Federal Trade Commission

Key COPA Facts

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Certificate of Public Advantage ("COPA") laws attempt to immunize hospital mergers from antitrust laws by replacing competition with state oversight. COPAs facilitate hospital consolidation, which is a key driver of higher healthcare costs without improvements in quality of care. Indeed, hospitals only seek COPAs for specific mergers that would otherwise violate antitrust laws and often result in monopolies.

FTC staff urges states to avoid using COPAs and invites state lawmakers to work collaboratively with competition policy experts to minimize the harmful effects of further hospital consolidation on local patients, employers, and hospital employees.

- **Mission Health COPA (NC):** Substantial increases in commercial inpatient prices during early COPA years (at least 20%), during later COPA years (average 25%), and after COPA was repealed (at least 38%). Demonstrates price regulations during COPA were ineffective, as well as the risk of eventually having an unregulated monopolist.
- **Benefis Health COPA (MT):** Substantial increases in commercial inpatient prices after COPA was repealed (at least 20%). Demonstrates the risk of eventually having an unregulated monopolist.

Studies show that several hospital mergers subject to COPAs have resulted in higher prices and reduced quality of care, despite regulatory commitments designed to mitigate these anticompetitive effects.

- **MaineHealth COPA (ME):** Substantial increases in commercial inpatient prices at unregulated hospital during COPA (at least 38%), as well as after COPA expired at both hospitals – for a total price increase of at least 50% during the COPA and post-COPA period. Demonstrates the risk of selectively regulating hospitals within a larger system, as well as the risk of eventually having an unregulated monopolist. Measurable decline in quality at the acquired hospital after the COPA expired.

COPAs rarely work as promised.
Here are the reasons to be skeptical:

- **COPAs exacerbate the widespread problem of hospital consolidation.** Studies show various harms can arise from hospital consolidation, including higher prices for patients without improvements in quality of care, reduced patient access to healthcare services, hospital resistance to value-based delivery and payment models intended to help reduce costs, and lower wages for hospital employees as a result of fewer employment options. Antitrust enforcers have successfully challenged anticompetitive hospital mergers likely to cause such harms, and COPAs undermine these efforts.
- **COPAs can reduce hospital employee wage growth.** Hospitals are major employers in most communities. When mergers result in high levels of hospital concentration, local labor markets suffer because fewer hospitals compete for workers. A recent study shows that such mergers can lead to lower wages for workers whose employment prospects are closely linked to hospitals, such as nurses and pharmacy workers. COPAs are sought for hospital mergers involving the highest levels of concentration and therefore can reduce employee wages.

- **COPA monitoring and compliance are difficult.** Effective COPA oversight requires significant state expertise and resources. Over time, regulatory fatigue, staff turnover, and changes in funding priorities at state agencies can lead to less vigorous supervision. Hospitals also must devote significant resources to compliance with COPA conditions, which leads them to eventually lobby for repeal of COPA oversight or fewer COPA conditions – defeating the original purpose of the COPA.
- **COPAs are susceptible to regulatory evasion.** COPA regulation is rarely, if ever, comprehensive enough to address all of the ways hospitals can exercise market power. Competition allows for greater flexibility when responding to market dynamics and has been proven to produce better results for consumers.
- **COPAs are only temporary.** Most COPAs do not last in perpetuity. They are eventually repealed, revoked, or terminated. Once state oversight ends, the community is often left with a hospital monopoly that can exercise its market power without constraint.

Hospitals make several unproven claims when seeking COPAs to form monopolies:

Claim	Fact
This merger will eliminate "wasteful duplication" associated with competition.	**Competition benefits patients, employers, and hospital employees – it is not unnecessary or wasteful. Competition can incentivize hospitals to invest in facilities, technology, and equipment that improve patient access to healthcare services and quality of care.**
This merger will reduce healthcare costs and generate efficiencies.	**Many hospital mergers do not achieve projected cost savings and efficiencies.**
Vulnerable rural hospitals will close without this merger.	**Facilities often close even with a merger. Antitrust enforcers already consider hospital financial conditions when evaluating mergers. If a rural hospital is truly failing financially and the proposed merger is the only way for it to remain viable, then the FTC is unlikely to challenge the merger and antitrust immunity is not necessary.**
This merger will improve quality of patient care and overall population health.	**Studies show that hospital mergers in highly concentrated markets are unlikely to improve quality and instead are associated with quality declines. There are many ways hospitals can achieve these laudable goals without a merger, and the antitrust laws do not prevent hospitals from engaging in initiatives to improve the quality of patient care and population health.**
This merger will enhance access to healthcare facilities and create jobs.	**Many of the cost savings projected by merging hospitals are the direct result of planned facility consolidation, elimination of services, and job reductions.**