

## **Yea or Nay? Hospital Mergers and Acquisitions**

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### Abstract

Mergers and acquisitions have become popular considerations for health care organizations when addressing major strategic issues such as market share, sustainability and profit margins in today's health care landscape. Sufficient evidence suggests that significant concentration in hospital markets signals loftier rates with insurers. In some markets, hospital mergers have essentially eliminated the competition among these organizations leading to, among other things, increased prices for hospital services. . When hospitals choose to merge in already saturated markets, significant price increases result, increases that are quite often passed on to patients.

Increased regulation and rising costs under the ACA have incited hospitals to merge, while simultaneously rousing the interest of antitrust regulators. At present, the Biden administration has charged the Federal Trade Commission and the Department of Justice with more closely examining hospital mergers and acquisitions that can lead to higher consumer prices. In reality, and through research, this author found that certain hospital mergers and acquisitions do run the risk of compromising quality care and, in addition, frequently leaving patients without affordable care. Recently a new trend may be underway, with some health care organizations deciding to part ways after several years of their merger/acquisition.

## Yea or Nay? Hospital Mergers and Acquisitions

Mergers and acquisitions are popular considerations for healthcare organizations when choosing to address profitability margins and sustainability in today's marketplace. However, in reality certain hospital mergers and acquisitions run the risk of compromising treatment quality and leaving patients without affordable care. To protect consumer rights, the Federal Trade Commission has taken an interest in the oversight of hospital mergers and acquisitions. Particularly, the Biden administration has charged the Federal Trade Commission and the Department of Justice with examining even more closely, hospital mergers and acquisitions.

The popularity of hospital mergers and acquisitions was born of the shifts occurring in the overall healthcare market.<sup>1</sup> Within the hospital landscape, healthcare reform is becoming an effective channel for consolidation and integration.<sup>2</sup> A hospital's motive to merge remains vast, while the rationale behind the decision is reiterated by the evolving value-based payment systems and willingness to endure the financial risk. In addition, a continued effort exists to reduce cost by implementing clinical standardization and improving quality. Challenges such as dwindling reimbursement, mounting costs, taxing consumers, and impeding new competitors leave hospital organizations believing if they can grow large enough, they will be able to survive the changing healthcare landscape.<sup>3</sup> Smaller hospitals gain advantages by acquiring greater access to innovative technology sources and ample provisions to ease organizational responsibilities through such alliances.<sup>4</sup>

However, this consolidation of healthcare organizations can initiate decreased competition. This decrease in competition primarily creates an increased bargaining ability for health care organizations during negotiations with health payers, according to Gregory Curfman, MD, assistant professor of medicine at Harvard Medical School.<sup>5</sup> Curfman further states, "When individual hospitals merge with larger systems they gain a larger share of the consumer health market;" this puts hospitals in a position to petition health insurance companies to pay more for medical care and procedures. Although many phases of hospital mergers and acquisitions took place before the Affordable Care Act (ACA), the increased regulation and rising costs under the ACA has incited hospitals to unite while motivating interest in the antitrust law arena.<sup>6</sup> Consequently, the resulting influx of mergers has not gone unnoticed.<sup>7</sup>

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<sup>1</sup> Merger Monitor, *Impact of Hospital Mergers*, (June-2016) or at [https://www.hpae.org/wp-content/uploads/2016/06/merger\\_monitor-internet.jpg](https://www.hpae.org/wp-content/uploads/2016/06/merger_monitor-internet.jpg), p.1

<sup>2</sup> Thomas C. Brown, et.al, *Current Trends in Hospital Mergers and Acquisitions: Healthcare reform will result in more consolidation and integration among hospitals, reversing a recent trend in which hospitals tended to stay away from such transactions*. HEALTHCARE FINANCIAL MANAGEMENT, vol. 66 no.3, March 2012, p. 114.

