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Advancing Health in America

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March 30, 2022

The Honorable Jonathan Kanter
Assistant Attorney General
Department of Justice, Antitrust Division
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

RE: U.S. Federal Trade Commission and the U.S. Department of Justice Request for Information on Merger Enforcement

Dear Assistant Attorney General Kanter and Chair Khan:

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) appreciates the opportunity to present our views to the U.S. Federal Trade Commission (FTC) and the Antitrust Division of the U.S. Department of Justice (DOJ) on the future of merger enforcement, particularly on contemplated changes to the 2010 Horizontal Merger Guidelines and the 2020 Vertical Merger Guidelines (collectively the "merger guidelines") and the impact the revisions will have on patient care.

AHA members are committed to improving the health of the communities that they serve and to helping ensure that care is available to and affordable for all Americans. The AHA provides extensive education for health care leaders and is a source of valuable information and data on health care issues and trends. It ensures that members' perspectives are heard and addressed in national health-policy development, legislative and regulatory debates, as well as judicial matters. Because hospital mergers regularly generate significant health care quality improvements and cost reductions, the AHA is invested in ensuring that the merger guidelines properly account for these benefits and correctly analyze the likely effects of hospital transactions.

Executive Summary

Hospital mergers benefit patients and their communities in multiple ways. Mergers enable hospitals to improve clinical care, lower costs, upgrade facilities, and offer new and higher quality services. For these reasons, it is essential that the antitrust agencies employ analytically sound merger guidelines that fairly account for the lifesaving benefits that hospital mergers produce. Changes to the guidelines should reflect years of scholarship that have documented these pro-competitive efficiencies.

The merger guidelines do not need major revisions. But they should be revised in two specific ways to improve how the agencies analyze hospital mergers. First, the guidelines should require the agencies to correct defects in the economic models that they use to evaluate hospital transactions. Second, the guidelines should enable the antitrust agencies to account for the improved coordination of care that mergers enable. These revisions are necessary to ensure that the antitrust agencies properly recognize the benefits of hospital mergers when reviewing proposed transactions.

SOUND MERGER GUIDELINES ARE IMPORTANT TO THE HOSPITAL FIELD BECAUSE HORIZONTAL AND VERTICAL MERGERS ENABLE HOSPITALS TO BETTER SERVE PATIENTS AND THEIR COMMUNITIES

Analytically sound guidelines that fairly account for the potential pro-competitive effects of mergers are essential to preserving hospitals' ability to merge and affiliate in ways that provide lifesaving care to patients at lower costs. Hospitals and health professionals have long worked to improve patient outcomes and lower provider costs by reducing fragmentation in the delivery of health care.[1] Mergers can be the most effective means to accomplish these goals.

In a variety of ways, these combinations improve clinical care in a cost-effective manner while preserving access to care in underserved communities. By joining a health system, hospitals can be better able to marshal necessary resources, restart planned projects, recruit and retain talented clinical staff and personnel, upgrade facilities, and offer specialty services to high-touch patients.[2] Acquired hospitals also can increase much-needed investment in personnel, technology and equipment.[3]

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[1] Drs. Monica Noether and Sean May and Ben Sterns, *Hospital Merger Benefits: Views from Hospital Leaders and Econometric Analysis – An Update* at 1 (2019), https://www.aha.org/system/files/media/file/2019/09/cra-report-merger-benefits-2019-f.pdf [hereinafter "*Views from Hospital Leaders*"].

[2] Testimony of the Am. Hosp. Ass'n for the Subcomm. on Competition Policy, Antitrust, and Consumer Rts. of the Comm. on the Judiciary of the U.S. Senate, "Antitrust Applied: Hospital Consolidation Concerns and Solutions," at 2, 4 (May 19, 2021), https://www.aha.org/testimony/2021-05-19-aha-testimony-antitrust-applied-hospital-consolidation-concerns-and-solutions [hereinafter "Dr. Hochman Testimony"].

[3] Dr. Hochman Testimony at 3; *see* Drs. Sean May, Monica Noether, and Ben Sterns, *Hospital Merger Benefits: An Econometric Analysis Revisited* at 1 (Aug. 2021), https://www.aha.org/system/files/media/file/2021/08/cra-merger-benefits-revisited-0821.pdf [hereinafter "*Hospital Merger Benefits Revisited*"].

