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Advancing Health in America

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September 26, 2022

The Honorable Richard Durbin
Chairman
Committee on the Judiciary
U.S. Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Durbin:

I am writing in response to your request to address questions for the record related to Rodney Hochman's, M.D., participation in the May 19, 2021 Senate Judiciary Subcommittee on Competition Policy, Antitrust, and Consumer Rights hearing entitled "Antitrust Applied: Hospital Consolidation Concerns and Solutions." Please find responses to questions submitted from Subcommittee Ranking Member Lee, Senator Tillis, and Ranking Member Grassley.

If you have any questions about this information, please contact Jason Kleinman, AHA's senior associate director of federal relations, at jkleinman@aha.org.

Sincerely,

Melinda Hatton
General Counsel

Questions for the Record
Rodney Hochman, M.D., President and CEO, Providence
U.S. Senate Judiciary Committee
Subcommittee on Competition Policy, Antitrust, and Consumer Rights
"Antitrust Applied: Hospital Consolidation Concerns and Solutions"
May 19, 2021

In response to Subcommittee Ranking Member Lee's question

1. Two days after our hearing, the New York Times reported that some hospitals may be using funds they received under the CARES Act Provider Relief Fund to buy up their competitors.[1] I am concerned that the government has yet again directly facilitated consolidation in the hospital industry. Do you share these concerns, and how can policymakers avoid such mistakes in the future?

Answer:

Mergers and acquisitions typically take years to develop. Moreover, hospitals and health systems drew down Provider Relief Fund (PRF) reimbursements under strict rules requiring them to demonstrate financial losses related to COVID-19. These funds, all of which providers are held accountable for under law, have allowed hospitals to continue to serve all who need care. There is a reporting and auditing process underway under which hospitals receiving more funds than their COVID-19-related expenses and lost revenue are required to return the excess funding. According to data from the Office of the Assistant Secretary for Planning and Evaluation, changes in ownership of hospitals have occurred less frequently during the pandemic than they did in the years before.[2] Any mergers that occurred concurrent to PRF distributions are more likely coincidental rather than causal.

During the height of the COVID-19 pandemic, some hospitals found that being part of larger, established health systems that potentially had more resources with which to navigate the Public Health Emergency, was an important part of their efforts to meet the many pandemic-related challenges. Health systems were able to adapt and even draw from within their own teams to secure the staffing resources needed when specific geographic areas were experiencing surges. Flexing and reallocating staff when needed allowed them to stand-up expanded intensive care units to meet the influx of COVID-19 patients and to create vaccination clinics. These systems can also provide the ability to offer financially distressed hospitals, including many in metropolitan and rural areas, a vital lifeline that can enable them to stay afloat, maintain access to care for patients and expand the breadth of services and programs offered to their communities.

Each hospital and health system came into the pandemic with their own particular financial challenges, but every one of them played an integral role in caring for patients and protecting their communities. Cherry-picking financial data is not reflective of the many immense

[1] https://www.nytimes.com/2021/05/21/health/covid-bailout-hospital-merger.html
[2] https://aspe.hhs.gov/sites/default/files/documents/4d960147d5fd8e2ea9af508f115ca7b7/aspe-datapoint-change-ownership-pecos.pdf

struggles and challenges facing the hospital field, including a historic workforce shortage crisis, along with spiking input costs for supplies, equipment, drugs and labor, and near-historic levels of inflation.

In response to Senator Tillis' questions

1. One concern that arises from hospital mergers is the impact it has on the prices insurers, and ultimately, consumers and taxpayers, pay for care. Can you share your perspective on the impact mergers and acquisitions of hospitals, particularly local, community-based hospitals, have on the cost of care?

Answer:

According to the Bureau of Labor Statistics, hospitals' price growth averaged about 2% annually over the past decade. The change in hospital prices over time is less than other parts of the health care system, and recently far lower than general inflation. In contrast, the annual premium for employer-based family coverage has increased 4.5% on average since 2010.[3]

Mergers have been shown to reduce the cost of care. For example, a 2021 analysis by the Charles River Associates found that mergers and acquisitions were associated with a 3.3% decrease in operating expenses per adjusted admission, and a 3.7% decrease in net patient revenue per adjusted admission.[4] Hospitals generally report that these reductions are the result of achieving economies of scale that can reduce the cost of acquiring medical equipment, prescription drugs and supplies. Researchers have also found that mergers allowed hospitals to share and implement best practices, including standardized care protocols, across multiple sites, resulting in reduced average length of stay for a variety of conditions.[5] Many hospitals and health systems also report that mergers and acquisitions improve access to capital (including reducing the cost of borrowing). Many hospitals and health systems may be organized differently and therefore the goals and effects of mergers and acquisitions may not be uniform across every transaction.

