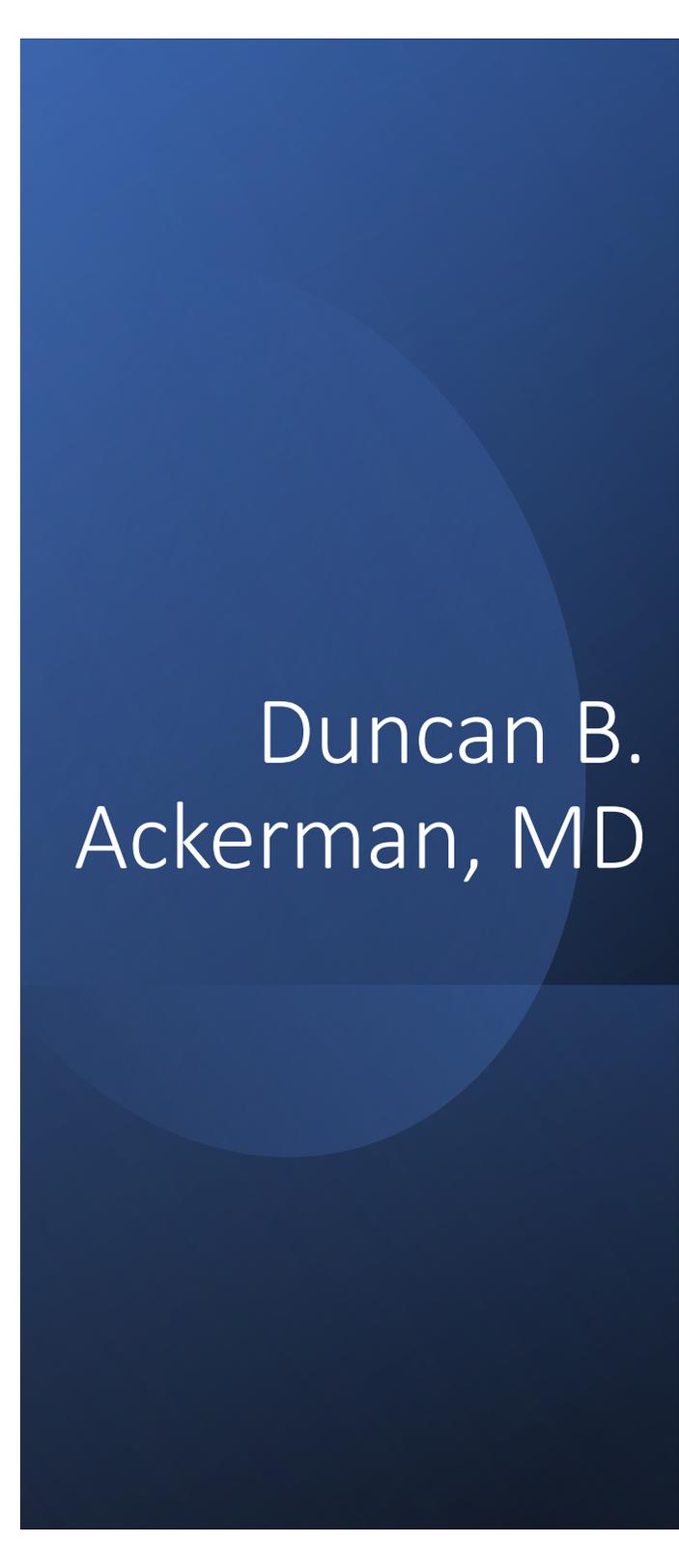


HB 1416 Patient Choice

- House Human Services Committee
- February 6th, 2023

North Dakotans for Open Access Healthcare

Duncan B. Ackerman, MD



Duncan B. Ackerman, MD

- Born and raised in Minot, North Dakota
- Graduate from Minot High School
- Undergraduate education -- Concordia College Moorhead, MN
- Medical School -- University of North Dakota School of Medicine and Health Sciences
- Orthopedic Surgery residency -- Mayo Clinic Rochester, MN
- Hand and Microvascular Surgery Fellowship -- Mayo Clinic Rochester, MN
- Partner at The Bone & Joint Center Bismarck, ND
- Partner at Bismarck Surgical Associates Bismarck, ND

HB 1416

- The genesis of the bill is patient choice of health care provider
- HB 1416 allows patients to choose the providers they know and trust
- Our rural state, our small resident population, and our small population of health care providers makes insurance plans with ZERO out-of-network coverage difficult on consumers

HB 1416 History

- 2021 Legislative Session similar bill – HB 1465
- HB 1465
 - DO PASS out of Human Services Committee. Passed House Floor.
 - Was converted to study after significant debate in the Senate Human Services Committee. Passed as a study on the floor

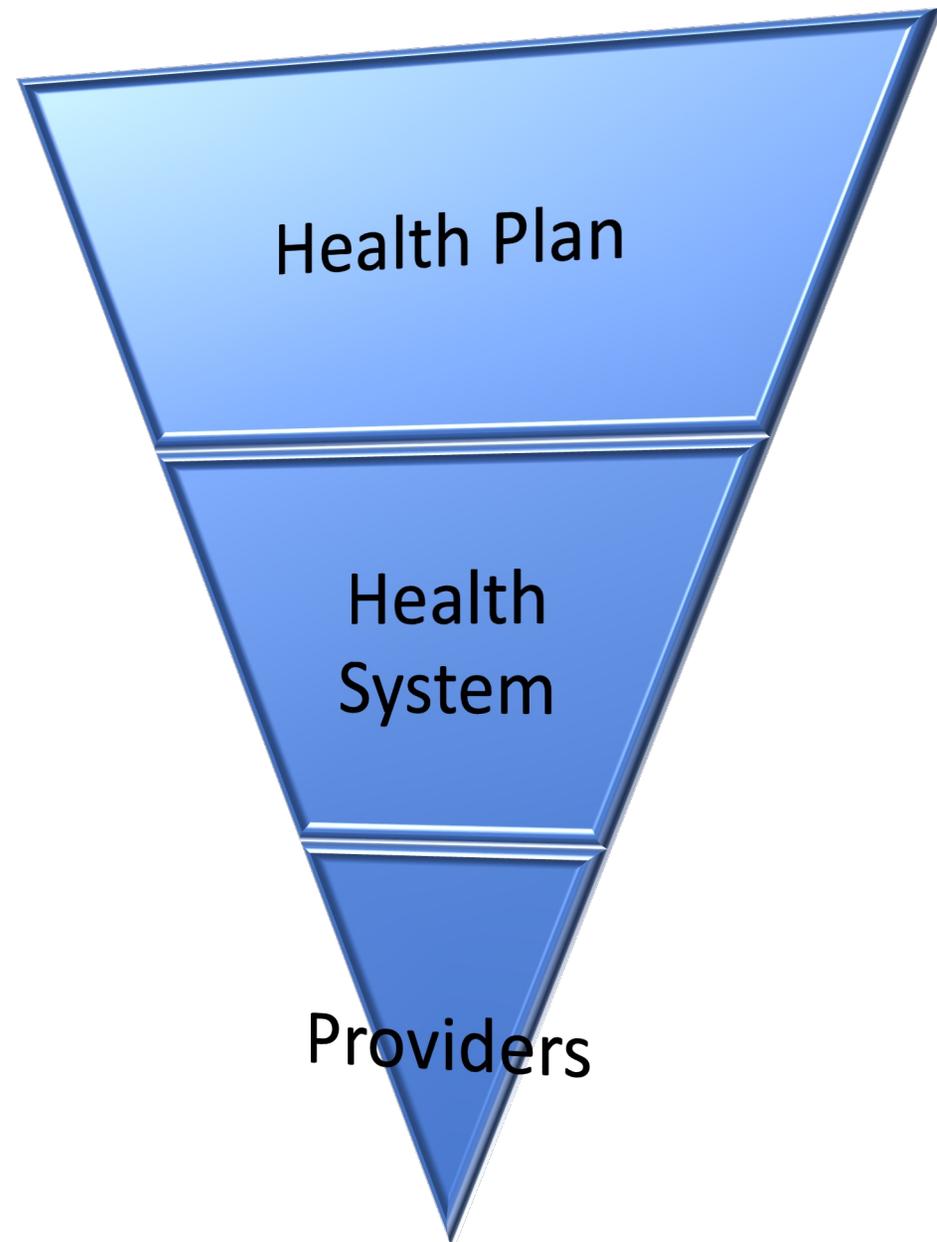
What did
we learn?