Hospital mergers also increase geographic coverage by bringing specialty services and management capabilities to new markets or expanding them in underserved markets.[4] Health care quality is enhanced because acquiring hospitals can standardize clinical protocols and are able to oversee and hold individual hospitals accountable for measurable outcomes.[5] Additionally, larger scale can allow smaller hospitals to adopt risk-bearing alternative payment models,[6] which place the value on patient outcomes rather than patient volume.[7] Moreover, mergers can enable health systems to provide better coordinated care, by accessing analytics and providing access to specialty care and care coordination staff who help to ensure patients' needs are met. All of these attributes can greatly benefit patients and their communities.

Mergers also can generate substantial savings and better patient outcomes from improved and integrated information technology (IT) systems and data analytics. For example, mergers can facilitate the creation and expansion of repositories of cost and clinical data that allow hospitals to identify and implement optimal management and innovative care protocols.[8] Advanced IT systems have the capability of providing accurate and real-time results for better diagnoses and treatments. Such state-of-the-art systems, however, are a considerable fixed cost that some hospitals can ill afford. Integrated hospital systems can often more readily invest in and implement robust IT infrastructure in an efficient and streamlined way, ensuring that affiliated hospitals, regardless of their size or location, can benefit equally. With access to the latest technology, as well as aggregate clinical data, health care providers in hospital systems are often able to perform more sophisticated analyses and implement best practices and innovations (such as telemedicine and care coordination services) that greatly improve patient access and care. These improvements, in turn, allow merged hospitals to provide critical, flexible, and complementary services to their communities, regardless of a patient's ability to pay.[9]

Economic research has shown that these benefits are quantifiable,[10] as they have been found, for example, to lower mortality rates and readmission trends in recently acquired hospitals.[11] In addition to these critical benefits, merger efficiencies allow struggling

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[4] Kaufman Hall, *Partnerships, Mergers, and Acquisitions Can Provide Benefits to Certain Hospitals and Communities* at 6 (Oct. 12, 2021), https://www.aha.org/system/files/media/file/2021/10/KH-AHA-Benefits-of-Hospital-Mergers-Acquisitions-2021-10-08.pdf.
[5] *Views from Hospital Leaders* at 1.
[6] Dr. Hochman Testimony at 4-5; Kaufman Hall at 15.
[7] *See generally* Am. Hosp. Ass'n, *Current & Emerging Payment Models*, https://www.aha.org/advocacy/current-and-emerging-payment-models.
[8] *Views from Hospital Leaders* at 14.
[9] Kaufman Hall at 5.
[10] *Hospital Merger Benefits Revisited* at 1; Dr. Hochman Testimony at 3.
[11] *Views from Hospital Leaders* at 14; *see* Drs. Joanna Jiang, Kathryn Fingar et. al, *Quality of Care Before and After Mergers and Acquisitions of Rural Hospitals*, JAMA Network Open at 1 (Sept. 20, 2021), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2784342; *see also* Drs. Erwin Wang and Simon Jones, Sonia Arnold et. al; *Quality and Safety Outcomes of a Hospital Merger Following a Full*

hospitals to realize significant cost savings and pass those savings on to their patients.[12]

As hospitals are facing rapidly rising costs and unsustainable financial pressures, the efficiencies that mergers produce can enable these hospitals to remain open and maintain, or even expand, the scope of services they offer.[13] These hospitals also benefit from capital infusions from acquiring hospitals, providing another means to avoid bankruptcy and closure.[14] Avoiding closure of these hospitals is especially important because smaller communities rely on their local hospitals for essential medical services.[15]

THE MERGER GUIDELINES DO NOT NEED MAJOR REVISIONS

The horizontal and vertical merger guidelines do not need major revisions. Rather, the guidelines should align with long-standing legal and economic principles and contemporary market realities. Today, the merger guidelines generally remain a robust benchmark for antitrust compliance and enforcement. Hospitals, other organizations, judges, and practitioners rely on the merger guidelines for predictability and transparency of what constitutes lawful conduct. Consequently, the guidelines should be recalibrated only to account for significant developments in antitrust law and economics, particularly as they relate to significant developments in the health care and hospital arenas.[16]

Changing the merger guidelines too often or too dramatically undermines their persuasive value with courts and the ability of businesses to rely on the guidelines as they will be viewed merely as an indication of temporary policy. For example, the FTC supported the adoption of the 2020 Vertical Merger Guidelines only to rescind that support a year later, a move that reduces hospitals' confidence that future guidelines will have enduring value. Rapid changes in agency guidance are destabilizing to hospitals

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Integration at a Safety Net Hospital at 1 (Jan. 6, 2022), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2787652.

