



800 10th Street, NW
Two CityCenter, Suite 400
Washington, DC 20001-4956
(202) 638-1100 Phone
www.aha.org

May 8, 2018

The Honorable Karen Handel
U.S. House of Representatives
1211 Longworth House Office Building
Washington, D.C. 20515

Dear Representative Handel:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, and our clinician partners – including more than 270,000 affiliated physicians, 2 million nurses and other caregivers – and the 43,000 health care leaders who belong to our professional membership groups, the American Hospital Association (AHA) is pleased to support H.R. 5645, the Standard Merger and Acquisition Reviews Through Equal Rules Act of 2018, also known as the SMARTER Act.

The SMARTER Act removes a regulatory roadblock to hospital realignment. Hospital integration and realignment is essential if the field is to be successful in its drive to build an efficient and effective continuum of care that delivers care to communities in innovative ways and in new, more convenient settings. Both public and private forces are fueling the drive toward greater integration and alignment. For example, there are significant financial penalties levied on hospitals that are unable to coordinate care and uncertain rewards for hospitals that accept financial risk to keep their communities healthy. The SMARTER Act helps hospitals and health systems evolve to serve the needs of their communities in the face of changing payment and delivery system reforms so they can better coordinate and integrate care to lower costs and improve quality for patients.

This legislation takes the critical step of standardizing the merger review process between the two federal antitrust agencies: The Department of Justice's (DOJ) Antitrust Division 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.



The Honorable Karen Handel

May 8, 2018

Page 2 of 2

While the 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. Requiring both antitrust agencies to prove their case before a judge in the federal courts and not just internal proceedings in which the agency has an advantage protects due process and promotes efficiency. The SMARTER Act ensures a neutral judge makes a decision on the merits of each merger and leads to a quicker resolution so parties have certainty about their case.

We applaud your leadership on this important issue and look forward to working with you to secure enactment of this legislation. Please contact me if you have questions or feel free to have a member of your team contact Travis Robey, senior associate director for federal relations, at trobey@aha.org or (202) 626-2328.

Sincerely,

Thomas P. Nickels
Executive Vice President

CC: The Honorable Bob Goodlatte
The Honorable Jerrold Nadler