- Significant discussions:
 - Patients
 - Providers
 - Independent Critical Access Hospitals
 - Independent medical practices
 - Independent medical facilities
 - Medical Associations
 - Insurance carriers

What did
we learn?

- We learned the common concern was the Vertically Integrated Healthcare Delivery Network in North Dakota
- Vertically Integrated Network (VIN)

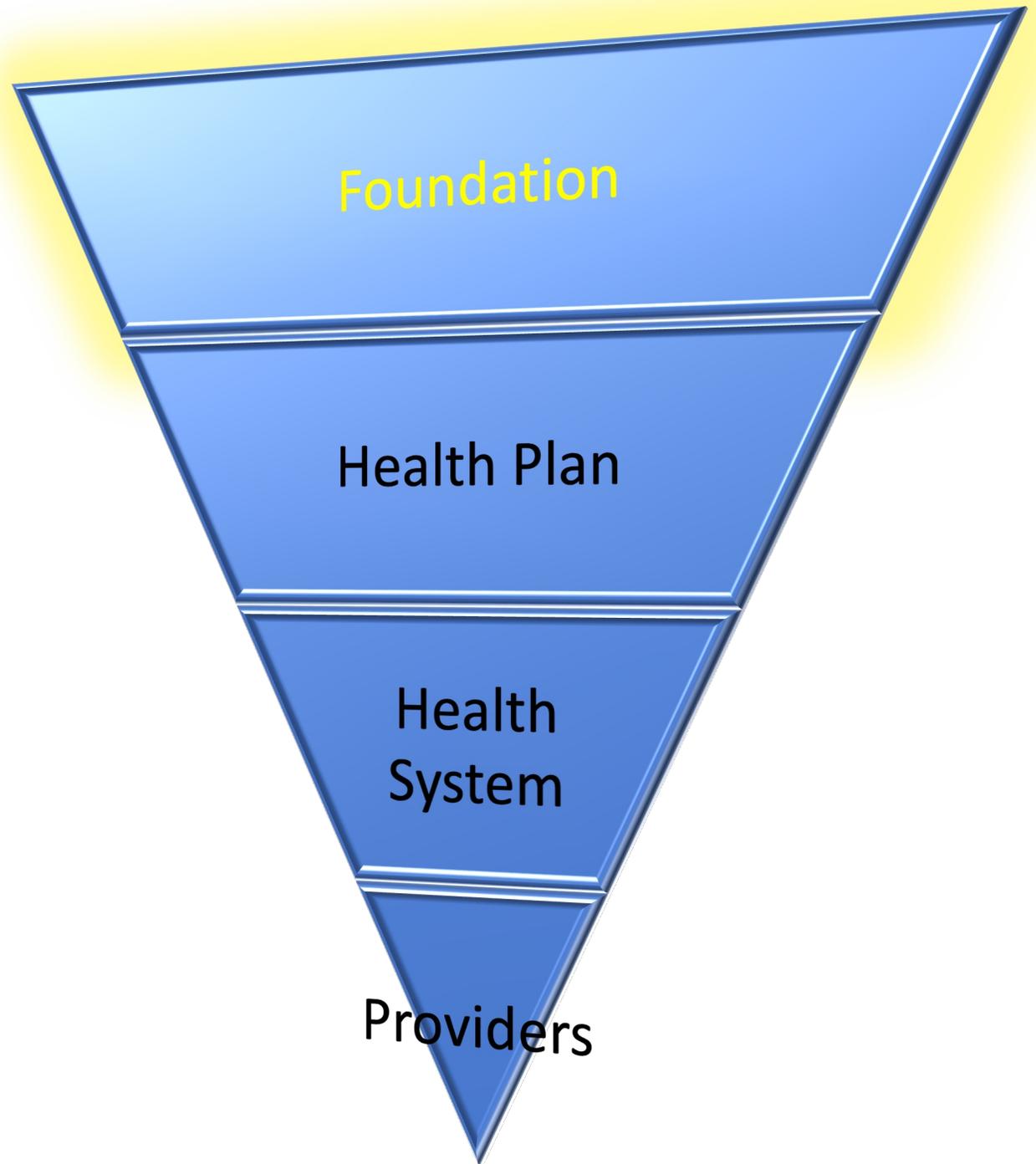
What is a
Vertically
Integrated
Network
(VIN)?