Additionally, it's clear that when provider rates are reduced, insurers do not pass these savings on to consumers. Most insurance markets are highly concentrated, and in about 46% of all markets, one insurer controls half or more of the insurance market.[6] Insurers leverage their market share to demand lower prices from health care providers, including hospitals. However, studies have shown that insurers do not pass these cost savings onto consumers.[7] In fact, while health care service use plummeted over the course of the pandemic, insurers raised premiums and reported record profits.[8] For example, UnitedHealth has reportedly spent as much on acquisitions, including home health and behavioral health services providers, in the second quarter of 2022 as it did during the entire year in 2021.[9]

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[3] https://www.kff.org/health-costs/report/2021-employer-health-benefits-survey/
[4] https://www.aha.org/guidesreports/2021-08-18-hospital-merger-benefits-econometric-analysis-revisited-executive-summary
[5] https://www.aha.org/guidesreports/2017-01-24-hospital-merger-benefits-views-hospital-leaders-and-econometric-analysis
[6] https://www.ama-assn.org/system/files/competition-health-insurance-us-markets.pdf
[7] https://www.healthaffairs.org/doi/10.1377/hlthaff.2015.0548
[8] https://www.fiercehealthcare.com/payers/which-insurer-was-most-profitable-q2-answer-wont-surprise-you
[9] https://www.unitedhealthgroup.com/content/dam/UHG/PDF/investors/2022/UNH-Q2-2022-Release.pdf

Recent increases in the cost of care have been driven by inflation as well as increases in the cost of labor, medical supplies, equipment and prescription drugs. Labor expenses, which account for around half the cost of providing care or more, are 19% higher than pre-pandemic levels.[10] A substantial portion of that increase is due to exorbitant price increases for contracted staff that appear to be closely coordinated. The American Hospital Association (AHA) has urged the federal antitrust authorities to investigate these price increases, although no public action has been taken.[11] This is an antitrust issue contributing to price increases that the committee may wish to examine more closely. As our nation considers approaches to reducing the cost of care, these areas are playing a much larger role in the current landscape than mergers and acquisitions.

2. I am particularly interested the impact mergers have on the cost of healthcare for rural and underserved communities. Can you share your thoughts on the costs mergers may impose on rural and underserved communities?

Answer:

Mergers can prevent rural hospitals from closing. Access to capital is important to stabilizing a vulnerable hospital or advancing an innovative one. For some rural hospitals, a variety of models — including partnerships, collaborations, mergers or affiliations — create additional financial stability, enhance operations, spur innovation and improve outcomes at scale. Research indicates that these options are important lifelines for rural hospitals, increasing access to much-needed capital. It's also shown not to drive closures.

Health systems typically acquire rural hospitals when rural hospitals are under financial distress. Research has shown that rural hospitals are less likely to close after acquisition compared to independent hospitals.[12] Moreover, acquired hospitals typically form new links or partnerships with larger health systems, which promotes access to specialists, telehealth and other care for rural patients.[13] For example, Morehead Memorial (N.C.), was acquired by UNC Health Care and renamed UNC Rockingham Health Care. At the time of closing, UNC pledged a $20 million capital investment over three years after the acquisition; most recently, the hospital acquired a $3.8 million linear accelerator for its cancer center.

Moreover, partnerships, mergers or acquisitions may help improve access to care for patients in rural and underserved communities. Some hospitals and health systems may pursue various partnerships, mergers or acquisitions as a way of creating a more cohesive continuum of care. It can make it easier for patients to access specialists in the acquiring system, or access services provided by that system. In this way, consolidation ensures that care remains in the community.

[10] https://www.aha.org/costsofcaring
[11] https://www.aha.org/lettercomment/2021-02-04-aha-urges-ftc-examine-anticompetitive-behavior-nurse-staffing-agencies-and
[12] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9250050/
[13] https://www.aha.org/system/files/media/file/2021/10/KH-AHA-Benefits-of-Hospital-Mergers-Acquisitions-2021-10-08.pdf

Mergers have not been shown to impose additional costs on rural or underserved communities. The bulk of rural hospital revenue comes from government payers, of which Medicare comprises nearly half. Both Medicare and Medicaid reimburse less than the cost of providing care to patients with Medicare and Medicaid coverage. Because rural hospitals are more likely to serve a population that relies on Medicare and Medicaid, rural hospitals are not able to offset low public program payment rates with revenue from patients with commercial coverage, which often has higher reimbursement rates than government payers.

3. Is it possible that government regulations actually caused the consolidation of hospitals?

Answer:

There are many motivations for mergers and acquisitions in the hospital field. Often they are prompted by financial pressures that can limit a hospital's ability to maintain the resources needed to effectively care for its community. While local and federal regulations are largely intended to ensure that patients receive safe, high-quality care, health care providers are subject to many ever-changing regulations at the federal, state and local level (in addition to commercial insurers' policies and procedures) that result in more and more time and other resources for regulatory compliance, which takes providers away from patient care and raises costs for patients and hospitals.

