American Hospital Association™
Advancing Health in America

Washington, D.C. Office
800 10th Street, N.W.
Two CityCenter, Suite 400
Washington, DC 20001-4956
(202) 638-1100

September 5, 2023

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

Comments to FTC Re: 16 CFR Parts 801-803—Hart-Scott-Rodino Coverage, Exemption, and Transmittal Rules, Project No. P239300

Dear Chair Khan:

On behalf of our nearly 5,000 member hospitals, health systems, and other health care organizations, the American Hospital Association (AHA) opposes the Federal Trade Commission's (FTC) proposed amendments to the Hart-Scott-Rodino (HSR) form and instructions.

The AHA shares the concerns expressed by other commenters. In particular, the AHA agrees that the proposed changes to the HSR form, if adopted, would impose a substantial burden on filing parties, yet are largely unnecessary to screen transactions for closer review. Moreover, the amended rules would require filing parties to submit more information than the agencies could feasibly review in 30 days. At best, this is an improvident use of staff and taxpayer dollars; at worst, it is an arbitrary and capricious regulation for which the costs vastly outweigh the benefits.[1] Indeed, this needlessly expensive proposal calls into question whether the amendments are intended to make the initial investigation phase more "efficient," as the FTC claims,[2] or simply to deter mergers in the first place. Either way, the proposed amendments function as little more than a tax on mergers.[3]

---

[1] *E.g.*, *City of Centralia v. Fed. Energy Regul. Comm'n*, 213 F.3d 742, 749 (D.C. Cir. 2000) ("Centralia contends, and we agree, that FERC's order is arbitrary and capricious for want of reasoned decisionmaking. On the record here, the costs of [FERC's] prescription far outweigh any benefits to fish or the general environment and is therefore unreasonable." (quotation marks and citation omitted)).
[2] 88 Fed. Reg. 42178, 42184 (June 29, 2023).
[3] Commissioner Noah Phillips, *Disparate Impact: Winners and Losers from the New M&A Policy* at 5, 10-11, Eighth Annual Berkely Spring Forum on M&A and the Boardroom (April 27, 2022), *available at*

The AHA also shares other commenters' concerns that the proposed amendments would force merging parties to make subjective judgments, including judgments about (i) current and future competition and (ii) how much detail to include in narrative responses. Such requirements, by their nature, invite disputes over compliance. Rather than focusing on the merits of a transaction, the agencies may be tempted to second-guess or nitpick the parties' responses. This will not merely waste valuable time; it also will generate uncertainty about transaction timelines and whether waiting periods will run as anticipated. This is the opposite of good government.

The AHA also writes to address the negative — and wholly unnecessary — impact these proposed amendments would have on hospitals and health systems in particular. Over the past several decades, enforcers have closely scrutinized mergers in the health care industry. Since 1990, the FTC alone has filed over *40* administrative complaints related to transactions involving hospitals or health systems.[4] This trend shows no signs of slowing; if anything, it has accelerated over the past decade.[5] We are aware of no evidence that hospital mergers have evaded scrutiny due to blind spots in the HSR rules. The FTC's aforementioned enforcement statistics — which do not reflect the numerous transactions that were investigated but not challenged — are powerful evidence that the FTC has no trouble spotting a health care transaction that it views as potentially harmful. And based on the FTC's own comments, the new rules appear to be aimed at transactions involving "technology companies" or private equity firms.[6] But hospital mergers rarely (if ever) involve nascent technology or complex investment vehicles, and thus do not present the concerns that purportedly justify the new rules. **In short, there is nothing broken about the FTC's ability to screen hospital**

---

https://www.ftc.gov/system/files/ftc_gov/pdf/Phillips_Keynote-Berkeley_Forum_on_MA_FINAL.pdf ("[T]he Commission has adopted several policies openly taxing M&A in a way that does nothing for competition and also disparately impacts smaller players.… In their zeal to tax M&A however they can, especially in ways that courts cannot police, those running the antitrust agencies and their supporters are already inviting perverse consequences. They are driving up costs and sowing uncertainty that disparately impact smaller players, putting them at a competitive disadvantage to the biggest companies.")

