SMALL BUSINESS MAJORITY

May 3, 2024

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U.S. Department of Justice
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Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

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

Re: Department of Justice, Department of Health and Human Services, and the Federal Trade Commission Request for Information on Consolidation in Health Care; Docket No. ATR 102 (3/5/2024)

Dear Assistant Attorney General Kanter, Chair Khan, and Secretary Becerra:

As a leading representative and advocate on behalf of America's 33 million small businesses, we write to provide our feedback to the U.S. Department of Justice's Antitrust Division (DOJ), the Federal Trade Commission (FTC), and the U.S. Department of Health and Human Services (HHS) joint request for information on healthcare consolidation.

Small Business Majority is a national small business organization that empowers America's diverse entrepreneurs to build a thriving and equitable economy. From our nine offices across the country, we engage our network of more than 85,000 small businesses and 1,500 business and community organizations to deliver resources to entrepreneurs and advocate for public policy solutions that promote inclusive small business growth. Our work is bolstered by extensive research and deep connections with the small business community that enable us to educate stakeholders about key issues impacting America's entrepreneurs, with a special focus on the smallest businesses and those facing systemic inequities.

Access to affordable, quality healthcare is critical for every American. According to the latest available data from the U.S. Bureau of Labor Statistics, over 47% of workers received healthcare benefits through their employer. But as employers of nearly half of the nation's private workforce, small businesses continue to struggle to provide affordable healthcare coverage to their employees. While there are many barriers standing between small business owners and their ability to offer quality coverage, recent increases in healthcare consolidation are contributing to rising healthcare costs that burden many of America's small business workforce. In fact, a recent Small Business Majority poll found that small business owners who offer health coverage to their employees reported that the cost of either insurance premiums (78%), deductibles (57%), copays (60%), prescription drug copays(60%) and hospital visits (59%) have risen over the past few years. As prices continue to increase, small business owners are left with difficult options that may include increasing employee contributions, switching to plans that offer less coverage, or dropping health coverage altogether as we describe below.

We appreciate the opportunity to provide comments on this issue as consolidation within hospitals and other healthcare provider markets has not only led to increased costs for employers and employees, but has also dramatically increased profitability for providers.

Effects of Consolidation: *How has a transaction involving health care providers (including providers of home- and community-based services), facilities, or ancillary products or services conducted by private equity funds or other alternative asset managers, health systems, or private payers (e.g., a health system, a private payer, or a private equity fund buying independent ambulatory surgery centers, dialysis clinics, PBMs, GPOs, or nursing homes) affected employers?*

As hospitals consolidate and prices increase, small businesses are forced to make unimaginable decisions that will negatively impact their employees, a business' most valuable asset–whether that be increasing employee contributions to a health plan, or moving to a cheaper insurance plan that offers less coverage. While their large business counterparts can negotiate rates and/or self-fund their plans, small businesses, a majority of which employ 10 or fewer workers, have no such leverage and simply cannot afford the price increases exacerbated by of healthcare consolidations.

As noted previously, our research reveals the troubling reality that small businesses are seeing their health insurance costs rise, without an end in sight. Employers who have seen costs increase were most likely to respond by increasing employee contributions to health plans (51%), moving to an insurance plan offering more limited coverage (47%) and cutting other employee benefits (29%). Notably, nearly one-quarter (24%) of these small businesses dropped health coverage altogether. Some small businesses indicated that they had to increase prices on goods and services (21%) and even eliminate or reduce wage increases (4%) to make up for the increasing share of their budget going towards healthcare.

The effects of healthcare consolidation on employers, especially small employers, cannot be understated. Consolidation not only directly impacts the cost and quality of care employers can provide their employees, but it has fragmented the insurance market, as some small business owners leave the fully-insured market in an attempt to find lower prices elsewhere.

Claimed Business Objectives for Transactions: *What were the claimed business goals and objectives for the transaction, and have these goals and objectives been realized post-transaction? These could include but are not limited to claimed efficiencies from scale, innovation in the organization and delivery of care, investments in care and quality improvements, the claimed or projected reduction in costs of delivering care resulting from these innovations and investments, complementarities between business units, or increased business valuations. Who benefited from the realization of claimed business goals and objectives of the transaction? Did the transaction, for example, require the acquired entity to take on any additional debt or restructure the ownership or leasing of any real estate or physical facilities? To the extent the transaction generated any surplus profits, were those profits used to reinvest in the acquired business, finance additional acquisitions, or paid out to shareholders in the form of dividends?*

The rise in healthcare consolidation has had grave impacts on both the overall costs of healthcare and the quality of care patients are receiving. These recent shifts in the healthcare market have led to questions regarding the overarching goal of consolidation, and research shows that hospital networks and private investors seem to be putting profit over patients. While some argue that hospital mergers can streamline care through the integration of services and broadening the availability of care to consumers, research from the New England Journal of Medicine finds that hospital acquisition by another hospital system was associated with worse patient experiences and no improvement in readmission or mortality rates. On the contrary, increased competition in the hospital industry has been linked to better patient outcomes and a lower cost of care. Since hospital mergers often lead to higher healthcare costs with no noticeable improvements to patient care, it is apparent that many hospital mergers are conducted in the interest of boosting profits rather than improving patient outcomes.