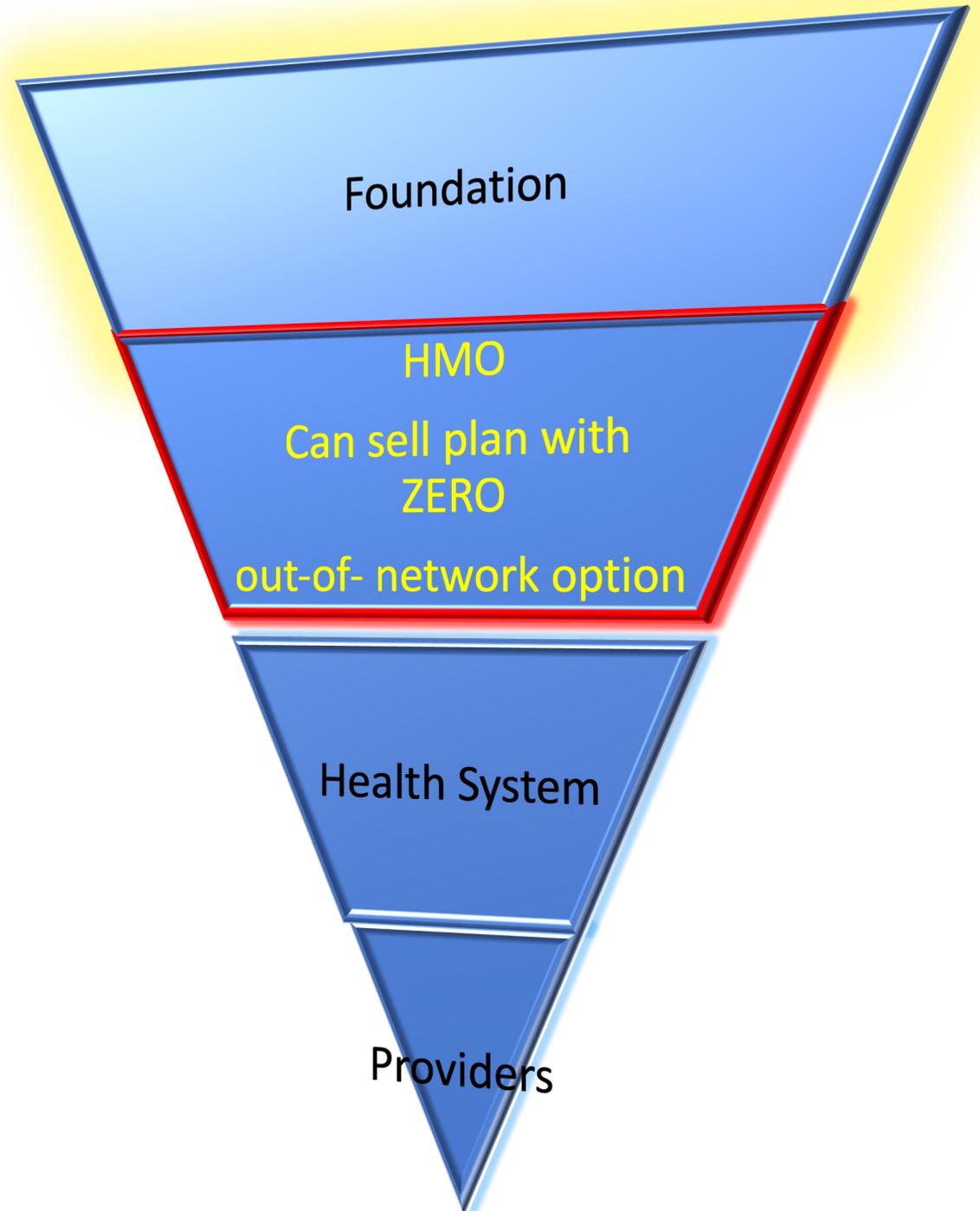
Vertically Integrated Network (VIN)

VIN houses the health plan, the health system, the providers and services provided

Distinct
Advantages
of VIN in
North
Dakota,
Large
Foundation

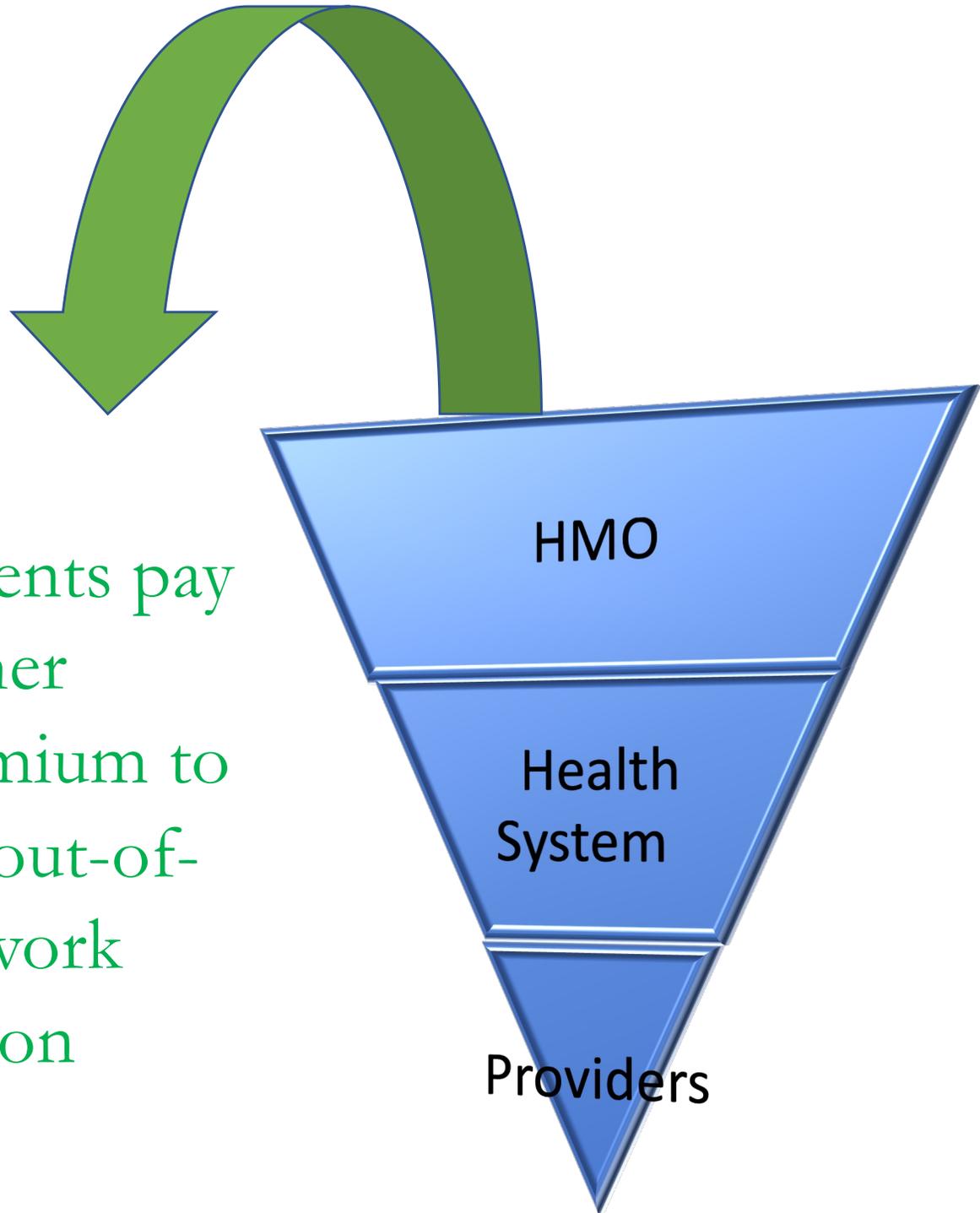


Distinct
Advantages
of VIN in
North
Dakota,
Health
Maintenance
Organization
(HMO)