[12] *Views from Hospital Leaders* at 1; note attempts to pass on savings can by stymied by health insurance companies that decline to pass them to their subscribers, *e.g., United States v. Anthem Inc*., 236 F. Supp. 3d 171, 251 (D.D.C. 2017) ("First of all, there is reason to doubt that the claimed savings will be entirely passed on to consumers as Anthem has repeatedly assured the Court that they would. . . .Anthem's internal documents reflect that the company has been actively considering multiple scenarios for capturing any medical cost savings for itself….)".

[13] Dr. Hochman Testimony at 2.

[14] Kaufman Hall at 9 (noting that 80 percent of bankrupt hospital targets were saved from bankruptcy in 31 recent hospital transactions).

[15] Dr. Hochman Testimony at 5.

[16] *See* Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson Regarding the Request for Information on Merger Enforcement at 1 (Jan. 18, 2022), https://www.ftc.gov/system/files/documents/public_statements/1599775/phillips_wilson_rfi_statement_final_1-18-22.pdf.

and health systems because the evaluation and pursuit of procompetitive mergers often requires a years' long commitment of resources and a steadfast understanding of the antitrust laws.

A particular area where the agencies should not make significant revisions concerns their approach to product and geographic market definitions. In this area, the agencies should continue to require market definitions as necessary elements of competition analysis. Relaxing market definition requirements would not only run contrary to years of established judicial precedent, but also make it exceptionally challenging for counsel to advise merging parties on antitrust risk. Market definitions enable hospitals to better predict how agencies will evaluate a contemplated transaction and allow procompetitive mergers to be more efficiently reviewed. This predictability and efficiency ultimately benefit the agencies, payers, and patients.

To the extent that developments in the technology or other sectors warrant updates to the guidelines, the agencies should tailor guidance specifically to those sectors. The agencies have successfully done so for other fields and industries.[17] To address certain innovation and competition issues that feature prominently in specific industries, it would be appropriate to issue tailored advice to those sectors. That would include updating the Statements of Antitrust Enforcement Policy in Health Care. AHA has over the years requested a number of changes to those Statements that would bring them more in line with contemporary practices in the health care and hospital field. These practices counsel, for example, assigning greater weight to the efficiencies created by mergers and acquisitions as well as less structured arrangements that provide myriad[18] benefits to their communities.

Rather than dramatically changing the merger guidelines, the agencies can and should do more with the power they currently possess to challenge anticompetitive mergers and deceptive conduct by insurance companies. The current guidelines allow the agencies to challenge deals like UnitedHealth Group's proposed acquisition of Change Healthcare, a suit that was recently and rightfully brought by the DOJ. Additionally, the agencies' power to go after anticompetitive conduct has recently been expanded with the 2021 passage of the Competitive Health Insurance Reform Act (CHIRA), which repealed the much-maligned McCarran-Ferguson Act's federal antitrust exemption for

[17] *See generally* Dep't of Justice & Fed. Trade Comm'n, *Antitrust Guidelines for the Licensing of Intellectual Property* (Jan. 12, 2017), https://www.justice.gov/atr/IPguidelines/download; *Statements of Antitrust Enforcement Policy in Health Care Issued by the U.S. Department of Justice and the Federal Trade Commission* (Aug. 1996) [hereinafter "Health Care Guidelines"]; *Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program* (Oct. 28, 2011), among others, https://www.ftc.gov/tips-advice/competition-guidance.
[18] https://www.justice.gov/atr/page/file/1197731/download and https://www.hoganlovells.com/~/media/hogan-lovells/pdf/publication/ahapaper_pdf.pdf

the health insurance industry.[19] The antitrust agencies are now greatly empowered to investigate and challenge anticompetitive practices by health care, dental and vision insurers.

The agencies also should scrutinize the increasingly concentrated health insurance sector and closely examine insurers' abilities to raise price, restrict competition and deny patients choice.[20] Highly concentrated insurance markets have already resulted in cognizable harm from insurer actions. For example, dominant insurers have engaged in bait-and-switch tactics that substantially change the coverage that their customers purchase without adequate notice, mid-year during the term of the policy. These tactics unexpectedly restrict patients' access to care, separate patients from their chosen providers and result in much higher than expected out-of-pocket costs. Additionally, restrictions on how patients must obtain specialty drugs, known as white and brown bagging, create serious supply and safety issues.[21] The AHA strongly urges the agencies to investigate and pursue these anticompetitive practices by health insurers using the powers granted to them by the passage of CHIRA.

