedures to patients, so they aren't unexpectedly hit with big bills. Finally, she is advocating for the state to have the power to reject health care provider contracts that are deemed "excessive."

Coakley made the comments at the annual meeting of the Massachusetts Association of Health Plans, where she served as the keynote speaker for the second year in a row. Health insurers often quote the Attorney General's two hospital pricing reports over the past two years, which found that market power, not quality, was the deciding factor in which hospitals commanded the highest reimbursement rates. Coakley's report led a state panel to recommend health care price controls, last week.

Coakley said that since those reports were issued, some positive changes have been taking place in the market. But, she said, "if those efforts fail, then we need to set the stage for limited and temporary government intervention to bring the market into alignment and reduce costs."

Coakley said that state regulators should have the authority to reject excessive or inadequate hospital prices that depart from a certain band - say 20 percent above or below the average reimbursement rates offered by a health plan. She is recommending these price controls begin in 2015 and sunset in 2018 or 2019.

The attorney general also said a lack of transparency about health care costs is causing pain for consumers, who are unaware of their share of costs and are unable to pay their bills. She said that Massachusetts health care is a little like an open bar, where no one worries about the prices, "But then, it's as if two weeks later, the groom's father calls you and says you had five of these and three of those, and you have to pay for it."

## The Boston Globe

# Mass AG offers plan to rein in health costs

November 19, 2011|Associated Press

Attorney General Martha Coakley says state government should have the power to temporarily intervene if health care providers are unable to bring down costs on their own.

Coakley outlined a plan Friday to address what she called a "dysfunctional" health care market in which costs are driven by the relative market clout of providers and not by the quality or value of the care.

Under the plan, large providers would be subject to an automatic market impact review and would have until 2015 to correct "unwarranted price variations." If they are unable to do so, the state could then step in and reject contracts with health plans.



# Coakley offers plan to rein in health costs

By Associated Press, Friday, November 18, 2011

Attorney General Martha Coakley says state government should have the power to temporarily intervene if health care providers are unable to bring down costs on their own.

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Under the plan, large providers would be subject to an automatic market impact review and would have until 2015 to correct "unwarranted price variations." If they are unable to do so, the state could then step in and reject contracts with health plans.

The attorney general said she wasn't convinced the market could correct itself on its own.

Coakley spoke at the annual conference of the Massachusetts Association of Health Plans.



## Coakley Calls For Patient Cost Estimates, 'Clout' Limit, Possible 2015 Caps

November 18, 2011 | 1:36 PM | By [Carey Goldberg](#)

Massachusetts Attorney General Martha Coakley broaches three new tactics — or “pillars,” as she puts it — for containing the state’s health costs in her speech today to the Massachusetts Association of Health Plans. A long swath of the prepared text follows, but here are three key quotes:

- “We are considering requirements that providers disclose the full amount that consumers could be liable to pay, so that patients know in advance what they are agreeing to.”
- “When a provider does reach a certain level of market clout, it should trigger a market impact review to determine whether the provider’s size is having a negative impact on consumer choice, access, or healthy market function.”
- “Starting in 2015, if the market has not corrected unwarranted price variation, the administration should be able to reject health plan contracts with excessive or inadequate provider price variations. Health plans should be prohibited from paying provider rates that differ beyond a certain band. One example would be 20% above or 20% below the plan’s average price for the previous year. Any

savings would then be directed to consumers in the form of lower premiums. Finally, I believe we should make this market intervention temporary.”

WBUR’s Martha Bebinger is at the MAHP conference and will be gathering reaction. Please stay tuned, and your opinions are deeply welcome in the comments below. Now for the text, with deep thanks to the Coakley staff for the camera-ready copy:

“...One of the most significant ways our office has been engaged in cost containment is through the two examinations we have done on the cost drivers of health care.

You heard from our Health Care team this morning about the results of those examinations, including the data we analyzed and the cost drivers we identified.

If you remember, last year I discussed many of those findings with you as well.

We explained that a shift to global payments is certainly not a panacea because it ignores the “flawed foundation” of the dysfunctional health care market.

That dysfunction is a market where costs are not based on value or quality, but on the market leverage of providers.

Today I’d like to offer some specific solutions to address that dysfunction – three “pillars” to shore up that foundation and reduce costs.

Those solutions include providing greater transparency and what I call “consumer health care literacy,” ensuring a competitive marketplace, and fixing unwarranted price variation.

### **Greater transparency for consumers**

The first fundamental pillar is providing more transparency and health care literacy for consumers.

Consumers are feeling the impact of rising health care prices without necessarily having more choices or control over those costs.

Patients are responsible for co-insurance and deductibles, and as health care costs rise, more and more of that cost is being borne by patients.

Consumers who find themselves in medical debt face adverse credit ratings, home foreclosures, and even bankruptcy – and incredible stress.

For example, our office receives complaints from consumers who asked how much a medical service would cost, and were told “not to worry about it.” But then when their insurance companies didn’t cover those costs – they are stuck with a huge bill, they are unprepared for it and I can tell you they are angry.