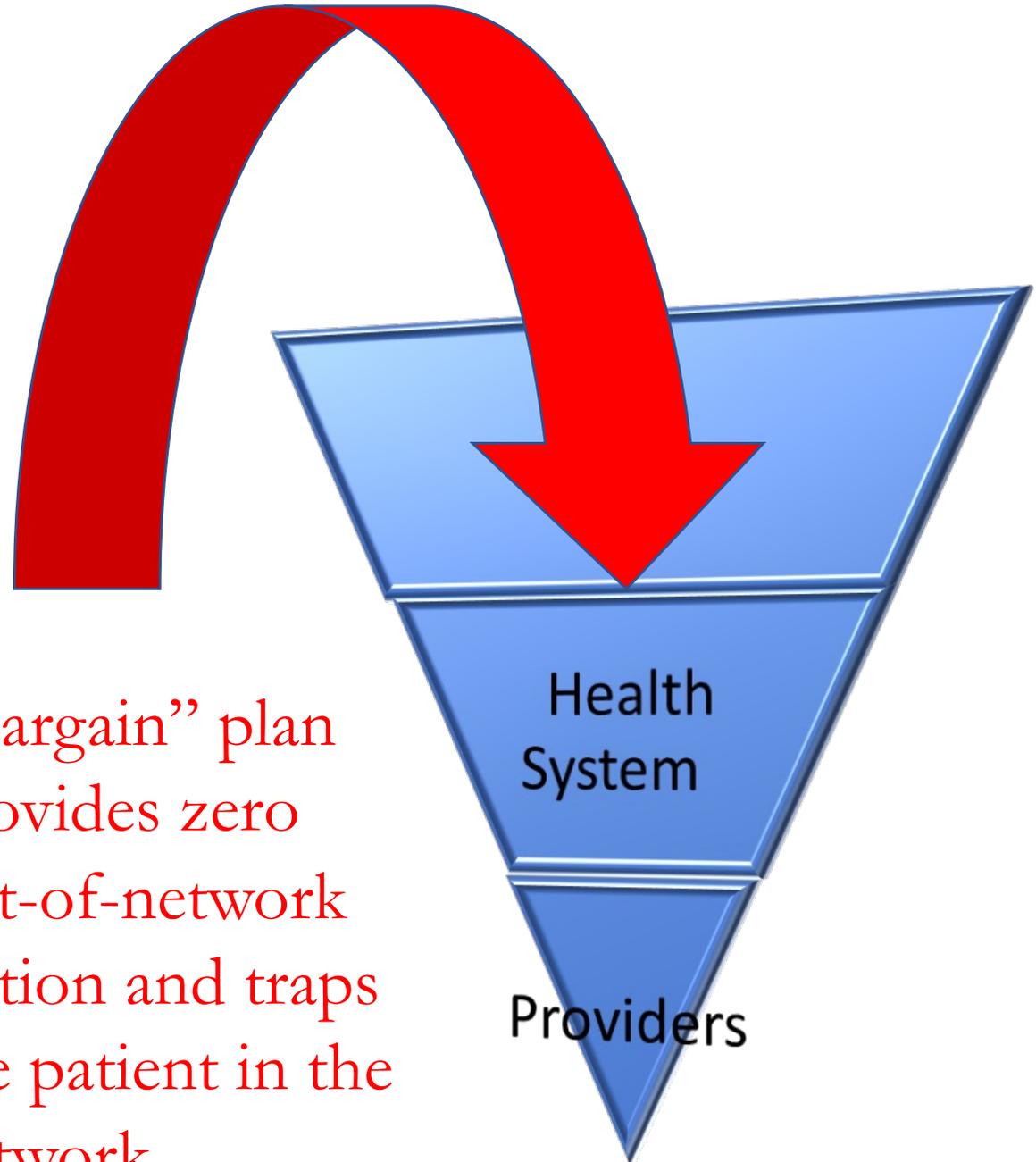


Distinct
Advantages
of VIN in
North
Dakota,
HMO

Patients pay
higher
premium to
get out-of-
network
option



Distinct
Advantages
of VIN in
North
Dakota,
HMO



“Bargain” plan
provides zero
out-of-network
option and traps
the patient in the
network

Financial Disparity Should NOT handcuff a patient's ability to choose a health care provider

- In 2014, a similar bill (Measure 17) was passed in South Dakota, with 61.81% of South Dakotans support.
- “Those who want more choice and are willing to pay more for it have that option.”
Dave Hewett, South Dakota Associations Of Healthcare Organizations.
- That comment should resonate....and so should the following question.....**what if you are unable afford to pay more for that choice?**
- **What if your employer doesn't allow an out-of-network option?**
- **HB 1416 answers these questions**

Question
from last
session..can
HB 1416
Apply to
HMOs?

- **2013 Wyoming Statutes**
TITLE 26 - INSURANCE CODE
CHAPTER 34 - HEALTH MAINTENANCE
ORGANIZATIONS
26-34-134. Written agreement with providers;
discrimination prohibited.
- **Universal Citation:** [WY Stat § 26-34-134 \(2013\)](#)
- 26-34-134. Written agreement with providers;
discrimination prohibited.
- In no event shall any Wyoming provider willing to meet the established terms and conditions be denied the right to enter into any written agreement.
- Wyoming: <https://law.justia.com/codes/wyoming/2013/title-26/chapter-34/section-26-34-134>

SUPREME COURT OF THE UNITED STATES

—
No. 00-1471
—

KENTUCKY ASSOCIATION OF HEALTH PLANS, INC.,
ET AL., PETITIONERS *v.* JANIE A. MILLER, COM-
MISSIONER, KENTUCKY DEPARTMENT
OF INSURANCE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

[April 2, 2003]

<http://supct.law.cornell.edu/supct/html/00-1471.ZS.html>

<https://www.crowell.com/NewsEvents/AlertsNewsletters/all/US-Supreme-Court-Upholds-Kentucky-Any-Willing-Provider-Laws-that-Restrict-HMOs-Ability-to-Select-Providers>

Question from
last
session..can
HB 1416 apply
to
Employee
Retirement
Security Act
plans (ERISA)?

Question
from
last..session
can HB 1416
apply to
ERISA plans?

- YES, There is legal precedence that HB 1416 can be applied to HMOs and self-insured ERISA plans.