[4] Fed. Trade Comm'n, *Overview of FTC Actions in Health Care Services and Products* 51-90 (Jan. 2023) ("FTC Health Care Overview") (identifying forty-three administrative complaints filed against hospital mergers or transactions involving health systems since 1990).

[5] *Id.* at 51-71 (identifying thirteen lawsuits challenging hospital mergers since 2010, including six since 2020); Pet. for Temp. Inj. Relief, *Fed. Trade Comm'n v. La. Children's Med. Ctr.*, No. 23-cv-1103 (D.D.C. Apr. 20, 2023), ECF No. 3 (complaint filed after release of FTC Health Care Overview).

[6] *See* 88 Fed. Reg. 42718, at 42719 (claiming that mergers "in sectors of the economy that rely on technology and digital platforms . . . present a unique challenge for the Agencies"); *id.* at 42188 ("The complex structure of investment entities is not adequately captured by the current Form[.]"); *id.* at 42203 (referring to acquisitions by "five of the largest technology companies").

transactions for further review. Accordingly, there is no need to subject hospitals to burdensome rules aimed at other sectors of the economy.

The FTC's proposed amendments to the HSR form put forward sweeping changes that are almost too numerous to list here. From the AHA's perspective, the most problematic of these amendments include:

- The requirement to report all prior acquisitions, regardless of size, for a 10-year period, in industries where the merging parties have horizontal overlaps;[7]
- The requirement to provide a narrative description of horizontal overlaps and supply relationships;[8]
- The requirement to provide information about labor markets;[9] and
- The requirement to produce drafts of Item 4 materials and ordinary course reports.[10]

These proposed amendments are unnecessary to determine whether horizontal transactions between hospitals—or vertical transactions between hospitals and physician groups or payors—warrant a Second Request. The agencies have a clear playbook and ready sources of information about hospital deals. They do not need narrative responses, information about labor issues, disclosures about prior transactions, or draft documents to assess whether a given hospital merger might impact competition in a given market. Even worse, these amendments would materially increase the cost of compliance for hospitals pursuing a merger or acquisition. They would require a substantial investment in executive time and outside legal spend. And these unnecessary cost increases would come at a time when hospitals face unprecedented economic challenges.

Accordingly, the FTC should withdraw the proposed amendments (except those needed to comply with recent legislation) and leave the current reporting regime in place.

I. As past experience demonstrates, the agencies do not need more information to identify hospital-related transactions that warrant closer review.

The FTC's arguments for the proposed amendments reduce to a single claim: The current process fails to generate information sufficient to assess whether a transaction

[7] 88 Fed. Reg. at 42202-04.
[8] *Id.* at 42214.
[9] *Id.* at 42215.
[10] *Id.* at 42213-14.

warrants a Second Request.[11] Regardless of whether this claim holds water in general, it is plainly not true with respect to hospital mergers.

Going back to at least the 1990s, the agencies have taken a hard line on mergers between competing hospitals. Between 1990 and 1999, the FTC alone filed 17 enforcement actions challenging hospital mergers.[12] Following a series of agency losses in the late 1990s, the rate of enforcement dropped during the early 2000s before rebounding — and accelerating — over the past three administrations. Since 2010, the FTC has filed 15 lawsuits challenging hospital mergers, including seven in the past three years alone.[13] In at least two other instances during that time, the FTC closed investigations after the parties (i) abandoned their transaction following staff's recommendation to sue or (ii) settled with a state attorney general.[14]

In addition to cases involving mergers between hospitals, federal agencies also have challenged a number of transactions between hospitals — or health systems that own hospitals — and other provider groups.[15] The agency playbook for these matters essentially mirrors that used in hospital mergers: In both settings, the FTC emphasizes local markets and relies on testimony from commercial insurers to demonstrate that a transaction is likely to harm competition.[16]

---

[11] *See, e.g.*, Statement of Chair Khan Regarding Proposed Amendments to the Premerger Notification Form and the Hart-Scott-Rodino Rules at 3 (June 27, 2023) ("[T]he information currently collected by the HSR form is insufficient for our teams to determine, in the initial 30 days, whether a proposed deal may violate the antitrust laws."); *see also id.* (claiming proposed amendments seek to fill "key gaps" by requiring more information about "deal rationale," "how a particular investment vehicle is structured," and "key aspects of competition").

