



## **States Are Now Moving to Intervene in Hospital Pricing Battles** (and billionaires are helping to finance the efforts against hospitals)

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### **The Anti-Hospital Narrative Moves to the States**

For the first time in my nearly four decades of health policy and advocacy work, a wide variety of powerful interests are lining up against hospital and health systems at the federal *and* state levels. The anti-hospital narrative is growing stronger in Washington and across the United States. (Click [here](#) for a recent news article “Hospital Purgatory” discussing this new anti-hospital narrative.)

*This memo is meant to be a summary and is not an exhaustive list of all actions underway. It underscores the need for hospitals and health systems to work together to promote a new national narrative.*

As you know from our previous reports, there are at least three billionaires who are actively working to smear the reputation of hospitals in an effort to drive down prices. While there are anti-hospital bills being introduced in many state legislatures, three states stand out today: Indiana, Colorado and Texas.

### **The Attack in Indiana**

There are a number of bills attacking not-for-profit hospitals in Indiana; however, the most punitive effort designed to force hospitals to lower their prices across the board is HB 1004 (click [here](#)). Among its many egregious provisions is the following:

...if a nonprofit hospital charged amounts for health care services that exceeded 260% of the federal Medicare reimbursement rate, the department shall assess a penalty against the hospital. Specifies the calculation of the penalty amount. Provides that revenue collected from the penalty shall be deposited in the state general fund and may be used to pay the state's share of the cost of Medicaid services provided under the federal Medicaid program.

We now have evidence that at least one billionaire (John Arnold, founder of Arnold Ventures) is helping to finance the anti-hospital effort in Indiana. The Employers Forum of Indiana is urging the state legislature to pass several anti-hospital bills. Arnold’s grants to the Employers Forum of Indiana of just over \$800,000 were initiated in 2021 and will be complete in 2024. (Click [here](#) to see details.) To see their complete agenda for the 2023 Indiana Legislative session, click [here](#).

Don’t forget, Indiana is a very Republican state (home of former VP Mike Pence) and usually opposes government intervention into the marketplace.

### **Colorado Governor, Medicaid Director Roast Not-for-Profit Hospitals**

In a state where Democrats have super majorities in the House and Senate, and a very activist Democratic governor, maybe it comes as no surprise to see state government actively intervening in the marketplace. (This is also happening in very blue Oregon, California and Washington State.)

However, the vitriol against hospitals in Colorado is jarring. Click [here](#) for the detailed attack against hospital “profits and reserves.” As a result of their findings, the Department of Health Care Policy &

Financing produced a series of recommendations to the state’s General Assembly that would direct the use of hospitals’ community investment dollars and require that all “profits earned by Colorado hospitals remain in Colorado,” and that all hospital reserves remain in Colorado. (Click [here](#) for the report. See pages 9 and 10 for the recommendations).

Colorado hospitals are now awaiting the introduction of legislation.

### **Top Texas Lawmakers Intervening to Restrict Hospital Business Practices**

Senior members of the state legislature are pushing at least two anti-hospital measures (click [here](#) for HB 711 and [here](#) for HB 633). HB 711 would prohibit providers from including in contracts “all-or-nothing, anti-steering, anti-tiering, gag or most-favored nation” provisions. HB 633 would cap a hospital or doctor’s prompt payment rate at the lowest contracted rate it has with an insurer, typically the Medicaid contracted rate. There is currently no rate setting for health care in Texas. Both bills are sponsored by Rep. James Frank, the chairman of the Human Services Committee. *Note that billionaire John Arnold is from Texas.*

### **Anti-Hospital Actions in other States**

Other Texas entities, including another billionaire, are deeply involved in promoting legislation to create a model hospital price transparency policy and pushes hospitals into “greater compliance” with existing federal requirements. The supporting organizations include billionaire Cynthia Fischer’s Patient Rights Advocate group, Texas State Rep. Dr. Tom Oliverson and the Texas Public Policy Foundation.

- Their legislation ([HB 2427](#)) is currently moving through the Virginia House. A hospital failing to comply would be prohibited from pursuing collection actions against patients.
- New Hampshire’s bill ([HB 389](#)) is similar to Virginia’s proposed legislation and creates consumer protections for patients who receive services at non-compliant hospitals. The bill states that “A patient or patient guarantor is not responsible for the cost of items or services provided to the patient by the hospital if the hospital was not in material compliance with hospital price transparency laws on a date on or after the effective date of this section that items or services were purchased on or provided to the patient.”

California and New Mexico are headed in similar directions with the establishment of state government commissions designed to put a serious damper on hospital prices. In the 2022 session, California enacted legislation to create the state's healthcare cost commission, the Office of Healthcare Affordability (OHCA). OHCA is authorized to analyze the health care market for cost trends and drivers of spending and set and enforce cost-growth benchmarks for the state. In New Mexico, legislation ([SB 290](#)) has just been introduced to analyze health care cost drivers, analyze the feasibility of applying to the New Mexico health care system methods developed by other states and countries for managing those cost drivers and report findings.

### **Important Developments**

The bills and initiatives are being pushed by legislative leaders – not fringe politicians.

Employers are now breaking their decades-long relationships with hospitals.

There is a half-dozen think tanks/policy organizations – some financed by wealthy individuals – that are producing “model” legislation attacking hospitals and is being distributed to state legislature nationwide. Here are two, as examples:

- [The National Academy for State Health Policy](#)  
(funded, in part, by Arnold Ventures)
- [American Legislative Exchange Council - ALEC](#)

### **Anti-Hospital Legislation in Congress**

US Representative Warren Davidson (R-OH) is out with the first anti-hospital bill ([HR 410](#)) that codifies and expands current hospital price transparency regulations.

A Republican U.S. Representative Victoria Spartz quietly introduced a number of bills last year that were all targeting hospitals. She is from Indiana...and she is now in the majority. These bills have not yet been reintroduced into the new Congress.

(Note that the some of the bills in state legislatures are similar.)

[H.R. 9080](#), Non-Profit Hospital Tax Exemption Transparency Act, to establish new community benefit standards for non-profit hospitals.

[H.R. 8185](#), Addressing Anti-Competitive Contracting Clauses Act, to require a GAO study on effects of anti-competitive contracting clauses between insurers and hospitals.

[H.R. 8129](#), Oversight of Anti-Competitive Behavior of Non-Profit Hospitals Act, to give the FTC enforcement authority over certain tax-exempt, hospital or cooperative hospital service organizations.

[H.R. 9510](#), Stop Anti-Competitive Healthcare Act of 2022, to make hospital organizations and cooperative hospital service organizations subject to the law relating to unfair methods of competition.

### **What Can We Do?**

- First, we need to share what is happening. If your state is pursuing anti-hospital legislation – especially if it is supported by committee chairs or leadership – please forward a copy and summary to us. We will begin a tracking and sharing effort.
- Second, we need to work together on a sophisticated hospital messaging initiative that turns the narrative. We will have more on this soon.
- Third, we can't pretend that hospitals hold the same reputational position in the eyes of public policy makers as they once did. We were heroes during the pandemic. Today, we are not.

We will provide regular updates to all this. If you would like to discuss this further, don't hesitate to contact me directly.

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