

September 9, 2014

The Honorable Blake Farenthold  
Subcommittee Vice-Chairman  
Regulatory Reform, Commercial and Antitrust Law  
U.S. House of Representatives  
Washington, DC 20515

Dear Vice-Chairman Farenthold:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, and our 43,000 individual members, the American Hospital Association (AHA) is pleased to support H.R. 5402, the Standard Merger and Acquisition Reviews Through Equal Rules Act of 2014, also known as the SMARTER Act.

We do so because of the importance of standardizing the merger review process between the two federal antitrust agencies: The Department of Justice's Antitrust Division (DOJ) and the Federal Trade Commission (FTC). Hospitals, in particular, have been adversely impacted by the ability of the FTC to use its own internal administrative process to challenge a transaction. Specifically, while the DOJ litigates its merger cases entirely in federal court before an impartial judge, the FTC has used the difference in authority between the two federal antitrust agencies to subject hospital transactions to what amounts to double jeopardy: commencing administrative litigation at the same time pursuing a preliminary injunction in federal court. This unfair and punitive tactic should not be permitted. While AHA supports enforcement of the antitrust laws, relying exclusively on the federal courts to determine the competitiveness of a transaction ensures that hospitals, and others, receive a full hearing on the merits.

We would urge the Committee to consider adding a provision to require the federal antitrust agencies to issue a closing statement when they elect not to challenge a merger or acquisition. We believe this requirement would impose, at most, a minimal burden on the agencies and would add tremendous value for the hospital and other fields. According to the Antitrust Modernization Commission, such statements increase predictability and promote voluntary



compliance because “when parties are able to predict in advance what types of transactions are likely to result in enforcement actions, they can eschew them in the first instance, thereby reducing the need for costly investigations and enforcement actions.” Moreover, other federal agencies, such as the Federal Reserve Board and the Federal Communications Commission, routinely issue such statements. The AHA would be pleased to work with the Committee on this proposal.

Sincerely,

/s/

Rick Pollack  
Executive Vice President

Cc: The Honorable Bob Goodlatte  
Chairman  
Committee on the Judiciary

The Honorable John Conyers Jr.  
Ranking Member  
Committee on the Judiciary