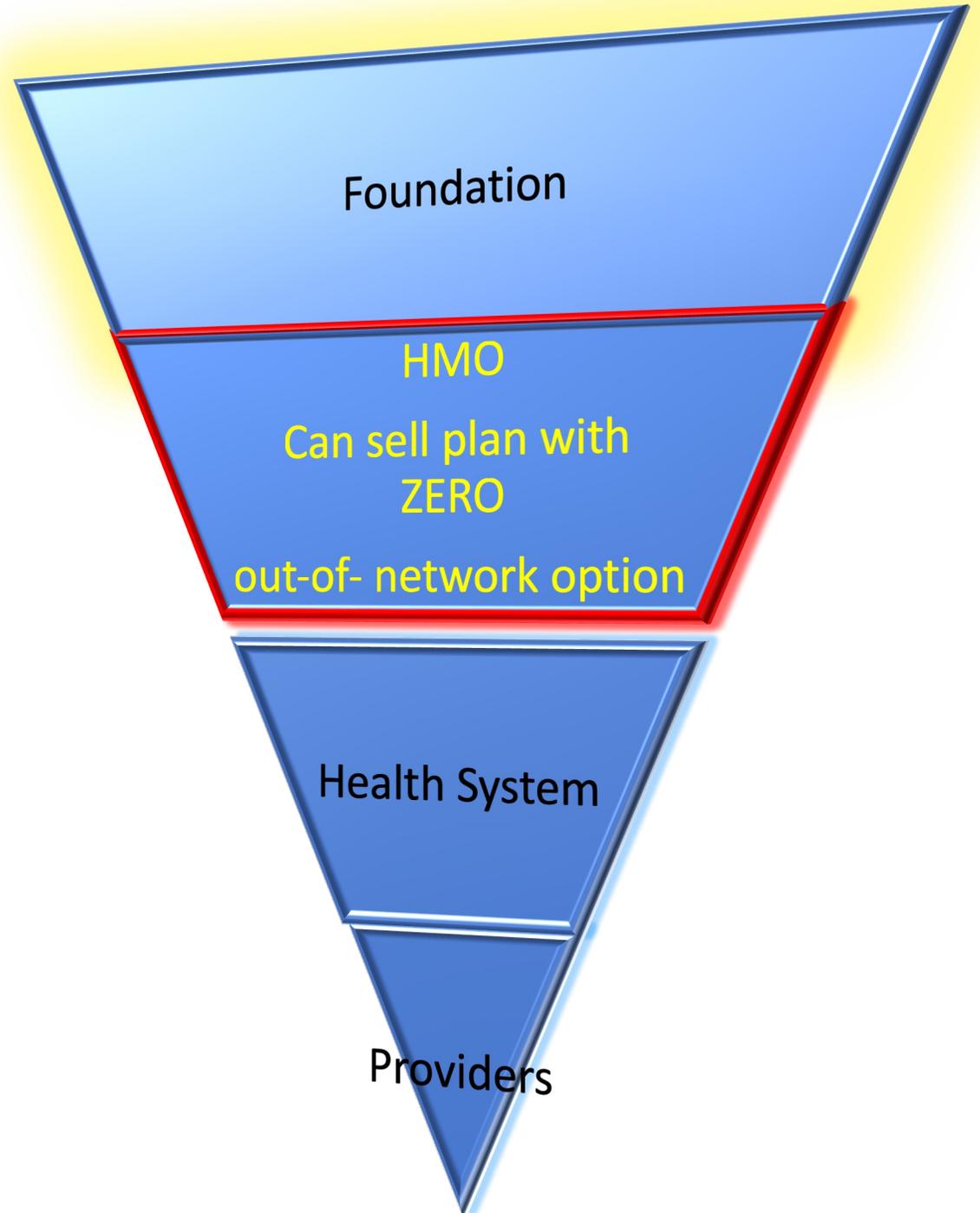
What is the main
argument against HB
1416?:

Increase cost

“Competition stimulates innovation –
lower prices and better quality.
Competition is the ultimate consumer
protection because it allows a consumer
to walk away from a transaction to find a
better partner”

North Dakota Legislative Management
Interim Healthcare Study, Final report January 2021

Does the VIN
model in
North Dakota
promote
competition?





California Health Care Foundation

[CF](#) [Our Work](#) [The CHCF Blog](#) [Publications](#) [Grants](#) [Innovation Fund](#) [Events](#)

CHCF BLOG

Is Vertical Integration Bad for Health Care Consumers?

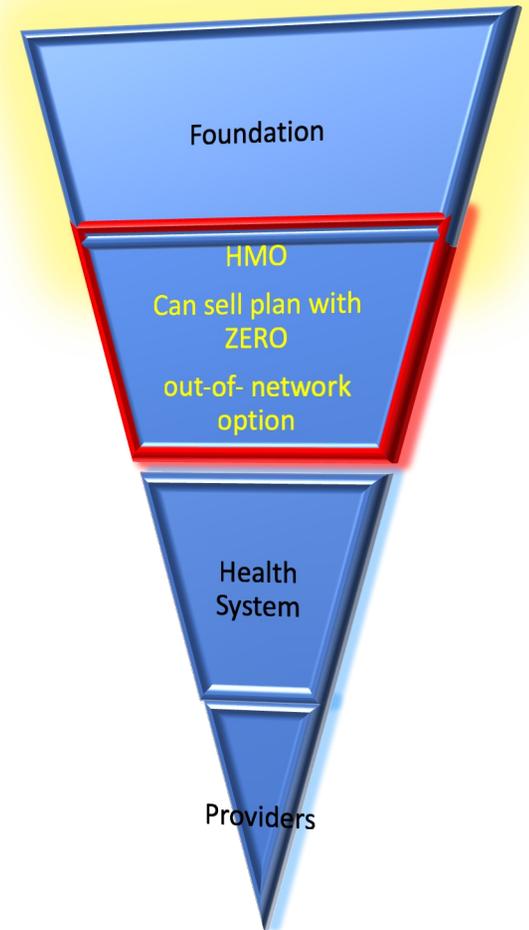
Stories that caught our attention this week

JUNE 21, 2019

[Is Vertical Integration Bad for Health Care Consumers? - California Health Care Foundation \(chcf.org\)](https://www.chcf.org/blog/2019/06/21/is-vertical-integration-bad-for-health-care-consumers/)

Summary to article:

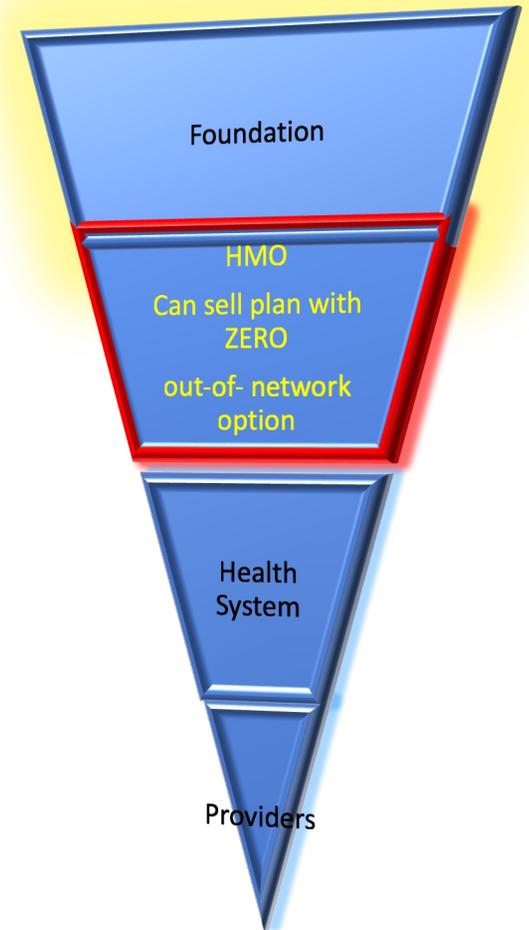
- “vertical integration can easily enable market power to use in an anticompetitive manner, allowing the merged firm to use its new structure to the disadvantage of others, and in some cases, to the harm of consumers.”