[12] FTC Health Care Overview at 51-71.

[13] *See* FTC Health Care Overview at 51-71; Pet. for Temp. Inj. Relief, *Fed. Trade Comm'n v. La. Children's Med. Ctr.*, No. 23-cv-1103 (D.D.C. Apr. 20, 2023), ECF No. 3 (complaint filed after release of FTC Health Care Overview).

[14] *See* FTC Health Care Overview at 76 (discussing Atrium Health/Houston Healthcare); Fed. Trade Comm'n, Press Release, "Statement of the Federal Trade Commission Concerning Its Vote to Close the Investigation of a Proposed Transaction Combining Massachusetts Healthcare Providers" (Nov. 29, 2018), *available at* https://www.ftc.gov/news-events/news/press-releases/2018/11/statement-federal-trade-commission-concerning-its-vote-close-investigation-proposed-transaction (discussing CareGroup/Lahey Health/Seacoast/BIDC). Because there is no public record of all instances in which hospitals abandoned merger plans following scrutiny by DOJ or FTC, the figures above understate the extent to which the Agencies' overzealous enforcement has derailed or deterred procompetitive transactions.

[15] *See, e.g.*, *Fed. Trade Comm'n v. Sanford Health*, No. 17-cv-133 (D.N.D. filed June 22, 2017); *In re CentraCare Health*, Dkt. No. C-4594 (F.T.C. filed Oct. 5, 2017); *Fed. Trade Comm'n v. St. Luke's Health Sys., Ltd.*, No. 13-cv-00116 (D. Idaho filed Mar. 12, 2013); *In re Renown Health*, Dkt. No. C-4366 (F.T.C. filed Aug. 3, 2012); *In re Reading Health Sys.*, Dkt. No. 9353 (F.T.C. filed Nov. 16, 2012); *In re Alan B. Miller*, Dkt. No. C-4309 (F.T.C. 2010).

[16] *See, e.g.*, *Fed. Trade Comm'n v. Advoc. Health Care Network*, 841 F.3d 460, 465 (7th Cir. 2016) (noting testimony from "several major insurers" that "it would be difficult or impossible to market a network to employers in metropolitan Chicago that excludes both NorthShore and Advocate"); *Fed. Trade*

Enforcement statistics, of course, tell only part of the story. In addition to the cases noted above, the agencies have investigated and cleared numerous other transactions,[17] and the Bureau of Economics has published at least eight studies of health care mergers[18] with another forthcoming.[19] And federal enforcers do not stand alone. State agencies — including attorneys general and departments of health — also routinely investigate and challenge hospital mergers. Recent examples include Madera/Trinity (California 2022),[20] Fairview/Sanford (Minnesota 2022),[21] CareGroup/Lahey/Seacoast/BIDCO (Massachusetts 2018),[22] and Partners/South Shore (Massachusetts 2015).[23]

This zealous enforcement history confirms at least two critical points. First, the agencies have no difficulty identifying hospital-related mergers that, in the agencies' view,

---

Comm'n v. St. Luke's Health Sys., Ltd., No. 1:13-cv-00116, 2014 WL 407446, at *9 (D. Idaho Jan. 24, 2014) (noting testimony from Blue Cross of Idaho, the "largest health plan in Idaho," that physician group was "a must have provider for Blue Cross in Nampa"), *aff'd* 778 F.3d 775 (9th Cir. 2015); *see also* Complaint, *In re CentraCare Health*, Dkt. No. C-4594, 2016 WL 5930294, at *1 (F.T.C. Oct. 5, 2016) (alleging that "CentraCare and SCMG compete to be included in health insurance plans, and compete for patients within those health insurance plans").