<sup>3</sup> Shane Devereux, The Kinetix Group, *Health Systems The Merger Boom: How and Why Hospital Mergers are Transforming the Healthcare Ecosystem*, (May 2, 2018) p.1 or <https://thekinetixgroup.com/the-merger-boom-how-and-why-hospital-mergers-are-transforming-the-healthcare-ecosystem/>

<sup>4</sup> *Id.*

<sup>5</sup> Sara Heath, *How Do Healthcare Mergers and Acquisitions Impact Patients?* Patient Care Access News, Xtelligent Healthcare Media, 7 August 2018, p.1.

<sup>6</sup> Pub. L. No.111-148. 124 Stat. 119 (2010) (codified as amended in scattered sections of the U.S. Code.).

<sup>7</sup> Leemore Dafney, Ph.D., *Hospital Industry Consolidation: Still More to Come?* New England Journal of Medicine, 370:198.199, 16 January 2014.

The healthcare market suggests the cost of business will continue to escalate due to the quickening pace of new technology, treatment modalities, and pharmaceuticals, combined with an aging demographic as patient expectations continue to escalate.<sup>8</sup> The inflated costs of running a hospital, health system, or physician business, are significant factors when considering consolidating.<sup>9</sup> Hospitals view mergers and acquisitions as an important way to adapt to the ACA's related challenges. Consequently, over two-thirds of the community hospitals in the United States are already a part of a health system or corporate entity that owns more than two hospitals.<sup>10</sup> Additionally, hospitals within the same geographic area achieve better negotiating advantage with health plans. These advantages are substantial for smaller hospitals and hospitals that may find themselves in a weakened financial state. Still, many hospital transactions purportedly involve independent hospitals that are relatively large and financially stable.<sup>11</sup> Shared costs are another attractive approach enhanced through a larger platform. Greater size also begets additional resources, such as increased access to capital, focused management, practical resources, and the ability to leverage the organizations strength with contracting partners and payers. When resources combine, additional organizational success is achieved.<sup>12</sup> Extensive industry consolidation also occurs as hospitals integrate vertically into the healthcare sectors. Hospitals that integrate vertically are seemingly in a better position to coordinate patient care and control the flow of health care dollars to achieve success in the post-ACA era.<sup>13</sup> Specifically, hospitals are also aggressively acquiring physician practices and employing physicians directly. Physicians may join hospitals for several motivating factors. For instance, many of these physician practices lack essential financial capital.<sup>14</sup> Another significant consideration for managing their patients remains the ability to reach the sizable financial obligation needed to purchase information technology.

The ACA prompted a massive reconfiguration of the dominant fee-for-service reimbursement models. A shift towards "experimental" methodologies such as bundled payments, heightened rewards, and quality penalties seemingly moved toward population health and a capitation-friendly payment system. Private payors were also encouraged to develop creative, innovative means to contain cost and promote quality.<sup>15</sup> The ACA embraced population health principles including that providers need to focus more on preventing illness rather than treating it. Consolidation offers providers assembled into Accountable Care Organizations (ACO's) financial incentives to reduce care costs by keeping their assigned members healthier.

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<sup>8</sup> *Id.*

<sup>9</sup> David M. Cutler, PhD, Fiona Scott Morton, PhD, *Hospitals, Market Share, and Consolidation*, JAMA, Vol. 310, Number 18, November 13, 2013 p.1969.

<sup>10</sup> NCCI Insights, *The Impact of Hospital Consolidation on Medical Costs*, 11 July 2018, p.2.

<sup>11</sup> Commins, J., *Hospital Consolidation 2016 Forecast: More of the Same*, Health Leaders Medicine, January 15, 2016.

<sup>12</sup> Lawrence J. Singer, Symposium Article: *Considering the ACA's Impact on Hospital and Physician Consolidation*, 46 J.L. Medicine & Ethics, 913 p.2.

<sup>13</sup> Physicians Advocacy Institute, (PAI), *Executive Summary: Provider Consolidation Increases Health Care Spending*, September, 2016, p.2.