THE MERGER GUIDELINES SHOULD ENABLE FEDERAL ANTITRUST AGENCIES AND THE COURTS TO PROPERLY ANALYZE THE LIKELY EFFECTS OF HOSPITAL MERGERS

The guidelines should enable the agencies to recognize recent scholarship that demonstrates the multiple ways that hospital mergers benefit patients and payers.

Recent scholarship has demonstrated that hospital mergers benefit patients and payers in multiple ways. Any revisions to the guidelines should account for these pro-competitive efficiencies and enable the antitrust agencies to properly recognize these benefits when reviewing proposed transactions.

For example, Charles River Associates (CRA) recently conducted one of the most comprehensive econometric analyses of contemporary hospital acquisitions.[22] This study analyzed the effects of hospital acquisitions on hospitals' costs and quality of care. The research found that hospital acquisitions can generate substantial benefits and reduce costs through several mechanisms, including by increasing hospital scale,

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[19] *See* Letter from Senators Patrick Leahy and Steve Daines to Attorney Gen. Merrick Garland (DOJ) and Chair Lina Khan (FTC) regarding Competitive Health Insurance Reform Act (July 20, 2021), https://www.leahy.senate.gov/imo/media/doc/7.20.21%20Leahy%20Daines%20Letter%20to%20DOJ%20and%20FTC%20re%20CHIRA%202020.pdf.
[20] *See generally* Am. Hosp. Ass'n, *Anticompetitive Conduct by Commercial Health Insurance Companies* (Aug. 16, 2021), https://www.aha.org/system/files/media/file/2021/08/anticompetitive-conduct-commerical-health-insurers-0821.pdf.
[21] *Id.* at 3.
[22] *See generally Hospital Merger Benefits Revisited* (expanding on the original 2017 study and the 2019 update of the econometric analysis conducted by Drs. Noether and May).

standardizing clinical practices, reducing hospitals' cost of capital and allowing hospitals to avoid duplicative capital expenditures. Mergers also enable hospitals to potentially realize substantial benefits in clinical quality attributable to the standardization of clinical protocols, investments to upgrade services at acquired hospitals and deployment of additional staff where needed.

The CRA study was based on the actual effects of hospital acquisitions on hospitals' costs, revenues and quality indicators. That evidence yielded several specific findings, including that:

- changes in the annual operating expenses of acquired hospitals were lower than those of comparable non-acquired hospitals;
- decreases in expenses were accompanied by declines in revenue per admission; and
- measures of inpatient quality at acquired hospitals improved relative to comparable non-acquired hospitals.

Using a robust data set, the CRA study also found that hospital acquisitions benefit patients by providing access to higher quality care at a lower cost. For example:

- hospital acquisitions are associated with a statistically significant 3.3% reduction in annual operating expenses per admission at acquired hospitals and simultaneous improvement in performance on key quality indicators; and
- hospital acquisitions show a statistically significant reduction in inpatient readmission rates and a composite readmission/mortality outcome measure.

In addition, revenue per admission at acquired hospitals declined relative to non-merging hospitals by a statistically significant 3.7%, suggesting that merged hospitals pass on savings to health plans and other payers.

The CRA study noted that two frequently cited factors by hospital leaders for delivering higher quality care in a more cost-effective manner were: (1) increased scale and (2) better standardization of care processes, both of which hospital mergers facilitate. Through acquisitions, hospitals are better able to make the necessary infrastructure and IT investments that the modern health care system demands while also controlling expenses, allowing for higher quality care at lower cost.

Other recent studies also have found benefits from hospital mergers. For example, one study found that a full-integration approach after a hospital merger was associated with improvement in quality outcomes.[23] The authors found fewer central line infections, fewer catheter-related infections and increased patient satisfaction following

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[23] *Quality and Safety Outcomes of a Hospital Merger Following a Full Integration* at 1.

consolidation. Another study found that rural hospital mergers were associated with better mortality outcomes for certain conditions — including acute myocardial infarction, heart failure, acute stroke and pneumonia — among patients at rural hospitals that had merged or been acquired.[24] And other studies have found statistically significant cost reductions at acquired hospitals averaging between 4% and 7%.[25]

A report by Kaufman Hall came to similar conclusions.[26] This report noted that hospital partnerships, mergers and acquisitions have provided many benefits to patients and their communities. These benefits include saving certain hospitals from closure and preserving and often enhancing patient access to care. For example, Kaufman Hall found that nearly 4 in 10 (38%) of acquired hospitals added one or more services post-acquisition. Patients at hospitals acquired by academic medical centers or large health systems also gain improved access to tertiary and quaternary services. The report noted that these combinations give health systems access to the scale needed to: (1) enhance the patient experience of care; (2) engage in partnerships with employers and health plans to improve the accessibility and affordability of care; and (3) obtain capital at an affordable cost to make investments in care delivery advances, technology and population health infrastructure.