The role of private equity in today's healthcare market also raises concerns about the intentions of private investors who may view healthcare strictly from a profit-making perspective. In 2021 alone, private investors spent more than $200 billion on healthcare acquisitions and $1 trillion in the past decade. These private equity funds often aggressively pursue profits through their purchase of physician practices or hospitals, and in some cases take out loans to pay back investors by putting up recently acquired heath facilities as collateral. Following the familiar trend of profitability over quality of care, additional research has found that patients experienced an increase in hospital-acquired complications following a private equity funds acquisition of a hospital.

As hospital networks grow through mergers and acquisitions, their leverage over providers and insurance companies increases. This allows hospitals to negotiate higher prices and force insurance providers to include certain high-cost providers in their network. For example, when hospital chains contract with insurance companies, they often require the insurer to work with a majority, if not all, of the hospitals in their system. With growing rates of consolidation within hospital networks, insurance companies are left with little choice but to work with large hospital chains and comply with their reimbursement rates and service costs. This often leads to increases in premium costs and ultimately impacts small businesses and their employees who are left to pick up the bill.

Need for Government Action: *What actions should the Department of Health and Human Services, Federal Trade Commission, and United States Department of Justice consider taking to identify and address transactions that, due to market consolidation or corporate control issues, may have major adverse impacts on entities listed in question 1(i)-(iv)? Should the agencies promote greater transparency and enhanced availability of information to the public on mergers, acquisitions, and other transactions involving health care facilities, providers, payers, and ancillary products or services, and if so, how?*

To address the disparate impacts of healthcare consolidation on consumers and employers alike, the federal government and Congress must play a larger role to implement guidance and guardrails to rein in the anti-competitive practices of healthcare providers and investors. Our research has found that 75% of small business owners believe the government should have even greater authority to block mergers and acquisitions in the healthcare industry.

Hospital mergers have grossly consolidated the industry, with some networks controlling over 150 hospitals in one region alone. Small Business Majority urges the FTC to continue monitoring proposed hospital mergers and develop comprehensive guardrails to ensure mergers will benefit consumers through lower costs and increased availability of quality care. Continued feedback from consumers and employers will also allow FTC and other agencies to better evaluate the direct impacts of mergers on quality of care and service costs. We applaud the recent joint initiative by the FTC, DOJ and HHS to launch an easily accessible online portal for the public to report healthcare practices that may harm competition. As noted earlier, large hospital chains have been able to leverage their power over the market to force insurance companies to agree to unfair reimbursement rates and include certain high-cost providers in their network. We urge the Administration to consider the impacts of anti-competitive hospital contracting prices and develop contract guidelines for hospitals and insurance companies to adhere to limit the market power of hospital networks.

Access to data and effective price transparency policies remain paramount to ensuring consumers and employers have access to the necessary information needed to make informed decisions about their healthcare coverage. For example, in 2022, HHS released data on mergers, acquisitions, consolidations and changes of ownership from 2016-2022 for hospitals and nursing homes enrolled in Medicare. This was the first time HHS released data of this kind, which provided critical insight into how consolidation has impacted costs and health outcomes for patients. We encourage HHS, and the FTC and DOJ, to continue to publish data on the impacts of consolidation and expand its data capture to include private equity owned facilities and large hospital chains. With increased access to up-to-date data on ownership, acquisitions, and mergers HHS and the FTC can better evaluate proposed hospital mergers to identify problematic trends or data points which could lead to poorer quality of care and increased costs for consumers. Consumers should know the vested interests of their healthcare providers, and with recent increases in private equity investments, it is more important than ever before to understand the ownership structures of the hospitals and other providers. We encourage Congress and the Administration to develop ownership reporting guidelines for hospitals, clinics, and other healthcare facilities to hold investors accountable.

Congress has also taken steps to improve price transparency and consumer choice within the healthcare system. Last year, the U.S. House of Representatives passed the Lower Costs, More Transparency Act (H.R. 5378) which would require hospitals, insurance companies, labs, imaging providers, and ambulatory surgical centers to publicly list to prices of care and services available to consumers. We are encouraged by this action and while we urge the Senate to follow suit, we will continue to work with the administration to pull all available levers to hold the healthcare industry accountable to patients and small businesses alike. Small business owners recognize the importance of increased transparency to improve health outcomes. For example, an overwhelming 95% of small business owners believe that healthcare providers should be required to publicly post the prices they charge for services. Transparent markets are stronger markets, and without transparency requirements, we are unable to address anti-competitive practices within the healthcare sector.

In closing, Small Business Majority thanks HHS, FTC, and DOJ for the opportunity to provide feedback on how healthcare consolidation is impacting our nation's small businesses and their employees. We urge the agencies to continue their oversight of hospital mergers and increase data and price transparency efforts to better understand the consequences of healthcare consolidation. We look forward to continuing to work with you on policies to benefit America's entrepreneurs and small business owners. Should you have any questions or would like to discuss our feedback further, please contact our Government Affairs Director, Alexis D'Amato at adamato@smallbusinessmajority.org or (202) 967-0995.

Sincerely,

John C. Arensmeyer

John Arensmeyer
Founder & CEO
Small Business Majority