<sup>14</sup> Timothy J. Hoff, et al., *PROFESSIONAL WORKFORCE: UNDERSTANDING HUMAN CAPITAL IN A CHANGING INDUSTRY*, 177, New York, NY Oxford University Press; 2016.

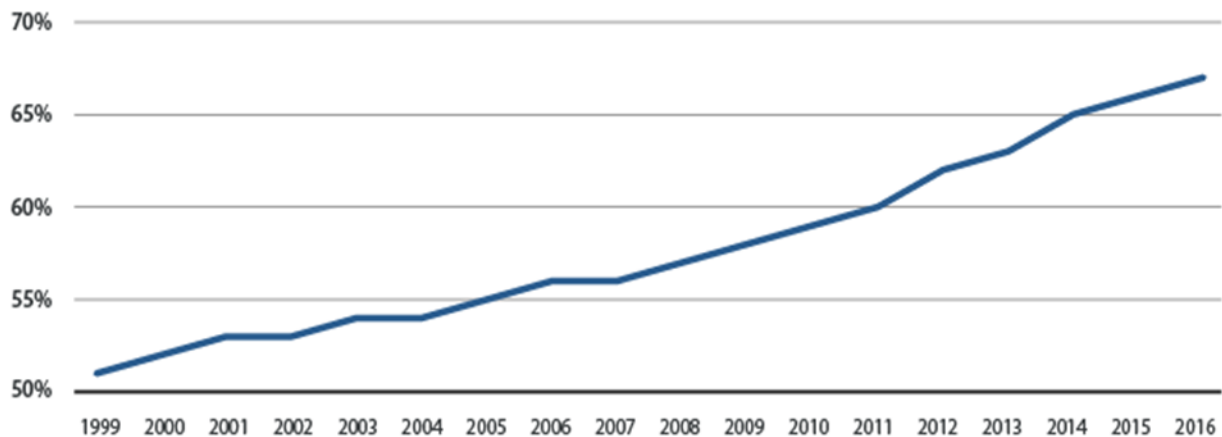
<sup>15</sup> *Id.* at 4.

When a merging entity obtains substantial market power or has an essential facility, consumers may have no alternative means of care if the hospital chooses to increase costs or decrease treatment.<sup>16</sup> Consolidation is the compelling influence of incredibly concentrated markets resulting in less competition among providers.<sup>17</sup> The smaller number of independent hospitals represents a loss of alternatives for patients and fewer costs for health systems do not transpire into lower prices for patients.<sup>18</sup> (See figure 2 below)

FIGURE 2

### Fewer hospitals are independent of health systems

Percent of community hospitals belonging to health systems, 1999–2016



Source: American Hospital Association, "Trendwatch Chartbook 2018" (2018), Table 2.1: Number of Community Hospitals, 1995–2016, available at <https://www.aha.org/system/files/2018-05/2018-chartbook-table-2-1.pdf>.



A lack of competition could lead some health systems to increase prices, lessen treatment options and over-treat patients. Hospital mergers in over concentrated markets generally lead to significant price increases. Rural areas of the country also suffer from scarce competition. Concentration in those communities are often a consequence of too few providers rather than consolidation. About 1 in 5 counties has no hospital at all, and half lack a hospital with obstetric services.<sup>19</sup> Moreover, the number of hospitals in the United States has waned over the last three decades because of closures, mergers, and acquisitions. Significant price increases are usually passed on to the patient's pocketbook when hospitals choose to merge in already saturated markets.<sup>20</sup>

<sup>16</sup> 15 U.S.C. 1 (2000).

<sup>17</sup> Emily Gee and Ethan Gurwitz, *Provider Consolidation Drive Up Health Care Costs*, Center for American Progress, December 5, 2018, p.4.

<sup>18</sup> *Id.* at 33.

<sup>19</sup> Caitlin Brandt and Alice M. Rivlin, *Insurer competition in rural areas: a bipartisan challenge*, (Washington: Brookings Institution, 2017), available at <https://www.brookings.edu/blog/up-front/2017/08/09/insurer-competition-in-rural-areas-a-bipartisan-challenge/>; Peiyin Hung and others, "Access to Obstetric Services in Rural Counties Still Declining, With 9 percent Losing Services, 2004-14," *Health Affairs* 36 (9) (2017):1663-1671.