One way in which the guidelines can reflect the multiple benefits of hospital mergers is by incorporating into the Horizontal Merger Guidelines the antitrust safety zone established in Statement 1 of the 1996 Statements of Antitrust Enforcement Policy in Health Care. For more than twenty-five years, Statement 1 has provided that, absent extraordinary circumstances, the agencies will not challenge any merger between two general acute-care hospitals where one of the hospitals has (1) an average of fewer than 100 licensed beds over the three most recent years; and (2) an average daily inpatient census of fewer than 40 patients over the three most recent years.[27] The agencies drafted this safety zone to ensure that small hospitals can realize efficiencies from aligning with larger hospitals and correctly expressed confidence that mergers falling within the safety zone are very unlikely to raise competitive concerns. By incorporating Statement 1 into the Horizontal Merger Guidelines, the agencies can better ensure that hospitals are not discouraged from pursuing these beneficial transactions.

The agencies and the guidelines should be more open to recognizing the efficiencies that hospital mergers can produce. As the Third Circuit recently admonished in *Hackensack*, "to the extent the District Court required a showing of extraordinary

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[24] *Quality of Care Before and After Mergers and Acquisitions of Rural Hospitals* at 1.
[25] *See* Matt Schmitt, *Do Hospital Mergers Reduce Costs?*, 52 J. Health Econ. 74, 74 (2017).
[26] Kaufman Hall at 12.
[27] Health Care Guidelines at 8-9. The safety zone does not apply to hospitals that are less than five years old.

procompetitive effects, it would have been incorrect."[28] Appropriate recognition of the multiple ways that hospital mergers benefit patients and payers will enable hospitals to better serve their communities.

THE AHA RECOMMENDS TWO SPECIFIC IMPROVEMENTS TO THE MERGER GUIDELINES AND THE AGENCIES' METHODS FOR ANALYZING HOSPITAL MERGERS

1. The merger guidelines should require the agencies to correct defects in the economic models that they use to evaluate hospital transactions.

In prior comments submitted to the FTC, the AHA has detailed numerous defects in the economic models that the FTC uses when reviewing hospital transactions.[29] As summarized below, flaws in the FTC's econometric models result in inaccurate forecasts about the effects of hospital mergers on consumers. Changes to the merger guidelines should correct this approach so that the antitrust agencies' economic analysis reflects the realities of the hospital sector and credits the many pro-consumer benefits of hospital transactions.

The FTC's models have two components: (1) a demand model, which the FTC uses to attempt to predict how many patients view the merging hospitals as their top two choices, and (2) a supply model, which the FTC uses to attempt to predict whether a merger will allow merging hospitals to negotiate higher prices from insurers. As the AHA's prior comments explain, these tools have important limitations that have caused them to make inaccurate predictions about the effects of hospital transactions.[30]

The FTC's demand models are flawed because the models are based on assumptions that are often too simple or incomplete. Most notably, the demand models overemphasize how much value patients assign to travel times and ignore other important considerations that affect how consumers select a hospital, such as past treatment experiences, where patients' physicians have admitting privileges, and physician referrals. For these and other reasons, the demand models do a poor job of predicting consumers' preferences for hospitals. Not surprisingly, several studies by prominent economists cast significant doubt on the accuracy of the FTC's demand models.[31]

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[28] *FTC v. Hackensack Meridian Health, Inc.*, No. 21-2603, 2022 U.S. App. LEXIS 7476 at *28-29 (3d Cir. Mar. 22, 2022).
[29] Am. Hosp. Ass'n, *FTC Hearing on Competition and Consumer Protection in the 21st Century – Project Number P181201 – Comments from the American Hospital Association on Defects in the Models Used for Evaluating Hospital Transactions* at 1 (Dec. 14, 2018), https://www.aha.org/system/files/2018-12/181217-let-ftc-defects-in-models-used-for-evaluating-hospital-transactions.pdf.
[30] *Id.* at 3, 6-10.
[31] *Id.* at 2.