“The hospital staff informed her that they could arrange for an ambulance to transport home, which she agreed to do. Only two weeks later she received a bill for more than \$2000.”

We had one consumer contact us because she had completed a non-emergency medical procedure and needed transportation home. The hospital staff informed her that they could arrange for an ambulance to transport home, which she agreed to do. Only two weeks later she received a bill for more than \$2000.

When consumers go to buy a car, for instance, they can shop for the lowest price at the quality they want. When they go to repair a car, they can even get estimates from mechanics before they authorize the repair.

In the same way, consumers need information about their health costs so they can make decisions about the most cost-effective choices.

So, how do we improve that health care literacy?

We are considering requirements that providers disclose the full amount that consumers could be liable to pay, so that patients know in advance what they are agreeing to.

For example, patients are often required to sign a form indicating that they are liable for any amount not paid for by their insurance, but they don't get any information, or even an estimate, of the cost of that care. That should change.

Obviously, there are many complicated issues that must be addressed. Not all services can be scheduled or quoted in advance.

But starting to provide consumers with this information is a critical component of cost containment, and we look forward to your input on the best way to do this.

### **Ensuring a more effective, competitive marketplace**

The second pillar to shoring up this foundation is ensuring a more effective and competitive marketplace.

In addition to giving consumers better information, we need to make sure they have competitive options for care delivery.

Providers in the market are consolidating, merging, and affiliating at an increased rate. With increased focus on payment and delivery system reform, we should anticipate even more consolidation in the future.

But how big is too big? The Governor's Bill and other proposals look to our Office to monitor market consolidation. But this is insufficient in a number of ways.

First, the current legal standards impose limits for involvement by our anti-trust or public charities divisions.

Action that may not be in the interest of an effective marketplace may not rise to the level of a law enforcement violation.

Second, our law enforcement tools to address these situations are often insufficient.

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To use a health care reference, there are many circumstances when a scalpel may be most effective but our office usually only has blunt instruments at our disposal.

To put it another way, if all you have is a hammer, every problem looks like a nail.

We believe a better mechanism should be in place. One that better tracks data about market consolidation to identify problems early and then is able to act on that data short of involvement by law enforcement. Right now, there is no reporting mechanism in place to effectively monitor provider market size or clout.

There should be an administrative review process in place in which updated information is provided to a regulatory agency – DPH is a possible example or maybe something new.

When a provider does reach a certain level of market clout, it should trigger a market impact review to determine whether the provider's size is having a negative impact on consumer choice, access, or healthy market function.

The agency must then have authority to restrict certain types of provider activity to protect consumers and the market. We will continue to play our traditional role of the consumer advocate in this administrative review process.

Now, I may be one of the first public officials who is not asking for more authority for my office! But I believe it is much more effective for all parties to have an agency that monitors these market forces and can act short of a lawsuit. I believe that agency must also be transparent with its goals and actions.

Of course we are and will be ready to intervene and bring independent enforcement actions when appropriate. We're not going away!

### **A balanced approach to addressing price disparities**

These improvements are crucial, but they are unlikely to fully address the market dysfunction. We still need to address this entrenched dysfunction in order to create a level playing field for competition.

There are some who say the market can correct on its own. There are others – including many of you in this room – who say it can't.

We believe that the market should be given a chance to correct itself. But it will be trust but verify.

We believe that the market should be given a chance to correct itself. But it will be trust but verify.

If those market efforts fail, then we need to set the stage for limited and temporary government intervention to bring the market into alignment and reduce costs. Here's how.

First, we already have rules in place prohibiting excessive or unreasonable health plan premiums. We need to have similar rules for health care providers.

The administration should have specific authority to ensure that provider contract rates are not unreasonable – neither excessive nor inadequate.

We then should give the market a chance to correct the unwarranted price variations, but set reasonable and firm markers to guide market corrections over the next few years.

Starting in 2015, if the market has not corrected unwarranted price variation, the administration should be able to reject health plan contracts with excessive or inadequate provider price variations.

Health plans should be prohibited from paying provider rates that differ beyond a certain band. One example would be 20% above or 20% below the plan's average price for the previous year.

Any savings would then be directed to consumers in the form of lower premiums.

Finally, I believe we should make this market intervention temporary.

We should include a “sunset provision” to re-evaluate this system and determine whether this regulatory mechanism should be continued in 2018 or 2019.

### **Moving Forward on Cost Containment: Working Together**

We believe these ideas are necessary, but today they are just ideas. Ultimately, they need to become tangible solutions.

We also recognize that other ideas should be on the table – such as solvency review for at-risk providers, additional consumer protections, and maintaining momentum on transparency and standardization.

We want to work with the administration, legislature, health plans and providers – all of you – to discuss these ideas and put the best solutions forward.

And if people don’t like these ideas, then I’d love to hear their alternatives.

But the one thing we can’t accept is to do nothing.

MAHP and its members have been engaged in this conversation and you have brought important principles to guide the discussion.

We’re lucky that we have a lot of people in the “marketplace of ideas” working on these issues.

That’s why I’m confident that we can get this right – and then everyone in the Commonwealth, and the Commonwealth itself, is going to benefit.

Thank you.”