<sup>20</sup> The Synthesis Project, *supra*.

A worthy case in point is the recent California’s Sutter Health’s \$575 million antitrust settlement.<sup>21</sup> The lawsuit claimed that higher prices led to \$756 million in overcharges. Headquartered in Sacramento, Sutter provides coordinated care to over 3 million Californians. Sutter sees over 691,000 emergency room visits annually and over 27,000 births were reported in 2020. The outcome of the Sutter case recognized a need to promote hospital price transparency, a priority remaining from the Trump administration.<sup>22</sup> Accordingly, hospital systems should be a “bit more cautious” when drawing up contracts that could be seen as anticompetitive. Prohibiting insurers from “steering” patients toward less expensive medical care or revealing pricing information must be integrated in measures taken.<sup>23</sup>

Another worthwhile transaction to watch is the Michigan-based Beaumont Health and Spectrum Health. They are proceeding with a merger that would give the combined health system control of 22 hospitals, outpatient sites, and a health plan covering over 1 million people. Southfield-based Beaumont brings to the acquisition eight hospitals and about 33,000 employees in southeastern Michigan. Beaumont has 3,375 hospital beds, 155 outpatient sites and a net revenue of \$4.6 billion. The proposed partner, Grand Rapids based Spectrum Health has 14 hospitals in western Michigan with 31,000 employees, and 2,573 hospital beds. Spectrum boasts 150 outpatient sites and net revenue of \$8.3 billion.<sup>24</sup> One of the unusual aspects of the Spectrum-Beaumont merger is that the two systems do not presently compete geographically or overlap in their service areas.<sup>25</sup> While the combination would create the most extensive health system in Michigan, the Spectrum CEO, Tina Freese Decker stated in a recent interview, the acquisition was not about being the biggest- but about quality service. “This integration is about developing scale necessary to make the shift to value-based care and transformation health for all of our circumstances across the state. Since we are an integrated health system, a health insurer and a care provider, we can create and deliver innovative, value-driven products and services to our communities and employers.”<sup>26</sup> These two organizations have so much in common in terms of vision and values, it allows for the creation of a new organization that will move toward value-based care rapidly for the state of Michigan.<sup>27</sup> Because these two Michigan based, nonprofit organizations, are coming together to create a new system, it is not believed the (state) Attorney General’s Office will need to approve the transition.”<sup>28</sup>

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<sup>21</sup> *UFCW & Employers Benefit Trust v. Sutter Health*, case no. CGC-14-538451 (Cal. Supr., filed Apr. 7, 2014), and *California v. Sutter Health*, case no. CGC-18-565398 (Cal. Supr., filed Mar. 29, 2018).

<sup>22</sup> Gaby Galvin, Healthcare Competition, *Hospitals, Other Health Care Players Are Seeing ‘the Bar of Scrutiny’ Raised by Biden Regulators*, Morning Consult, September 10, 2021, p.5.

<sup>23</sup> Kristen Jordan Shamus, *Beaumont and Spectrum Health to plan merger, forming Michigan’s biggest health system*, Detroit Free Press, June 17, 2021.

<sup>24</sup> Kristen Jordan Shamus, *Beaumont-Spectrum merger takes another forward step with formal integration agreement*, Detroit Free Press, September 2, 2021 p.

<sup>25</sup> MoodyontheMarket.com, HEALTH SYSTEM MERGER: IS SIZE REALLY THE QUESTION?, July 6, 2021, p.1

<sup>26</sup> Kristen Jordan Shamus, *Beaumont and Spectrum Health to plan merger, forming Michigan’s biggest health system*, Detroit Free Press, June 17, 2021, p.4.