The FTC's supply-side models also suffer from several critical drawbacks. First, when the FTC analyzes hospital mergers, it uses a one-size-fits-all framework known as "upward pricing pressure" (UPP) from the Horizontal Merger Guidelines. A core problem with the use of the UPP framework in the context of hospital mergers is that it was not developed to model marketplaces in which prices are negotiated — as hospital prices are — but rather to model marketplaces in which the seller sets its price as, for example, a grocery store would. The FTC supply-side models also are prone to errors based on calculating hospitals' economic margins, and they fail to consider how competing hospitals or insurers will respond to changes in hospitals' prices. These significant problems reduce the accuracy of the FTC's supply-side models.[32]

Another flaw in the FTC's supply-side models comes from the agency's reliance on the concept of willingness to pay (WTP) to try to measure how much consumers value access to a hospital. To reliably predict post-merger price effects requires an estimate of the relationship between merger-related changes in WTP and merger-related changes in prices.[33] With possibly one exception, there is no research that connects merger-related increases in hospital WTP to higher prices.[34] For example, in its published hospital merger retrospective studies, the FTC did not attempt to validate price increases predicted by the WTP framework with observed changes in price at the time of the merger.[35] Another merger retrospective that assessed 26 consummated hospital mergers noted that changes in WTP were not a reliable indicator of post-merger price increases.[36]

The major shortcomings in the supply and demand models used by the FTC to evaluate hospital transactions have resulted in ineffective and inaccurate merger reviews. The merger guidelines should be updated to correct this problematic framework for analyzing hospital mergers so that the agencies do not harm consumers by inappropriately challenging hospital mergers that would benefit patients and their communities.

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[32] *Id.* at 3-4, 10-14.
[33] *Id.* at 12.
[34] *Id.*
[35] *Id.*
[36] *Id.* at 13.

2. The guidelines should enable the antitrust agencies to account for the improved coordination of care that mergers enable.

For decades, hospitals and health professionals have worked to improve patient outcomes and lower the costs of care by reducing fragmentation in the delivery of health care. Merging with hospital systems can lower costs effectively and improve coordination and clinical integration while preserving access to care in underserved communities. In essence, clinical integration involves pooling infrastructure and resources to develop, implement and monitor protocols, best practices and other organized processes that foster higher quality care in a more efficient manner. The guidelines should enable the antitrust agencies to account for the better coordination of care that hospital mergers produce.

Mergers and acquisitions facilitate effective clinical integration in a variety of ways. For example, through the common purpose that merged entities share, they can better: (1) align their efforts to improve quality and patient safety; (2) improve their ability to perform well in pay-for-performance initiatives; (3) participate in reporting mechanisms for patients, employers and health plans; (4) gain experience in forming provider organizations responsible for an entire episode-of-care or population of patients; and (5) create scale to help defray the added costs of clinical integration efforts. Economic research has shown that partnering with hospital systems typically enables the acquired hospital to provide measurable benefits to patients in the form of lower health care costs, improved patient care and better access to providers.[37] The agencies and the guidelines should recognize these additional benefits to hospital mergers.

CONCLUSION

America's hospitals and health systems continue to care for all the patients who walk through their doors even as they must tackle new and old challenges. Whether those challenges include a surge of COVID-19 patients, natural disasters, or increasing pharmaceutical and other costs, hospitals and their professionals and staff dedicate themselves every day to serving their communities.

Mergers are a vital tool that help hospitals address these challenges. Mergers can enable hospitals to improve care coordination, improve and expand services, invest in much-needed technology, and lower costs. For these reasons, the AHA urges that the

[37] *See* Dr. Monica Noether et al., *Hospital Merger Benefits: Views from Hospital Leaders and Econometric Analysis—An Update*, Charles River Assocs. 1 (Sept. 9, 2019), https://www.crai.com/insights-events/publications/hospital-merger-benefits-views-hospital-leaders-and-econometric-analysis-update/; Margaret E. Guerin-Calvert & Jen A. Maki, *Hospital Realignment: Mergers Offer Significant Patient and Community Benefits* at 2, FTI CONSULTING (2014), http://ignacioriesgo.es/wp-content/uploads/2014/06/hospital-realignment-mer-gers-offer-significant-patient-and-community-benefits.pdf.

antitrust agencies update the merger guidelines to properly recognize the benefits that hospital mergers produce.

Sincerely,

/s/

Melinda R. Hatton
General Counsel