[Is Vertical Integration Bad for Health Care Consumers? - California Health Care Foundation \(chcf.org\)](http://chcf.org)

Summary to article:

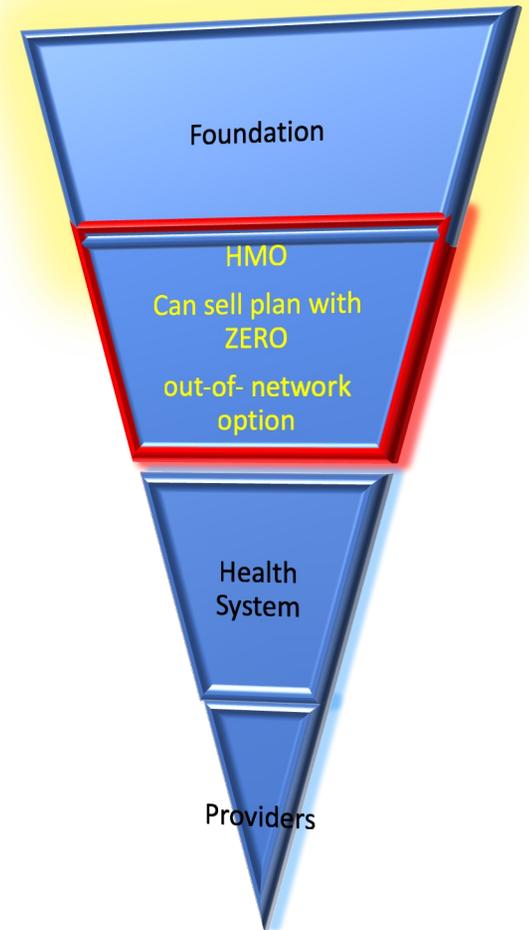
- “hospital ownership of physician practices leads to higher prices and higher levels of hospital spending.”



[Is Vertical Integration Bad for Health Care Consumers? - California Health Care Foundation \(chcf.org\)](https://www.chcf.org)

Summary to article:

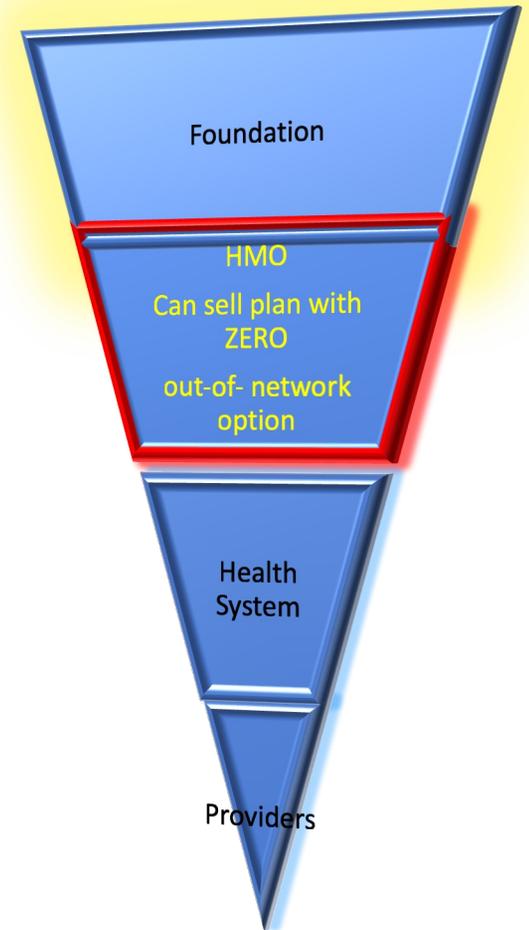
- Vertical integration increased hospital's bargaining power with the insurers, meaning the dominant hospitals can demand higher costs and limit competition.



[Is Vertical Integration Bad for Health Care Consumers? - California Health Care Foundation \(chcf.org\)](https://www.chcf.org/)

Summary to article:

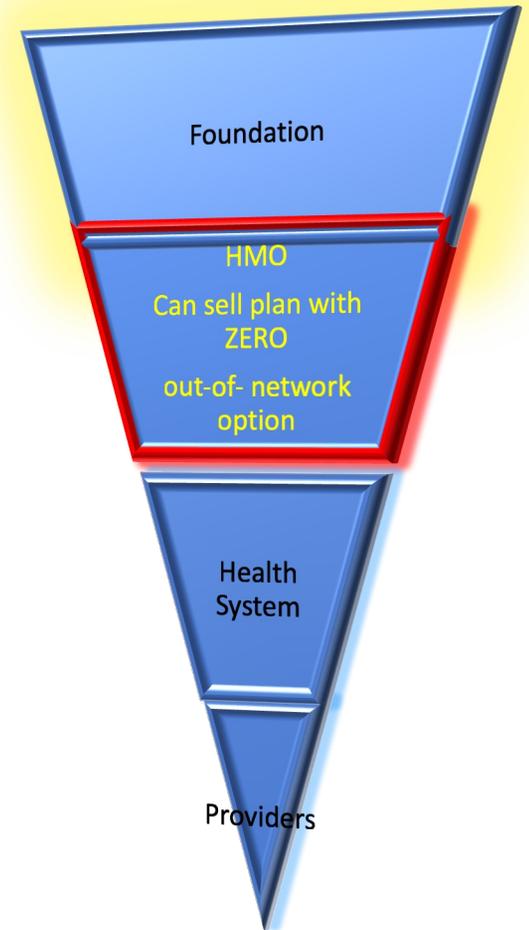
- Physician groups owned by large hospital systems were more than 50% more expensive than those owned exclusively by physicians.



[Is Vertical Integration Bad for Health Care Consumers? - California Health Care Foundation \(chcf.org\)](http://chcf.org)

Summary to article:

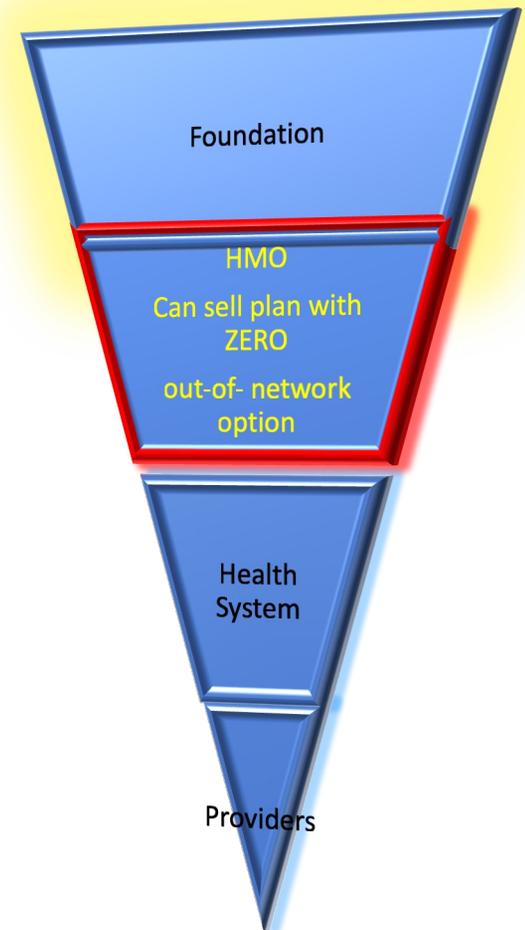
- Recent increases in vertical integration in California were associated with higher prices for primary care, more expensive specialty care, and higher health insurance premiums.



[Is Vertical Integration Bad for Health Care Consumers? - California Health Care Foundation \(chcf.org\)](https://www.chcf.org)

Summary to article:

- “Physician-Hospital integration did not improve the quality of care for the overwhelming majority of quality measures.”



[Is Vertical Integration Bad for Health Care Consumers? - California Health Care Foundation \(chcf.org\)](http://chcf.org)

STATE EFFORTS TO ADDRESS HEALTH CARE CONSOLIDATION AND COSTS

September 14, 2021

Katherine L. Gudiksen, Ph.D., M.S.

