



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
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***A Health Check on COPAs:
Assessing the Impact of Certificates of Public Advantage in Healthcare Markets***
Opening Address
FTC Chairman Joseph J. Simons
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Welcome to today's workshop, *A Health Check on COPAs: Assessing the Impact of Certificates of Public Advantage in Healthcare Markets*. I would like to extend our sincere thanks to all of the workshop participants who took the time to be here today. I'd especially like to thank our colleagues from several State Attorneys General offices for traveling to DC to join us. I would also like to thank the folks in the audience and those who are joining us on live webcast. Finally, I'd like to express my appreciation to the many FTC staff members across different bureaus and offices who helped to organize today's event. In particular, I would like to recognize staff from the Office of Policy Planning and the Bureau of Economics, who took the lead in putting together today's program.

Today, we are going to have a conversation about what we know—and don't yet know—about the effects of Certificates of Public Advantage, or COPAs. As part of our effort to encourage additional learning and scholarship, we have invited presentations about ongoing research.

Here's what we do know. COPAs, also known as cooperative agreements, are regulatory regimes developed and supervised by states. COPAs are undertaken by hospitals or other healthcare providers in the context of mergers, acquisitions, or other collaborations. COPAs typically require hospitals to make a number of behavioral commitments—ranging from rate regulation, to quality and community investments, to promises to keep facilities open for a set time.

Importantly from the FTC's perspective, and also for merging hospitals seeking COPAs, these regimes purport to grant hospitals immunity from the antitrust laws under the state action doctrine. The Supreme Court has said that private organizations can engage in conduct that would otherwise violate the antitrust laws, so long as a state has clearly articulated an intent to displace competition in favor of regulation, and the state is actively supervising that conduct. The FTC is interested in further clarifying the precise metes and bounds of the state action doctrine, as we have done before the Supreme Court in the *NC Dental* and *Phoebe Putney* cases. I will leave that topic for another day.

For purposes of framing today’s discussion, however, I want to note that in several recent hospital mergers, COPAs have prevented the FTC from challenging problematic deals. For example, in 2016, in the midst of an active FTC challenge, West Virginia passed additional COPA legislation and granted COPAs to Cabell Huntington Hospital and St. Mary’s Medical Center, the only two hospitals in Huntington, West Virginia. The Commission ended up dismissing its litigation, and the hospitals merged. More recently, the states of Virginia and Tennessee granted COPAs to Mountain States Health Alliance and Wellmont Health System during a pending FTC investigation, and the FTC ultimately declined to challenge that merger.

At least four active COPAs are operational today. Those four COPAs exist against a backdrop of almost two dozen states that have COPA statutes on their books, creating the possibility for more healthcare providers to seek COPAs. We are also seeing an uptick of interest in COPA legislative activity in statehouses across the country. For example, the state of Texas recently passed a bill expanding its COPA statute to apply to hospital mergers. Although there has also been movement in the other direction—Montana just eliminated its COPA statute—we do not expect COPAs to go away anytime soon.

The Commission has been skeptical of the use of COPAs to protect consumers from competitive harm. We continue to believe that competition is the best way to reduce prices and improve service quality for healthcare consumers, just as in other markets. While we understand and are sensitive to the challenges faced by providers in today’s complex healthcare ecosystem, we generally think antitrust law is flexible enough to let procompetitive deals proceed, while targeting only those transactions that would truly harm consumers.

Having said that, we also believe that the FTC’s enforcement and policy decisions must be grounded in sound economics and rigorous empirical analysis. That’s why it is so important for us to test empirically the effects of COPAs on healthcare markets and, ultimately, consumers. Then, we can better understand what COPAs do or do not accomplish with respect to prices, clinical quality, patient access, and innovation. There has been little research into the *actual* harms and benefits associated with COPAs. And, for that matter, we don’t know enough about what happens to markets when COPAs go away—as they almost surely do.

Today we are taking a big step forward in developing that understanding. This workshop is a great example of what the FTC does so well, using its unique policy and study tools: conduct original empirical research, and bring together expert stakeholders for rigorous discussions. This will not only inform our own analysis, but also aid others considering these issues.

We will hear presentations about four retrospective studies—two by members of the FTC’s Bureau of Economics, and two by BE alums. Three of these studies will evaluate price effects of hospital mergers operating under COPAs in Montana, North Carolina, and South Carolina. One study will examine quality effects of the Phoebe Putney / Palmyra hospital merger in Georgia.

Today’s workshop will also incorporate perspectives from stakeholders with direct and extensive experience with COPAs. Notably, we will hear from past and present state Attorneys General who oversee and monitor COPAs. We will also hear from representatives of hospitals

operating under COPAs, as well as other healthcare providers and commercial health plans doing business in markets where a COPA is in place. The workshop will include academics, health policy experts, and others who will address broader issues in healthcare markets that are relevant to COPAs.

Finally, and very importantly, let's not lose sight of American patients in this discussion. Healthcare policy deeply affects people in communities all across the United States, and it is critical that we get it right. The FTC will continue to work tirelessly to advocate on behalf of U.S. healthcare consumers, and to promote competitive healthcare markets that generate lower prices and better clinical quality.

Thanks again to all of you for being here today, and to my FTC colleagues for your work on behalf of U.S. consumers.