<sup>27</sup> *Id.*

<sup>28</sup> Kristen Jordan Shamus, *Merger takes another forward step with formal integration agreement*, Detroit Free Press, September 2, 2021, p.2.

In contrast, Methodist Le Bonheur Healthcare of Memphis and Tenet Healthcare Corporation of Dallas chose to abandon their \$250 million transaction of two Memphis area hospitals after the sale triggered a lawsuit from the FTC due to consolidation concerns.<sup>29</sup> The FTC blocked the proposed acquisition believing the transaction would substantially lessen competition in the Memphis area. The complaint alleged once the proposed acquisition was completed, healthcare costs will escalate, the incentive to expand offerings, invest in technology, improve access to care and the emphasis on providing quality of care will fade. The two-hospital system released a statement in December, 2020 commencing that Tenet’s sale of two hospitals known as St. Francis was called off in part, because of the FTC’s lawsuit. St. Francis CEO, Sally Hurt-Deitch concluded “the best course of action for both organizations is to continue to serve our communities independently.”<sup>30</sup>

Hospitals have maintained that consolidation helps patients with lower, affordable prices from coordinated services and additional savings.<sup>31</sup> However, just the opposite occurred. The mergers have essentially eliminated the competition and increased prices for hospital admissions.<sup>32</sup> Sufficient evidence suggests that a significant concentration in hospital markets signals loftier rates with insurers.<sup>33</sup> Moreover, these mega-hospital systems may fail to improve outcomes and foster greater utilization of services. Additional treatment may result in suboptimal care, excessive treatment of patients, and can account for higher mortality rates.<sup>34</sup> Reducing competition by hospital mergers in concentrated areas generally lead to considerable price increases.<sup>35</sup> Other research has shown that an increasing number of budget-savvy patients prefer to shop around for their care. These patients are also more likely to postpone treatment due to price. Here, consolidations could undesirably sway population health by limiting care alternatives at multiple price points.<sup>36</sup> As a result, hospitals will end up treating sicker patients in the long run. The increased financial emphasis on facilities keeping patients healthy and curtailing access to care via consolidation may actually impair a hospital’s bottom line.<sup>37</sup> Informed choices and shared decision-making where patients are supplied with information that allows them to obtain the care they want and need often leads to lower utilization, less costs, and improved outcomes.<sup>38</sup>

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<sup>29</sup> *FTC v. Methodist Le Bonheur Healthcare et al.*, 220-cv-02835

<sup>30</sup> Robert King, *Hospitals: Methodist Le Bonheur call off sale of 2 hospitals after FTC’s lawsuit*, Fierce Healthcare January 4, 2021, p.1

<sup>31</sup> Reed Abelson, *When Hospitals Merge to Save Money, Patients Often Pay More*, The New York Times, 14 November 2018 or <https://www.nytimes.com/2018/11/14/health/hospital-mergers-health-care-pending.html>.p.1.

<sup>32</sup> *Id.*

<sup>33</sup> Beth Fitzgerald, Hackensack, *Meridian to Merge, forming the state’s largest health system*, NJB12, 16 October or 2014, or <http://www.njbiz.com/article/2014.2016/NJB1201/141019838/hackensack-meridian-to-merge-forming-states-largest-health-system>.

<sup>34</sup> Tim XU, et al., *The Potential Hazards of Hospital Consolidation: Implications for Quality, Access, and Price*, JAMA, Volume 314, No.13, 6 October 2015.

<sup>35</sup> Gaynor, M. and Town, R., *The Impact of Hospital Consolidation*, The Synthesis Project, Robert Wood Johnson Foundation, June 1, 2012, p.2.

<sup>36</sup> *Id.* at 2.

<sup>37</sup> *Id.*

<sup>38</sup> Arteburn, D., Wellman R., Westbrook, E., et al., *Introducing decision aids at Group Health was linked to sharply lower hip and knee surgery rates and costs*, Health Affiliates (Millwood) 2012:9:2094-2104 or The American Journal of Medicine, *Potential Advantages of Health Systems Consolidation & Integration Commentary*, p.1.

