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Koehler Fitzgerald LLC provides highly specialized legal services for self-insured health plans, their members and sponsors, TPAs, and reference-based pricing plans.

The firm's services encompass defense of out-of-network claims, claim repricing and scrubbing, and the national defense of patients confronted with balance billing claims. Additionally, the firm can represent plans nationally in the recovery of claim overpayments.

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### Sutter Antitrust Litigation

On March 20, 2018, the Attorney General of California filed an antitrust case against Sutter Health in the Superior Court for the City and County of San Francisco based on California's Cartwright Act, its state antitrust legislation.

The complaint alleges that healthcare costs in Northern California have risen more than in other areas of the state. "For example, a 2015 study found that insurance premiums offered through Covered California, the state-run health insurance Exchange established by the Affordable Care Act, are 16 to 48 percent more expensive in San Francisco than in Southern California." The complaint says that rising health insurance premiums depress salaries, reduce hours worked, and reduce employment.

"That these increased costs are due to increased market concentration in healthcare provider markets in Northern California, and no other factors, has been observed by studies and public analysis. For example, a 2018 study found unadjusted inpatient procedure prices are 70% higher in Northern California than Southern California corresponding to hospital market concentration being 110% higher in Northern California than Southern California, while input cost adjusted inpatient procedure prices are 32% higher in Northern California than Southern California."

The California Attorney General claims that Sutter has





## Guardian Flight vs. North Dakota

Guardian Flight, a multi-state provider of air medical services is challenging a relatively new North Dakota law that sets reimbursement caps on out-of-network air ambulance services -- a practice that resulted in average charges of \$60,000, according to North Dakota figures. The 2017 act establishes the amount the air ambulance providers must accept as the average of an insurer's in-network rates for air ambulance services. It follows upon a 2015 law overturned by a federal judge in 2016. The 2015 law provided for the creation of a primary air ambulance carrier list and required as a condition to being accepted on the list that the services agree to become participating providers with Blue Cross Blue Shield of North Dakota, thereby establishing an agreed rate of reimbursement.

The 2017 law also prohibits subscription agreements between air ambulance carriers and consumers and balance billing. In its action, Guardian asserts that the 2017 law "relates" to air ambulance rates and services -- areas falling exclusively under federal jurisdiction through the Airline Deregulation Act.

Guardian and its affiliates manage a fleet of over 80 aircraft based throughout the western and central U.S., Alaska & Hawaii.

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become "a large multi-market healthcare system with at least 24 state-licensed hospitals throughout Northern California." Allegedly, Sutter has 4,311 acute care beds; 35 outpatient centers; physicians' organizations with 5,500 members and 12,000 other physicians who partner with Sutter.

The complaint contends that Sutter exerts control over acute care hospitals and ancillary services via anticompetitive terms contained in its contracts with network vendors. "Sutter has the power to impose those anticompetitive contract terms for all of its providers because there are geographic markets for hospital healthcare within Northern California where Sutter has 'must have' hospitals, that is hospitals desired by employees because of referrals, reputation, or the lack of alternatives in their geographic location, such that it would be impossible to assemble a viable healthcare Provider Network in those markets without including those Sutter hospitals. ... The anticompetitive agreements that Sutter imposes upon the Network Vendors leave Self-Funded Payors, Healthcare Benefits Trusts, and other Employers with no alternative other than to pay Sutter's illegally inflated prices. ... Sutter unlawfully controls, fixes, and tampers with prices through the Anti-Incentive, Price Secrecy and All-or-Nothing Terms that it compels Network Vendors to accept."

The Attorney General seeks a declaration that Sutter has violated the Cartwright Act and permanent injunctive relief.

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