

August 18, 2021

Tim Wu  
National Economic Council, Room 235  
Eisenhower Executive Office Building  
Washington, DC 20502

The Honorable Xavier Becerra  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

The Honorable Lina Khan  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

The Honorable Richard Powers  
Antitrust Division  
U.S. Department of Justice  
950 Pennsylvania Ave, NW  
Washington, DC 20530

Dear Secretary Becerra, Chairwoman Khan, Mr. Powers and Mr. Wu,

President Biden's Executive Order on *Promoting Competition in the American Economy* called upon all agencies of the federal government to protect and promote fair competition throughout the economy. Achieving that objective will require each agency to assess fairly the activities of those fields and industries that fall within its purview.

To that end, the American Hospital Association, which represents nearly 5,000 hospitals, health care systems networks and other providers of care and 43,000 individual members, is providing each of your agencies with an updated study on the benefits of mergers within the hospital field. Additionally, we are providing an updated assessment of problematic conduct by the commercial health insurance industry that appears to have skirted much of the antitrust enforcement and regulatory attention provided by this assemblage of federal agencies.

Despite the recent unfortunate remarks by the Federal Trade Commission's (FTC) Director of Public Affairs,<sup>1</sup> we continue to believe that all pertinent federal agencies will

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<sup>1</sup> <https://www.ftc.gov/news-events/press-releases/2021/08/statement-ftc-office-public-affairs-director-lindsay-kryzak>. From President Biden's inaugural address: "Every disagreement doesn't have to be a cause for total war....[w]e must end this uncivil war." [Unity and Civility in America](https://thehill.com/opinion/white-house/535296-unity-and-civility-in-america) <https://thehill.com/opinion/white-house/535296-unity-and-civility-in-america>



do their best to assess both proposed mergers in the hospital field and the resulting impacts on the communities they serve. The fact is that most proposed hospital mergers present no competitive issues and offer real benefits for those communities.<sup>2</sup>

The most recent study of those benefits is by Charles River Associates (CRA),<sup>3</sup> which is attached, and confirms that contemporary hospital mergers result in significant cost savings and quality improvements without an increase in revenue consistent with the acquisition of market power. CRA concludes that these findings suggest that cost savings resulting from hospital mergers are passed on to commercial health insurance plans. Whether those savings are passed on to consumers is uncertain at best.

The benefits of the integrated health systems that often result from mergers have been particularly pronounced during the recent and ongoing pandemic, especially for hospitals in rural areas. Even before the pandemic began, “about one in five hospital partnership transactions involved a financially distressed hospital, many at risk of imminent closure.”<sup>4</sup> Nineteen rural hospitals closed their doors last year, but many more might have closed had they not been able to draw on the resources provided by an integrated health system.

While hospital mergers and conduct have received generous amounts of attention from both federal antitrust agencies, that has not so clearly been the case for the commercial health insurance industry. The attached paper highlights that industry’s proclivity for anticompetitive conduct and some of the recent practices that, while detrimental for both consumers and providers, seems to have escaped scrutiny from any responsible federal agency.<sup>5</sup>

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<sup>2</sup> “The [hospital] industry is less concentrated than other sectors like airlines,” according to Debbie Feinstein, former director of the FTC’s Bureau of Competition. “If hospital prices are increasing, consolidation isn’t necessarily to blame,” she said. <https://news.bloomberglaw.com/health-law-and-business/keeping-hospital-market-competitive-is-an-uphill-battle-for-ftc>, June 6, 2019

<sup>3</sup> CRA is the same economics consulting firm employed by the current and the immediate past California Attorney General to perform antitrust analyses in connection with various hospital mergers and markets. *E.g.*, <https://www.aha.org/2021-05-28-amicus-brief-pasadena-hospital-assn-ltd-dba-huntington-hospital-and-cedars-sinai-health>.

<sup>4</sup> <https://www.fiercehealthcare.com/hospitals/industry-voices-a-time-need-hospitals-must-be-able-to-transform>

<sup>5</sup> Letter from Senators Leahy and Daines to Attorney General Garland and Lina Khan, FTC Chair requesting information about the federal antitrust agencies’ enforcement activities against the commercial insurance industry. July 20, 2021.

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We would like to meet with each of you to discuss these papers and share our views about the benefits hospital mergers can have for communities, particularly those hit hard by the ongoing pandemic, as well as the conduct of the commercial health insurance industry and its impact on consumers and providers.

Sincerely,

/s/

Richard J. Pollack  
President and Chief Executive Officer

Attachments:

Charles River Associates, Hospital Merger Benefits: An Econometric Analysis Revisited, August 2021 (Full Paper and Executive Summary).

Anticompetitive Conduct by Commercial Insurance Companies, Scrutiny Needed to Prevent Adverse Impacts on Consumers and Providers, American Hospital Association, August 2021.