



REGULATION NATION

Impulsive expansion
of health regulations
will harm patients.

Anyone who lives in Minnesota knows the state is home to world-class health care. *Newsweek* calls the Mayo Clinic in Rochester the world's best hospital. The nation's largest health insurer — UnitedHealth Group — keeps growing in Minnetonka. Thanks to these companies and a strong cluster of inventive medtech companies like Medtronic and St. Jude, the region was dubbed Medical Alley in 1984.

By Peter Nelson

Living along Medical Alley, Minnesotans have understandably become accustomed to getting the best health care anywhere. However, there's no guarantee that the state's health care system will remain world-class for the next generation of Minnesotans.

Whether you're a pro hockey player, a Fortune 500 CEO, or the "state that works," complacency poses one of the biggest dangers to those on top. There's reason to believe that Minnesota has been riding the success of previous generations and become less equipped to lead and succeed in the future.

However, since Democrats took full control over state government this year, complacency is no longer a top concern for Minnesota's health care system. Rather, the state is now dealing with the exact opposite problem: An impulsive move by Democrats to dramatically expand health care regulations. During the 2023 legislative session, Minnesota lawmakers enacted a radical new vision with big changes that tighten the government's bureaucratic control over health care.

These policy changes put patients at risk. That's because they rely on a public utility model to tightly control key parts of the health care system similar to how the Minnesota Public Utilities Commission (MPUC) controls how electric utilities like Excel Energy run every aspect of their business. This tighter government grip will ultimately undermine future investments and innovation to deliver better patient care.

Democrats build a bigger bureaucracy

Upon taking control of the legislature this year, Democrats worked to adopt nearly every far-left health care policy that's been moving through other deep blue states in recent years. To start, they created a Prescription Drug Affordability Board — an unelected, politically-appointed bureaucracy with power to set an upper payment limit on the price of drugs. Another price control sets up a regime that narrowly targets generics for so-called "excessive" price increases.

To increase oversight over providers,

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they created a Center for Health Care Affordability to identify drivers of health care spending growth with the power to require private health care entities to open their books and report data. The law establishes a Health Subcabinet that can use this data to push private entities to change the way they deliver and pay for care.

Several other provisions work to micromanage health plan designs, including a requirement for each health insurer to offer the same standardized plan alongside their other plan options. The law also directs the state to offer a public health plan option to compete with private plans. Essentially, the government took over the health plan options available. Finally, they took steps to plan for the adoption of a

single-payer, "universal health care financing system," which would remove private health plan options entirely.

These are just the major elements of the Democrat's far-left health care agenda that became law. Hundreds of other policies spread across three omnibus bills spanning 1,368 pages fill in the complete picture. Altogether, they collect the worst of top-down, government-knows-best regulations that will cement Minnesota's position among the most tightly regulated health care states in America.

Democrats embrace a public utility model

The new health care boards and regulations that Democrats just put in place aim to fundamentally transform how Minnesota's health care system operates and evolves. Their new vision embraces what may best be described as a public utility model.

Utilities like Excel Energy and CenterPoint Energy have been strictly governed by the MPUC for decades. The MPUC plays a role in approving nearly every major business decision for utilities, including whether they can invest in new facilities and whether they can raise or even lower rates on consumers. This level of oversight requires the MPUC to pore over each utility's financials and other proprietary business information. The process also requires complicated economic modeling to project future impacts of any decision, such as a decision to shut down a natural gas plant or spend more on energy conservation projects.

The new Prescription Drug Affordability Board and the proposed Health Care Affordability Board are designed to function very similarly to the MPUC. Each is empowered to limit costs and influence business policies. Each requires access to proprietary business information to set the "right" prices, which is needed to feed the models to project how the board's decisions will impact important things like patient care, the financial

sustainability of rural hospitals, and incentives to innovate new drugs. The most troubling similarity: All of these truly life-and-death decisions are made by an unelected, politically-appointed bureaucracy.

While Mayo may have held off the Health Care Affordability Board, it's been replaced by a new Center for Health Care Affordability in the Department of Health, which still has the power to demand the same proprietary business information to build out a robust data analytics capability to closely scrutinize business operations. The law also establishes a new Health Subcabinet made up largely of executive branch department heads, including the Health Commissioner, who are directed to "coordinate state and, as applicable, private sector efforts to reform the health care delivery and payment systems." So, even without

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the power to enforce limits on cost growth, these two entities are together still empowered to demand reports from the private sector and use those reports to, *as applicable*, strong-arm the private sector. Moreover, the two entities lay the foundation to quickly establish a more powerful board as originally proposed when the timing is better.

As noted previously, the law also adds dozens of new requirements for providers and health plans. So, in addition to being micromanaged by unelected, politically-appointed bureaucracies, the growth in statutory

requirements further micromanages the health system — another similarity with the public utilities.

Democrats' new model will harm patients

A public utility model will always hold back the health care system from achieving the best results for patients. The only reason public utilities need strict oversight from the MPUC is because they are natural monopolies with no competition. But this approach comes with a major tradeoff. The intrusion of prescriptive statutes and MPUC oversight stalls business decisions and innovation. It can take five to 10 years to get major generation or transmission projects approved. However, the public is willing to make this tradeoff because innovation is not a top concern for the electricity and gas industries. People just want to know their lights and furnace will go on.