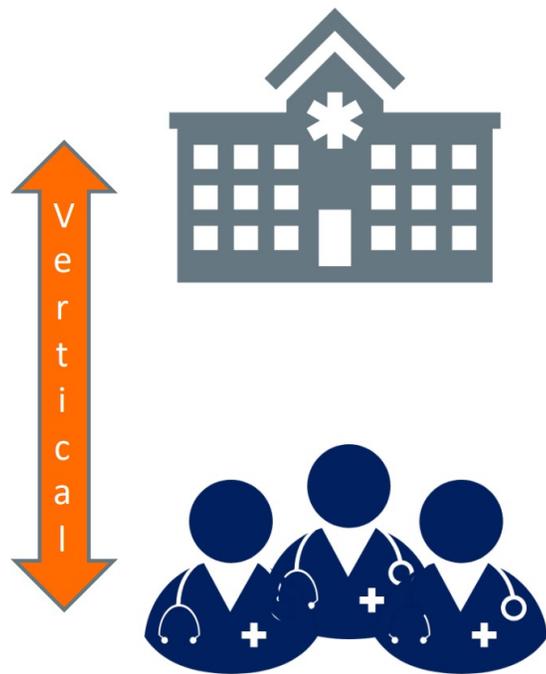
THE SOURCE
ON HEALTHCARE PRICE & COMPETITION



WHY ARE U.S. HEALTHCARE PRICES SO HIGH?

- Failure to protect a free market – lack of transparency
- Failure to protect competition and rigorously enforce antitrust laws
- Failure of policymakers to act when competition no longer exists

DATA ON RESULTS FROM HEALTHCARE MERGERS



Vertical Mergers

- **Higher Physician Prices:** Physician prices increase post-merger by an average of 14%
(Capps, Dranove, & Ody, 2018)
 - **Cardiologist prices increased by 33.5%**
(Capps, Dranove, & Ody, 2018)
 - **Orthopedist prices increased by 12-20%**
(Koch and Ulrick, 2017)
- **Higher Clinic Prices:** Hospital-acquired clinic prices increased 32–47% within four years
(Carlin, Feldman & Dowd, 2017)
- **Higher Hospital Prices** (Baker, Bundorf, Kessler, 2014)
- **Little to no quality improvements** (McWilliams et al. 2013; Neprash et al. 2015; Short and Ho, 2019)

Issue Brief

Hospital and Provider Consolidation: Negative Impact on Affordability for Consumers

November, 2014



America's Health
Insurance Plans



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[Professional
Development](#)

[Events](#)

[News](#)

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[Corporate
Partnership](#)

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[< NEWS](#)

AHIP Statement for Senate Hearing Highlights Concerns About Vertical Provider Consolidation

Article

PUBLISHED 10/12, 2019 • BY AHIP

SHARE

[< NEWS](#)

How Hospital Consolidation Hurts Americans

Article

PUBLISHED AUG 26, 2021 • BY AHIP

SHARE

Lower hospital competition equals higher health care costs

Diminished quality of care

VERTICAL INTEGRATION AND THE MONOPOLY PROBLEM*

CORWIN D. EDWARDS

Bureau of Industrial Economics, Federal Trade Commission

Corwin D. Edwards. *Journal of Marketing* Vol.17, No.4 (Apr, 1953), pp. 404-410

VERTICAL INTEGRATION AND THE MARKET POWER CRISIS

ISSUE BRIEF BY **ADIL ABDELA, KRISTINA KARLSSON, AND MARSHALL STEINBAUM**
APRIL 2019

We define “market power” as the ability to skew market outcomes in one’s own interest, without creating value or serving the public good.

This “walled-garden” business model has harmed consumers, independent content creators, and innovation.

[RI-Vertical-Integration-and-Market-Power-Crisis-Issue-brief-201904.pdf](#)
(rooseveltinstitute.org)

VERTICAL INTEGRATION AND THE MARKET POWER CRISIS

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APRIL 2019

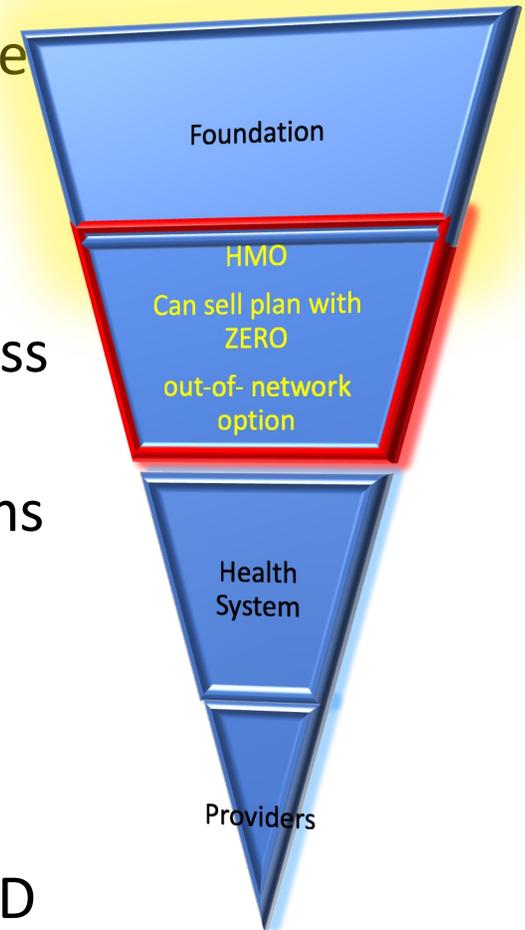
We define “market power” as the ability to skew market outcomes in one’s own interest, without creating value or serving the public good.

The real problem is the legalization of highly profitable business models that suppress competition and exploit stakeholders throughout the supply chain, no matter how large or small the parties to any given merger are.

Is ND at risk of
a monopoly in
healthcare?

YES

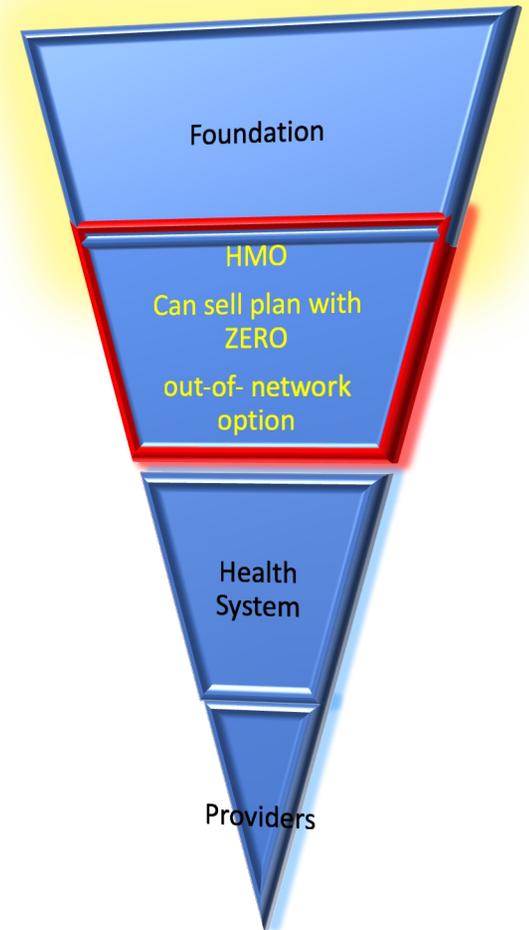
- 1) Vertically Integrated Network
- 2) Large foundation to support anti-competitive growth
- 3) HMO with zero out-of-network options, with planned expansion across ND
- 4) Struggling health systems at risk for consolidation
- 5) Struggling provider practices at risk for consolidation
- 6) Difficulty to recruit to ND in an anti-competitive environment = less competition



Is ND at risk of
a monopoly in
healthcare?