[17] Sometimes the agencies acknowledge these investigations publicly, *see, e.g.*, Letter to Counsel for Saint Raphael Healthcare System (June 1, 2012), *at* https://www.ftc.gov/sites/default/files/documents/closing_letters/yale-new-haven-hospital/saint-raphael-healthcare-system/120601yalenewhavenltr.pdf, but otherwise no data exists to quantify the (likely high) percentage of hospital transactions that are investigated.

[18] Fed. Trade Comm'n, Physician Group and Healthcare Facility Merger Study (Apr. 14, 2021), *available at* https://www.ftc.gov/enforcement/competition-matters/2021/04/physician-group-healthcare-facility-merger-study.

[19] Press Release, Fed. Trade Comm'n, "FTC to Study the Impact of Physician Group and Healthcare Facility Mergers" (Jan. 14, 2021), *available at* https://www.ftc.gov/news-events/news/press-releases/2021/01/ftc-study-impact-physician-group-healthcare-facility-mergers.

[20] Letter from Attorney General Bonta to Jean Tom re: Proposed Change in Control and Governance of Madera Community Hospital (Dec. 15, 2022) (imposing conditions on approval of proposed transaction between Madera Community Hospital, Saint Agnes Health, Saint Agnes Medical Center, and Trinity Health Corporation), *available at* https://oag.ca.gov/system/files/media/madera-community-hospital-decision-12152022.pdf.

[21] Press Release, "Attorney General Ellison announces public input on proposed merger of Fairview Health Services and Sanford Health" (Nov. 21, 2022), *available at* https://www.ag.state.mn.us/Office/Communications/2022/11/22_Sanford-Fairview.asp.

[22] Press Release, "Statement of Federal Trade Commission Concerning Its Vote to Close the Investigation of a Proposed Transaction Combining Massachusetts Healthcare Providers" (Nov. 29, 2018), *available at* https://www.ftc.gov/news-events/news/press-releases/2018/11/statement-federal-trade-commission-concerning-its-vote-close-investigation-proposed-transaction (noting consent decree with Massachusetts attorney general).

[23] Priyanka Dayal McCluskey & Robert Weisman, "Healey opposes deal with Partners HealthCare," *Boston Globe* (Jan. 26, 2015), *available at* https://www.bostonglobe.com/business/2015/01/26/healey-says-she-prepared-bring-suit-against-partners-judge-rejects-settlement-with-coakley/QRmA2ZN498HefLbqyFb9mI/story.html.

deserve a closer look. The agencies know precisely what information they need during the initial waiting period, and they know precisely what factors warrant further scrutiny. Second, there is no shortage of third parties who stand ready to identify potentially harmful transactions. These include health insurers (who are no doubt on speed-dial at the FTC given the prominence these parties play in hospital merger challenges, even as they routinely evade comparable scrutiny from the Department of Justice's Antitrust Division), competing health care providers, state attorneys general,[24] and state departments of health. Moreover, to the extent the agencies are concerned about harm to labor markets, many hospitals have a unionized nursing staff, and labor unions that have ample incentive to identify harm that might arise from a transaction.

II. The proposed amendments would impose a substantial and unnecessary burden on hospitals.

As the FTC concedes but downplays, the proposed amendments would increase the burden on filing parties.[25] The question, therefore, is whether the purported benefits of the additional information justify the increased burden — that is, whether the new information will materially improve the agencies' ability to identify mergers that warrant a Second Request. With respect to hospitals, the answer is resoundingly "no."

The FTC proposes sweeping changes to the HSR form that are too numerous to list here and have been well-critiqued by other commenters. We focus our comments on a handful of amendments that, in our view, are most problematic.

