

May 27, 2020

The Honorable Anthony Portantino  
Chair, Senate Appropriations Committee  
State Capitol, Room 2206  
Sacramento, CA 95814

Dear Senator Portantino:

On behalf of the more than 50,000 members of the California Medical Association (CMA), we regretfully must oppose SB 977 (Monning), which is an overbroad approach to health care consolidation that would burden already struggling physician practices during the current pandemic, and economic, crises.

The bill creates vast new jurisdiction and responsibilities for the California Attorney General's office that will further burden the state's budget as well. The office will need to increase staff and establish a new administrative process to monitor the thousands of affiliations, partnerships, joint ventures, mergers, and strategic alliances involving physician practices, clinics, ambulatory surgery centers, and hospitals in our very large and complex health care system. The scale of this undertaking by the Attorney General will not be absorbable with existing resources, and recoveries from litigation penalties are speculative. Any application fees the AG may be able to levy will be limited in scope and inadequate to cover the costs of the broad mandate imposed by this bill.

CMA supports governmental actions designed to assure hospital market competition and quality of care, including the authority to disapprove hospital mergers and acquisitions whenever such transactions are expected to have negative consequences on affordability and/or quality of care. However, this legislation would subject a vast array of healthcare transactions - including leasing and other contracting arrangements - to scrutiny. Pursuing this particular legislation as written during the current COVID-19 public health emergency would only further restrict the additional flexibility and resources physician practices desperately need simply to keep their doors open and provide vital care to patients right now. As physician practices ceased providing elective and/or non-emergent services, immediately CMA began to hear from care settings of various sizes making real time decisions to conduct staff layoffs and/or

reduce capacity in order to remain viable. In a member survey, 95% of practices replied that they are worried about their practice's financial health, and 73% replied that they have experienced challenges with loan processes. Therefore, during this time where CMA is trying to avail these practices with additional resources and lessen existing administrative burdens, legislation that would broadly restrict and delay transactions that could help maintain the existing provider network in California could have severe unintended consequences limiting access to care.

While CMA supports hospital acquisition and merger oversight, this framework captures a vast number of transactions under the existing definitions of acquisition and affiliation that include those undertaken by individual physicians and health care facilities, including small practices and clinics, such as existing agreements with medical groups that come up for renewal or renegotiation. We fear this approach will only further force smaller providers out of business, especially at this time when California must focus on preserving the current condition of the health care delivery system in order to meet pent-up post COVID-19 demand, while still working through the current state of emergency. The author has attempted to mitigate these concerns by creating a default process for transactions under \$500,000, but this very low threshold will have little impact while still requiring AG review and, thus, activities for which there is no funding. The bill still attaches a new and uncertain process to the list of financial and administrative hurdles our physicians and smaller practices are facing. It is important to highlight the economic impact of the pandemic when reviewing this legislation because it underscores a significant access to care crisis that is on the horizon.

The bill does not include due process protections or a right to meaningfully appeal the decisions being made, raising significant concerns as well. The burden is on all health care providers and all health care facilities to meet the standard of proof, with no right to a hearing or evidentiary standard to create a record for appeal. The bill states that the AG must deny any transaction between health care systems (i.e., hospitals in different counties) and any "facility or provider" if the parties fail to prove that transaction is substantially likely to result in "clinical integration" or increase availability and access to services to underserved populations. This leaves out many other deals that may be desirable, for instance increasing access for populations that do not fit their current definition of "underserved" and transactions that preserve access to care rather than increasing it. This can happen when a medical practice cannot survive financially on its own. It also does not allow for approval if quality is improved but there is no clinical integration. As written, the AG will have no discretion but to deny the transaction. In addition, the AG also may deny consent even if the parties show clinical integration or increase access to underserved populations, if the AG finds broadly defined anticompetitive effects.

Again, CMA appreciates and understands the impetus for this legislation. We stand ready to work with the author and sponsors on creating a workable framework for limiting harmful health care consolidation in the state. However, during this time of public and financial health crisis, and with the aforementioned concerns, we must respectfully ask that this bill not move forward at this time.

Thank you in advance for your consideration of our oppose position. If you have any questions, please do not hesitate to contact our office at (916) 444-5532.

Sincerely,



Amy Durbin  
Legislative Advocate  
Center for Government Relations  
California Medical Association

cc: The Honorable Bill Monning  
The Honorable Members of Senate Appropriations Committee  
Samantha Lui, Consultant, Senate Appropriations Committee  
Joe Parra, Consultant, Senate Republican Caucus