Additionally, it is broadly acknowledged that payment rates for Medicare and Medicaid, established through federal and state regulations, are set below the costs of providing care. Combined underpayments from Medicare and Medicaid to hospitals were $100 billion in 2020, up from $76 billion in 2019. Exacerbating this pressure is the fact that Medicare and Medicaid account for most hospital utilization. In fact, 94% of hospitals have 50% of their inpatient days paid by Medicare and Medicaid and more than three quarters of hospitals have 67% of their inpatient days paid for by Medicare and Medicaid. Since these are fixed payments, hospitals are unable to fully absorb the tremendous inflationary forces they are currently facing. Merging with a hospital system can help some hospitals ease this financial burden and improve patient care.

4. Looking past antitrust remedies and enforcement, are there are other laws we should consider modifying and changing? In other words, looking holistically at our healthcare system, what statutory changes should we consider making in order to deal with the issue of hospital mergers and acquisitions?

Answer:

It is essential that Congress look holistically at the entire healthcare system when regulating anticompetitive practices. This means that Congress and the Executive Branch must enact and enforce laws against health insurers and pharmaceutical companies when they harm consumers through anticompetitive practices.

The Department of Justice and Federal Trade Commission, for example, should begin vigorously enforcing the Competitive Health Insurance Reform Act of 2020, which limits the

antitrust exemption available to health insurance companies under the McCarran-Ferguson Act, and Congress should be prepared to conduct oversight hearings to make sure that this recent law fulfils its promise. Likewise, Congress should investigate ostensibly coordinated efforts by pharmaceutical companies to place conditions that seek to limit access to the 340B program to the detriment of patients on their fulfillment of statutory obligations to offer 340B pricing on outpatient drugs, and investigate some conditions imposed by commercial insurance companies that inappropriately deny prescription drugs (among other limitations) to patients.[14]

5. How have federal government healthcare policies — again, looking at them holistically — influenced the closure of hospitals in rural and underserved areas?

Answer:

As the country recovers from the COVID-19 pandemic, we have a unique opportunity to examine how some federal policies have helped rural hospitals, and how some have imposed undue burden that leads to rural closures.

As discussed above, most federal regulations impose additional costs on hospitals. While rural hospitals are generally subject to the same regulations as other hospitals, lower patient volumes mean that, on a per-discharge basis, their cost of compliance is often higher than for other facilities and greater reliance on Medicare and Medicaid means rural hospitals' revenue might not cover this higher cost of compliance. The volume of regulation, pace of change and complexity of the regulatory framework almost requires scale to implement — and rural areas lack scale. Public payer reimbursement rates are also set through regulation, and are broadly acknowledged to set below the cost of providing care to Medicare and Medicaid beneficiaries. Rural providers rely disproportionately on these payers, so federal payment policies have a large effect on them.

Most importantly, we've seen that federal investment in rural hospitals helped reduce closures. Federal policies, including the CARES Act and Medicare Advanced and Accelerated Payments, provided much needed support for rural hospitals. As a result, there were only two reported rural hospital closures in 2021 according to the UNC Sheps Center, in comparison to 2020 when 19 rural hospitals closed. Financial pressures in 2022, including the exhaustion of COVID-19 relief funds and skyrocketing costs for labor, medical supplies, equipment and prescription drugs, are a serious concern, and likely put more rural hospitals at risk of closure.

Other federal policies have played an important role in reducing the risk of hospital closures:

- Medicaid expansion has been linked to fewer rural hospital closures and reduced costs for Medicaid patients. The majority (74%) of rural closures have occurred in states where Medicaid expansion was not in place or had been in place for less than a year.
- The Medicare-dependent Hospital (MDH) and enhanced Low-volume Adjustment (LVA) programs provide vital support to rural hospitals to offset financial vulnerabilities associated with being rural, geographically isolated and low volume. The AHA supports bipartisan legislation to extend these programs before they are set to expire on Sept. 30, 2022.

[14] https://www.aha.org/white-papers/2022-07-28-commercial-health-plans-policies-compromise-patient-safety-and-raise-costs

- Telehealth flexibilities, granted under waivers during the COVID-19 pandemic, have allowed rural hospitals to see new patients and provide important health care. Certain flexibilities should be made permanent, including lifting geographic and originating site restrictions, expanding practitioners who can provide telehealth and allowing hospital outpatient billing for virtual services, among others.
- Although implementation is still underway, we recognize that the Rural Emergency Hospital model has enormous potential to help avoid rural hospital closures. The AHA has also voiced support for this model and has advocated for implementation policies that seek to realize the model's full potential.

6. Can you explain the impact hospital mergers and acquisitions have on the quality of care for patients? I am particularly interested in the impact on care for rural areas.