Narrative Description of Horizontal Overlaps. One proposed addition to the HSR form requires a filing party to "list and describe" each of its "current or known planned products or services" that "competes with (or *could compete with*)" any "current or known planned product or service" of the other party.[26] "Current or known planned products or services" include anything the party "researches, develops, manufactures, produces, sells, offers, provides, supplies, or distributes."[27] For any overlapping product or service, the filing party must then compile and submit additional information about revenues and customers.[28]

This provision, if adopted, would materially increase HSR compliance costs. Read literally, it requires every filing party to analyze each product or service it offers — or

---

[24] State attorneys general already play an active role in premerger review and challenging hospital transactions, and this will only continue as more and more states are contemplating or enacting laws requiring pre-consummation notice of transactions between health entities, including hospitals and provider groups. *See, e.g.,* The Source on Healthcare Price and Competition, "Market Consolidation: Overview," *available at* https://sourceonhealthcare.org/market-consolidation/.
[25] *See* 88 Fed. Reg. at 42184 ("The Commission recognizes that, in total, these proposed changes would be significant and impose additional burden on some filing parties.").
[26] 88 Fed. Reg. at 42214 (emphasis added).
[27] *Id.*
[28] *Id.*

"plans" to offer — and make subjective judgments about whether that product or service competes with or "could" compete with a product or service (whether in the market or merely "planned") of the other party. For any product or service where the answer is "yes," the filing party must then submit detailed additional information. And all this will occur under the threat of massive civil penalties should the agencies later disagree with a party's judgment. The inevitable result is that filing parties will feel compelled to engage antitrust counsel (and potentially an economist) even on deals that present no risk to competition.

Yet for all this additional burden, this new requirement would generate no actionable information with respect to hospital mergers. The agencies are well aware of the products and services that health care providers offer. There are no secret overlaps or competitive issues lurking in the shadows. Requiring hospitals or provider groups to describe all areas in which they compete (or "could" compete) would just require merging firms to confirm what the agencies already know.

Narrative Description of Supply Relationships. The proposed amendments also require a filing party to describe supply relationships between the parties to the transaction, or between the filing party and competitors of the other party.[29] Then, for each product or service involved in those supply relationships, the filing party must provide detailed information about sales and customers.[30]

This amendment presents the same concerns as the horizontal overlap requirement. Specifically, it forces parties to make similar judgments about actual or potential competition (and the amount of detail to provide). And it seeks information about hospital inputs that is typically known to the FTC. This proposed amendment would thus compel a significant investment in executive time and legal spend, with little or no real-world benefit to the agencies.

Prior Acquisitions. The FTC proposes amending the HSR form to require parties to report all prior domestic acquisitions over a 10-year period, regardless of size or location, in industries where the merging parties have horizontal overlaps.[31] For many parties, identifying all prior acquisitions over a 10-year period in overlapping industries, no matter how small the transaction or how trivial the overlap, will require significant engagement by company personnel. This is especially true where executives with relevant "institutional knowledge" are no longer with the company.

Here too, this proposed amendment would generate no actionable information with respect to hospital mergers. The FTC points to acquisitions by "five of the largest

---

[29] *Id.*
[30] *Id.*
[31] 88 Fed. Reg. at 42202-04.

technology companies" as evidence that more information about prior acquisitions is necessary to identify "concerns about the filing[] parties' acquisition or roll-up strategies."[32] This has no relevance in the context of hospital mergers. As the case law makes clear, whether a given transaction violates Clayton Act § 7 turns on the facts and circumstances of that specific combination —*i.e.*, whether it will harm competition in a specific product market in a specific geography — and not on whether one or both parties previously acquired health care providers in other markets.[33] A complete list of prior acquisitions over a 10-year period is unnecessary to screen hospital-related transactions for closer review.

