



# Sutter Health has its day in court

BY JENNY GOLD / Kaiser Health News

**SAN FRANCISCO—Economists and researchers** long have blamed the high cost of health care in Northern California on the giant medical systems that have gobbled up hospitals and physician practices—most notably Sutter Health, a nonprofit chain with 24 hospitals, 34 surgery centers and 5,000 physicians across the region.

Now, those arguments will have their day in court: A long-awaited class-action lawsuit against Sutter is set to open Monday, Sept. 23 in San Francisco Superior Court.

The hospital giant, with \$13 billion in operating revenue in 2018, stands accused of violating California's antitrust laws by leveraging its market power to drive out competition and overcharge patients. Health care costs in Northern California, where Sutter is dominant, are 20% to 30% higher than in Southern California, even after adjusting for cost of living, according to a 2018 study from the Nicholas C. Petris Center at the University of California-Berkeley cited in the complaint.

The case was initiated in 2014 by self-funded employers and union trusts that pay for worker health care. It since has been joined with a similar case brought last year by California Attorney General Xavier Becerra. The plaintiffs seek as much as \$900 million in damages for overpayments that they attribute to Sutter; under California's antitrust law, the award can be tripled, leaving Sutter liable for as much as \$2.7 billion.

The case is being followed closely by industry leaders and academics alike.

"This case could be huge. It could be existential," said Glenn Melnick, a health care economist at the University of Southern California. If the case is successful, he predicted, health care prices could drop significantly in Northern California. It also could have a "chilling effect" nationally for large health systems that have adopted similar negotiating tactics, he said.

"We feel very confident," said Richard Grossman, lead counsel for the plaintiffs. "Sutter has been able to elevate their prices above market to the tune of many hundreds of millions of dollars."

Sutter vigorously denies the allegations, saying its large, integrated health system offers tangible benefits for patients, including

more consistent high-quality care. Sutter also disputes that its prices are higher than other major health care providers in California, saying its internal analyses tell a different story.

"While insurance companies want to sell narrow networks to employers, integrated networks like Sutter's benefit patient care and experience, which leads to greater patient choice and reduces surprise out-of-network bills to our patients," spokeswoman Amy Thoma Tan wrote in an emailed statement.

There's no dispute that for years Sutter has worked aggressively to buy up hospitals and doctor practices in communities throughout Northern California. At issue in the case is how it has used that market dominance.

According to the lawsuit, Sutter has exploited its market power by using an "all-or-none" approach to contracting with insurance companies. If an insurer wants to include any one of the Sutter hospitals or clinics in its network, it must include all of them. "All-or-none" contracting allows hospital systems to demand higher prices from an insurer with little choice but to acquiesce, even if it might be cheaper to exclude some of the system's hospitals that are more expensive than a competitor's. Those higher prices trickle down to consumers in the form of higher premiums.

The California Hospital Association contends such negotiations are crucial for hospitals struggling financially. "It can be a great benefit to small hospitals and rural hospitals that don't have a lot of bargaining power to have a larger group that can negotiate on their behalf," said Jackie Garman, the CHA's legal counsel.

California legislators have attempted to limit the "all or nothing" contracting terms several times, but the legislation has stalled amid opposition from the hospital industry.

Now the courts will weigh in. □

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