Answer:

Mergers can provide community hospitals with the necessary scale to use sophisticated data analytics, identify best practices and implement innovations such as telemedicine. Data-driven development of best practices can reduce the rates of readmission and mortality in merged hospitals. For example, one study found that acquisitions were associated with statistically significant improvements in quality measured as decreases in the overall outcome composite index (where a negative estimate indicates improved quality) and the 30-day readmission rate index.

Moreover, a recent study of rural hospital mergers and acquisitions, published by JAMA Network Open in September 2021, found significant reductions in mortality for a number of common conditions — including acute myocardial infarction, heart failure, acute stroke and pneumonia — among patients at rural hospitals that had merged or been acquired.[15] In a separate study, authors concluded a full-integration approach to hospital consolidation was associated with improvement in quality outcomes and patient experience.[16]

Acquired hospitals often offer expanded services. One study found that nearly 4 in 10 (38%) of acquired hospitals added one or more services post-acquisition.[17] Patients at hospitals acquired by academic medical centers or large health systems also gain improved access to tertiary and quaternary services.

7. Do mergers actually improve patient access to comprehensive, integrated care? For example, a merger between two local hospitals may reduce choice, but the consolidation might also allow the new merged hospital to commit resources to the development of more comprehensive treatment methods and specialties. How do mergers affect access to more comprehensive, integrated treatment?

Answer:

[15] https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2784342
[16] https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2787652
[17] https://www.aha.org/system/files/media/file/2021/10/KH-AHA-Benefits-of-Hospital-Mergers-Acquisitions-2021-10-08.pdf

Research shows that mergers can both preserve and enhance access to care for patients; particularly in small, rural communities or for financially vulnerable organizations. The value of integrated health systems was seen clearly during the pandemic, particularly those in rural areas that otherwise might have succumbed to the devastating financial effects of COVID-19.

Mergers can produce important cost savings allowing for investments in medical innovation and providing the scale needed to take on investments to upgrade services, recruit and deploy additional staff to an acquired hospital. Benefits of mergers often include a strong foundation for coordinated care, including implementing system-wide best practices, the ability to improve operations across the combined entities and bring specialty services or management capabilities to hospitals in new communities, which expands access to healthcare services and enhances operational efficiencies.

Additionally, data shows that mergers have given hospitals and health systems the scale needed to support consumer-centric strategies that enhance the patient experience of care as well as make investments in the advancement of care delivery, technology and population health infrastructure.

In response to Ranking Member Grassley's question

1. I'm a strong proponent of transparency and providing additional information to consumers. Every customer in America is entitled to know what they must pay before first buying a product or service. This should include medical care. In January of this year a final rule from HHS went into effect requiring hospitals to disclose prices for common items and services. I've cosponsored legislation to codify these regulations. Dr. Hochman, do you agree that price transparency is important to consumers and are your member hospitals providing this information to your patients?

Answer:

Hospitals and health systems across the country support price transparency efforts that ensure patients have access to the information they seek when preparing for care. The AHA has been actively engaged in identifying and promoting best practices in patient billing, including adopting and updating guidelines for the field in 2003, 2006, 2012 and, most recently, 2020.[18] The AHA's Patient Billing Guidelines underscore hospitals' commitment to ensuring that conversations about financial obligations do not impede care, while recognizing that determinations around financial assistance require mutual sharing of information by providers and patients. Additionally, they balance needed financial assistance for some patients with the hospital's broader fiscal responsibilities in order to keep their doors open for all who may need care in a community.

Understanding potential costs is an important aspect of the patient experience, which is why the AHA has educated members on best practices and tools that aid patients and align with the new federal price transparency policy, including around "shoppable services" that can be met through the use of a patient cost estimators. Hospitals and health systems have been able

[18] https://www.aha.org/standardsguidelines/2020-10-15-patient-billing-guidelines

to increase adoption of these tools largely due to growth in availability of technological resources at multiple price points and with increased functionality. In particular, this “next generation” of price transparency tools are easier for hospitals to implement and for consumers to navigate. However, implementation and maintenance requires significant organizational effort across many different departments and can take over a year to establish; these efforts are worthwhile, though, to ensure patients have clear information about every aspect of their health care decisions, including their expected out-of-pocket costs.

The price transparency policies in the No Surprises Act focus on providing tailored cost information to patients. We commend Congress for passing this legislation and are already working with CMS to ensure these policies are appropriately implemented. While we support these policies and believe they will better inform patients of their financial obligation, implementation will not be easy. New standards are needed for the implementation of the advanced explanation of benefit, with industry-wide buy-in and adoption. It is critical that the government ensure alignment across the various federal price transparency requirements in order to avoid patient confusion that could harm, not help, patients’ ability to use cost information to inform decisions about their care. The AHA will continue to support hospitals as they work to help patients understand their anticipated costs for care.