Labor Competition. The proposed amendments also require filing parties to provide detailed information about labor markets and workplace safety.[34] There is no reason for this requirement in the context of hospital mergers. Given the agencies' hyper-local focus in hospital transactions, it is inconceivable that a hospital-related merger could plausibly harm competition in any labor market without also presenting at least some competitive risk in a downstream market. Indeed, prior hospital merger challenges have borne out that the FTC has no trouble identifying and complaining about potential labor market concerns,[35] and we are aware of no hospital merger challenge based solely upon labor competition. There is simply no need for additional information about labor competition during the initial waiting period.

Draft Item 4 Materials and Ordinary Course Reports. Lastly, in addition to the documents called for by Item 4, the proposed amendments require filing parties to produce drafts of Item 4 materials and ordinary course reports that relate to competition.[36] Like the narrative descriptions of overlaps and supply relationships, this new requirement will require assistance from counsel. And, like the narrative responses, there is no reason to believe draft documents or reports will reveal previously unknown competitive issues in the health care sector. This requirement will therefore increase the burden on hospitals with no apparent benefit to the agencies.

---

[32] 88 Fed. Reg. at 42203.
[33] *See, e.g.*, *Advoc. Health Care Network*, 841 F.3d at 464 ("To show that the merger may lessen competition, the Commission and Illinois *had to identify a relevant geographic market where [the] anticompetitive effects of the merger would be felt.*" (emphasis added)). The AHA is not aware of any case finding a hospital-related merger unlawful under § 7 (or any other antitrust law) absent proof of likely competitive harm in at least one specific antitrust market.
[34] 88 Fed. Reg. at 42215.
[35] *See, e.g.*, Concurring Statement of Commissioner Slaughter & Chair Khan, *In re Lifespan Corp.*, File No. 2110031, 2022 WL 558287, at *1 (F.T.C. Feb. 17, 2022) ("[W]e also would have supported an allegation that the effect of the proposed transaction may be to substantially lessen competition in a relevant labor market").
[36] 88 Fed. Reg. at 42213-14.

III. The agencies should be focused on ways to *decrease*, not increase, compliance costs to health care providers.

The FTC's proposed amendments could not come at a worse time for hospitals and health systems. Many health care providers, including community hospitals, face economic challenges that jeopardize access to care. These challenges include historic inflation, which has driven up the cost of medical supplies and equipment; critical workforce shortages, which have forced hospitals to rely on more expensive contract labor; rising drug costs, with the median price of a new drug now exceeding $200,000; and inadequate government reimbursements in the face of rising costs.[37]

These challenges come on the heels of the COVID-19 pandemic and, as a result, are particularly devastating to hospitals and health systems. During the early phases of the pandemic, hospitals were on the front lines delivering care to patients. They acted as *de facto* public health agencies; they incurred significant increases in costs due to workforce and supply shortages; and they lost money hand over fist.[38] During the first four months of the pandemic alone, U.S. hospitals lost over *$200 billion* in revenue.[39] In addition, because many individuals deferred care during the pandemic, hospitals saw a dramatic rise in patient acuity.[40] At the same time, due to workforce shortages at other levels of the health care system, hospitals were unable to discharge patients to other care settings (*e.g.*, skilled nursing facilities), creating patient bottlenecks and leaving beds occupied without reimbursement.[41]

---

[37] *See* Am. Hosp. Ass'n, *The Financial Stability of America's Hospitals and Health Systems Is at Risk as the Costs of Caring Continue to Rise* at 1 (Apr. 2023) (2023 Cost of Caring Report), *available at* https://www.aha.org/costsofcaring. Labor expense increases are particularly noteworthy. Overall labor expenses increased by 20.8% between 2019 and 2022. Even after accounting for the fact that patient acuity (as measured by the case mix index) increased during this period, labor expenses per patient increased 24.7%, and contract labor expenses grew by a staggering 257.9% in 2022 relative to 2019 levels. These increases are particularly challenging, because labor on average accounts for about half of a hospital's budget.