Unlike electricity and gas distribution — a process that relies on century-old technology — innovation in health care is everything. People are unwilling to trade innovations that improve their health and save lives. Yet, that is exactly the trade-off the Democrats' new public utility model approach to health care requires. The state simply cannot layer on regulations and bureaucracies without getting in the way of new drug development, better patient care management, and quick access to the latest treatments. Patients will be harmed.

Health sector forms a circular firing squad

Unfortunately, patients have no idea what is coming because every major player in the health sector has focused on protecting their turf and otherwise kept quiet. Worse, they've turned on each other in a blame game trying to deflect

the damage from Democrat policies on other players. Like most circular firing squads, this strategy did not go well.

Even if one player deflected some damage this year, pointing fingers and asking for heavier regulation on other players in the health sector affirmed the idea that there are circumstances when state lawmakers can and should micromanage the health care sector. By giving that idea momentum, all the participants in the blame game invited tighter regulations on themselves in the future.

Throughout the session, generic drug manufacturers urged lawmakers to focus drug price controls on high-cost, brand-name drugs. Branded drug manufacturers highlighted how insurers and pharmacy benefit managers (PBMs) contribute to higher drug costs and, instead of drug price controls, urged lawmakers to support caps on copays and other top-down government regulations on health plans. In turn, the health plans eventually put their full support behind drug price controls. Doctors also entered this fray with their qualified support for a public health plan option — they support it so long as they get paid enough.

Hospitals largely kept out of this fray and limited their public comments to oppose policies that directly impact their operations and bottom line. Though hospitals didn't join the circular firing squad, their quiet voice through the legislative session kept Minnesotans in the dark about the serious risks the Democrats' policies pose to patients. The only major alert — and only on two policies — came when the Mayo Clinic made national news with an ultimatum. In the final weeks of the session, the Mayo Clinic sent an email to Democrat legislative leaders and Gov. Tim Walz warning that if two policies became law, Mayo would redirect billions in planned



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investments to other states. In response to Mayo's ultimatum, both provisions were watered down.

Principled push back

The only principled, consistent effort to educate the public on how the Democrats' health care agenda would impact patients came from American Experiment and the Minnesota Chamber of Commerce. While the drug manufacturers, PBMs, health plans, and doctors were blaming each other, the Minnesota Chamber provided principled positions and arguments against pretty much every new regulation the Democrats proposed.

American Experiment also regularly sat down at the testifying table to summarize the in-depth written testimony that we submitted to the committees that heard the bills. The depth of these analyses was unmatched by any

organization and that is true across each of the major issue areas that American Experiment covers at the Capitol.

Looking back at the legislative session, without the Minnesota Chamber and American Experiment, there would be little record of the serious danger the Democrats' health policies pose to Minnesota's health care system and the patients who depend on it.

Public utility model cannot escape the iron triangle

In health care, people often talk about the triple aim — the idea that health care reforms should simultaneously aim to improve health care access, cost, and quality. People also talk about the iron triangle — the idea that access, cost, and quality cannot be simultaneously improved. The iron triangle acknowledges how policy changes tend to always present tradeoffs. Improving quality or increasing access tends to cost more money, while imposing cost controls tends to limit investments in better quality and broader access. For instance, the push to measure quality has imposed a huge administrative cost on health systems.

The iron triangle clearly applies to the Democrats' public utility model approach. As noted previously, the state simply cannot impose heavy regulations to control costs without negatively impacting patient care. No matter how much the state claims to study or account for potential negative impacts, a big government approach cannot efficiently decide what price is too high, how many hospital beds are too few, or the ratio of nurses needed at the bedside.

Competition model can achieve the triple aim

In contrast to a public utility model, a competition driven model to reform health care is not trapped in the iron triangle. Most major industries deliver higher quality products and services at a lower cost to more people through a competition driven model. Phones, cars, laundry detergent, bikes, and refrigerators get better year after year because companies must compete to meet consumer demand.

Minnesota can likewise have a health

care system that simultaneously delivers broader access to higher quality at a lower cost. To get there, the state needs to finally begin replacing the perverse incentives that pervade the health care system with new incentives that push health plans, providers, and drug companies to compete to deliver more innovative care and treatment models at a lower cost.

Price transparency, the first step

A move to a competition driven model starts by making sure patients have ready access to prices. Hidden pricing is a key contributor to the high and rising cost of health care in America. Upfront pricing information is essential to an efficient and competitive market. In any market for goods and services, consumers need pricing information to make sound, cost-conscious decisions. Yet, prices are hidden from patients because health care is largely financed through third-party health plans.

Fortunately, there's been bipartisan support to require price transparency both nationally and in Minnesota. The Trump administration implemented federal rules requiring hospitals and health plans to disclose prices to patients — a move the Biden administration continues to strongly support. Last year, Republicans and Democrats in the Minnesota legislature sponsored bills to strengthen and expand upon these federal rules. This year, these proposals became law. American Experiment played a lead role in making this happen by doing the initial research, working directly with legislators, and providing lead testimony.

The enactment of price transparency creates some irony and optimism. While the Democrats adopted a public utility model with heavy-handed price controls, they also agreed to take the necessary first step toward a competition driven model. If price transparency creates enough competitive pressure to control costs, there may be nothing to trigger any regulatory action or overbearing oversight from the new bureaucracies the Democrats just put in place. Short of paring back any of these newly enacted laws, that's the best outlook for Minnesota patients. ★