The FTC pays particular attention in healthcare markets to prevent anticompetitive behavior that denies consumers the benefit of competition.<sup>39</sup> At present, President Biden is pursuing the federal government to review and revise the guidelines for hospital mergers that can lead to higher prices. The directive aims to increase competition throughout all sectors of the economy and emphasizes several parts of the healthcare market where access to care has diminished. Biden called out mergers that have “left rural communities without good options for convenient and affordable healthcare service. Due to unchecked mergers, the ten largest systems now control a quarter of the market.”<sup>40</sup> The most straight forward, early signal of how aggressively the Biden administration will push healthcare competition may not come from merger reviews, but from its efforts on price transparency. AHS has proposed increasing fines for hospitals that do not comply with the rule requiring them to publicize their prices from up to \$109,500 annually to more than 2 million. Remarkably, research indicates most hospitals are ignoring the rule, which went into effect this year. Price transparency is the “low-hanging fruit” to promote competition in health care and similar rules should apply to health insurers.<sup>41</sup>

Overall, hospital mergers have slowed this year, with 27 deals completed in the first half of 2021 compared to 43 in the same period last year, according to a Kaufman Hall analysis.<sup>42</sup> While the number of transactions has fallen; revenue is similar with previous years as health systems focus on regional partnerships in new markets rather than acquiring smaller, individual hospitals.<sup>43</sup> Patients should have a choice about where to obtain their healthcare. The U.S. government has made it a leading priority to make sure that any consolidation in the healthcare industry does not impair competition, and it has become the “new norm” in being more aggressive in trying to obstruct mergers it believes are a detriment to consumers.<sup>44</sup>

Of late, one of the largest health systems in Illinois has decided to part ways. Amita Health formed by Advent Health and Ascension and comprises 14 acute care hospitals. The company released a statement “Leaders of both sponsoring organizations have determined that going forward separately is in their collective best interest in order to more nimbly meet the changing needs and expectations of consumers in the rapidly evolving healthcare environment”<sup>45</sup>

So what really drives the separation? Most of the hospitals that joined a larger system accomplished greater revenue, but failed to become more efficient.<sup>46</sup> Often the acquired hospital of a system asserts that expectations were not met, cultures clashed, executive turnover disrupted operations, performance declined and the hospital’s autonomy is lost.<sup>47</sup> These separations also carry implications across virtually every facet of an organizations operations. According to Ian

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<sup>39</sup> <https://www.ftc.gov>; Federal Trade Commission, *Protecting America’s Consumers*

<sup>40</sup> Gaby Galvin, Healthcare Competition, *Hospitals, Other Health Care Players Are Seeing ‘the Bar of Scrutiny’ Raised by Biden Regulators*, Morning Consult, September 10, 2021, p.2.

<sup>41</sup>*Id.* at 5.

<sup>42</sup> *Id.* at 3.

<sup>43</sup> *Id.*

<sup>44</sup> Joseph Miller and Alexis Gilman, Health Care Mergers: Keeping Care Competitive, February 2018 p. 1., or <https://www.crowell.com/Newsevents/regulations/articles/health-care-mergers-keeping-care-competitive>.

<sup>45</sup> Stefano Esposito, *After seven years, Amita Health partnership breaking up*, Chicago Sun Times, October 21, 2021.

<sup>46</sup> Alex Kacik, *Consolidations casualties: Hospital mergers unwind as organizations clash*, Modern Healthcare Alert, <https://modernhealthcare.com>, June 5, 2021.

<sup>47</sup>*Id.*

Spier, director of healthcare at Wells Fargo Securities “these unwinds can effect governance, finance, IT, to branding and credit ratings.”<sup>48</sup>

In closing, it remains essential for healthcare executives to be diligent in examining an organization’s mission, values, and culture before deciding to take the leap. The Beaumont-Spectrum merger just may set the precedent for other hospital mergers and acquisitions to follow. Stay tuned and keep watching.

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<sup>48</sup> Id