[38] *Id.* These losses were so high due in part to price gouging by hospital personnel staffing agencies, which imposed enormous rate hikes for travel nurses and other personnel during a time when hospitals had no choice but to pay the inflated rates. The AHA has repeatedly called this issue to the FTC's attention, yet the FTC has failed to take any action. *See* Letter from M. Hatton to Acting Chairwoman Slaughter at 2 (Feb. 4, 2021) (noting studying showing that rates for travel nurses "in some instances had tripled"), *available at* https://www.aha.org/system/files/media/file/2021/02/aha-urges-ftc-examine-anticompetitive-behavior-nurse-staffing-agencies-commercial-insurers-2-4-21.pdf

[39] Am. Hosp. Ass'n, *Hospital and Health Systems Face Unprecedented Financial Pressures Due to COVID-19* at 1 (May 2020), *available at* https://www.aha.org/system/files/media/file/2020/05/aha-covid19-financial-impact-0520-FINAL.pdf.

[40] 2023 Cost of Caring Report at 1. Caring for more complex patients has also contributed to increased hospital costs. The average length of stay increased by nearly 10% in 2021 relative to 2019 levels. Caring for sicker patients often requires more staff time, the use of more intensive treatments and higher cost drugs, as well as the need for more supplies and equipment.

[41] *Id.*

As a result of these factors, hospital expenses increased by roughly 17.5% between 2019 and 2022 — more than double the increase in Medicare reimbursement for inpatient care during that same period.[42] This had a profound effect on hospitals' financial performance. Nineteen rural hospitals closed in 2020 alone.[43] Over half of U.S. hospitals ended 2022 operating at a loss.[44] Things have only worsened in 2023: according to one study, the first quarter of 2023 had the highest number of bond defaults by hospitals in over a decade.[45]

Against this backdrop, the federal government should be looking for ways to ease the financial burden on hospitals and health care providers. Regrettably, the FTC's proposed amendments to the HSR form and instructions would have the opposite effect.

IV. Conclusion

The FTC wishes to impose onerous new rules on *all* filing persons, including hospitals, based on concerns that are valid (if at all) only with respect to a small minority of transactions. This is not just bad government — it is irresponsible.

These proposed changes come at a time when many health care providers, including community hospitals, face unprecedented economic challenges. Rural hospitals in particular are at risk, despite being critical access points for care and economic anchors for the communities they serve. They are least able to afford the increased costs and burdens of HSR compliance; accordingly, they will be hardest hit should the proposed amendments take effect. But rural hospitals are not the only concern. Across *all* hospitals and health systems, the new requirements would add to the complexity and costs of operating in today's uncertain environment.

If adopted, the proposed amendments are certain to chill hospital merger activity — including transactions that enhance quality, reduce cost, and increase access to care[46] — yet are plainly unnecessary to ensure the agencies have sufficient information during the HSR waiting period. Perhaps that chilling effect is the agency's ultimate goal, however. If so, it will function for most as an arbitrary and capricious tax on pro-competitive behavior. The FTC should withdraw the proposed amendments except to

---

[42] *Id.*
[43] *Id.* at 2.
[44] *Id.*
[45] *Id.* Despite these financial pressures, hospital price growth has remained low. In fact, in 2022, growth in general inflation (8%) was more than double the growth in hospital prices (2.9%). *Id.*
[46] *See, e.g.*, Sean May, Monica Noether & Ben Stearns, *Hospital Merger Benefits: An Econometric Analysis Revisited* at 1 (Aug. 2021) (showing that "hospital acquisitions are associated with a statistically significant 3.3 percent reduction in annual operating expenses per admission at acquired hospitals" and that "performance on key indicators of quality is improved" following hospital mergers), *available at* https://www.aha.org/guidesreports/2021-08-16-hospital-merger-benefits-econometric-analysis-revisited.

the extent they are required to implement the Merger Filing Fee Modernization Act of 2022.

Sincerely,

/s/

Melinda Reid Hatton
General Counsel and Secretary