YES

- 1) HB 1416 - Allowing patients to choose a trusted provider helps solve one small piece of the monopoly risk



“Competition stimulates innovation –
lower prices and better quality.
Competition is the ultimate consumer
protection because it allows a consumer
to walk away from a transaction to find a
better partner”

North Dakota Legislative Management
Interim Healthcare Study, Final report January 2021

How will HB
1416 control
or even
decrease cost?

- 1) HB 1416 – Is not “any willing provider” at “any willing price” - provider still needs to negotiate and meet the terms and conditions to participate
- 2) Fail First mechanisms employed by insurance companies
- 3) Independent provider practices cannot provider base bill (bill facility fee and professional fee)
- 4) Provide access to Ambulatory Surgery Centers vs Hospital Outpatient Departments (ASC up to 50% cost savings vs HOPD)
- 5) Patient access to the providers they need, avoid redundant visits
- 6) Value based contracting arrangements



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www.deloitte.com

Memo

Date: January 24, 2023

To: Scott Miller
Executive Director, North Dakota Public Employees Retirement System

From: Tim Egan & Dan Plante & Drew Rasmussen, Deloitte Consulting LLP

Subject: **ACTUARIAL REVIEW OF PROPOSED HOUSE BILL 1416**

“Deloitte’s comments are limited to the scope of the uniform group insurance program. The legislation is anticipated to have a financial impact on the uniform group insurance program but the impact cannot be estimated with confidence because the **costs will be dependent on provider contracting arrangements** with the health insurer that administers the uniform group insurance program”



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“Conceptually, eliminating the ability for health insurers to exclude any providers from their networks removes some of the incentive for providers to agree to competitive reimbursements. The average discounts agree to by health systems (e.g., usually 30-40% for hospital care) could be reduced, or eliminated, IF providers could charge higher rates without any impact to patient volume. Any reduction in the discounts could lead to significant increase in health insurance premiums for all covered participants under the uniform group insurance program.”



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program includes 100% of hospitals and over 96% of physicians in the State. Given the breadth of the network participation in the State, the legislation may not have the effect of expanding provider participation. Additionally, since there is such broad provider participation, the financial impact of the proposed legislation could be immaterial if provider reimbursement rates do not increase as a result of the legislation (since there are no hospitals and relatively few providers that are not under contract today).

What HB 1416 Does Do?



Allows patient to see the provider of their choice, IF the provider agrees to the terms and conditions established by the insurer

Allows insurance companies to determine the terms and condition offered to the provider

Increases competition

Gives patients the choice to request access to a local provider instead of traveling great distances to see in network providers

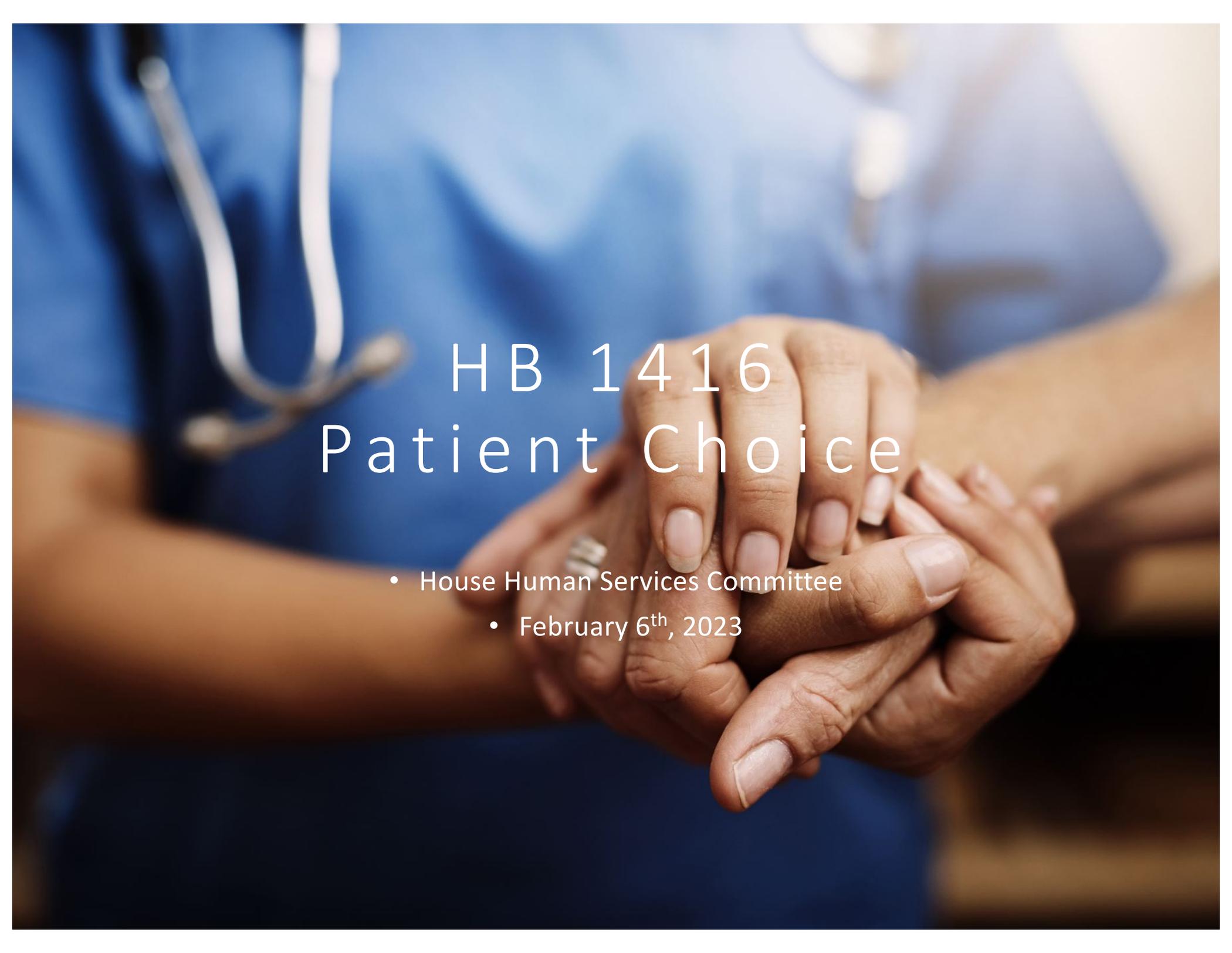
What HB 1416 Does Do



Lowers cost by allowing patients to select lower cost centers

Allows patients to select and out of network option when no option exists

Decreases the risk of future health care monopolization in North Dakota



HB 1416 Patient Choice

- House Human Services Committee
- February 6th, 2023