Statement on

"Competitive Implications of Vertical Consolidation in the Health Care Industry"

Submitted to the

Senate Judiciary Committee
Subcommittee on Antitrust, Competition Policy, and Consumer Rights

June 12, 2019

Every American deserves affordable coverage and high-quality care. The best way to achieve this goal is through a competitive health care system that offers a wide range of choices for accessing high-quality care at the lowest possible cost. When patients and consumers have more choice and more control, they can get the care they need when they need it, at a price they can afford.

We thank the committee for examining how Americans are affected by vertical consolidation in the health care industry. All consolidation, whether vertical or horizontal, must be assessed individually based on its own impact on competition. Some vertical consolidation benefits consumers by making possible new products, more efficient approaches, and other benefits. Unfortunately, much vertical provider consolidation, at this point, has a demonstrated record of leading to higher prices and not leading to benefits for consumers. Our statement for today's

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America's Health Insurance Plans (AHIP) is the national association whose members provide coverage for health care and related services to millions of Americans every day. Through these offerings, we improve and protect the health and financial security of consumers, families, businesses, communities, and the nation. We are committed to market-based solutions and public-private partnerships that improve affordability, value, access, and well-being for consumers.

hearing focuses on our serious concerns about the harmful impact of such anticompetitive vertical consolidation among health care providers, such as the acquisition of physician practices by hospitals or hospital systems.

The Harmful Impact of Vertical Provider Consolidation: Higher Prices, No Quality Improvement, Lower Patient Satisfaction

One major cause of rising health care costs is vertical provider consolidation—when more and more of a region's doctors and medical experts work for the same hospital or health system. By no surprise, research has found that when health systems in a region get bigger and squeeze out competition, prices go up for consumers. That is a basic economic reality.

A study published by the *Journal of Health Economics* in May 2018 examined what happens to prices when hospitals acquire physician practices. This study found that following such acquisitions, the prices for services provided by the acquired physicians increased by an average of 14.1%.[1]

Similarly, a study published by *Health Affairs* found that "an increase in the market share of hospitals with the tightest vertically integrated relationship with physicians—ownership of physician practices—was associated with higher hospital prices and spending." The authors further explain that "vertical relationships can be a way for physicians and hospitals to bundle their services together and charge insurers higher prices."[2]

A December 2016 study, published by the *Journal of Health Economics*, addresses the impact of hospital/physician integration on hospital choice. This study cautions: "We find that a hospital's ownership of a physician dramatically increases the probability that the physician's patients will choose the owning hospital. We also find that patients are more likely to choose a high-cost, low-quality hospital when their physician is owned by that hospital."[3]

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[1] The effect of hospital acquisitions of physician practices on prices and spending. Cory Capps, David Dranove, and Christopher Ody. May 2018. *Journal of Health Economics*. https://www.sciencedirect.com/science/article/abs/pii/S016762961730485X

[2] Vertical Integration: Hospital Ownership of Physician Practices Is Associated With Higher Prices and Spending. Laurence C. Baker, M. Kate Bundorf, and Daniel P. Kessler. May 2014. *Health Affairs*. https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2013.1279

[3] The effect of hospital/physician integration on hospital choice. Laurence C. Baker, M. Kate Bundorf, and Daniel P. Kessler. December 2016. *Journal of Health Economics*. https://www.sciencedirect.com/science/article/abs/pii/S0167629616301679?via%3Dihub

Additional research indicates that vertical provider consolidation is not fulfilling the promise of higher quality and instead is leading to lower patient satisfaction. A February 2019 study published by *Medical Care Research and Review* determines, based on an analysis of 29 quality measures, that vertical integration "has a limited effect on a small subset of quality measures" and that "increased market concentration is strongly associated with reduced quality across all 10 patient satisfaction measures at the 95% confidence level."[4]

One of the study's authors explains: "Physician-hospital integration did not improve the quality of care for the overwhelming majority of these measures. If patient welfare doesn't improve after integration, there may be other reasons why physicians and hospitals are forming closer relationships—perhaps to raise profits."[5]

Taken together, these research findings clearly demonstrate that increasing provider competition is a complex challenge that needs to be addressed as part of any strategy for improving health care affordability. Provider markets that lack competition also lack appropriate incentives to restrain prices, innovate in care delivery, and partner with other stakeholders in ways that will benefit patients.

Unfortunately, the trend continues to be toward more anticompetitive provider consolidation, with vertical consolidation a large part of the problem. A study published by *Health Affairs* in September 2018 found that the percentage of physicians in practices owned by a hospital increased from about 25% in 2010 to more than 40% in 2016 and, additionally, that the increase in vertical integration from 2013 to 2016 in highly concentrated hospital markets was found to be associated with a 12% increase in premiums.[6] Another study found that hospital acquisitions of physician practices increased by 128 percent from 2012 to 2018.[7] The remedy will require both addressing this trend and implementing innovative legislative solutions to address already embedded provider market power.

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[4] Weighing the Effects of Vertical Integration Versus Market Concentration on Hospital Quality. Marah Noel Short, Vivian Ho. February 2019. *Medical Care Research and Review*. https://journals.sagepub.com/doi/10.1177/1077558719828938

[5] Vertical Integration in Healthcare Doesn't Boost Care Quality. February 14, 2019. *RevCycle Intelligence.* https://revcycleintelligence.com/news/vertical-integration-in-healthcare-doesnt-boost-care-quality

[6] Consolidation Trends In California's Health Care System: Impacts On ACA Premiums And Outpatient Visit Prices. Richard M. Scheffler, Daniel R. Arnold, and Christopher M. Whaley. September 2018. *Health Affairs*. https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2018.0472

[7] Hospital Acquisitions of Physician Practices Rose 128% Since 2012. February 21, 2019. *RevCycle Intelligence.* https://revcycleintelligence.com/news/hospital-acquisitions-of-physician-practices-rose-128-since-2012

Provider consolidation is not a new problem—hospitals have undergone multiple waves of consolidation over the past 30 years. Often such consolidation efforts have resulted in the creation of massive vertical systems of hospitals, physicians, and other providers that become "must haves" for any health insurance provider looking to offer an adequate network in an area. Without including these types of vertical systems, it becomes effectively impossible to offer an insurance product that is either viable in the market or that regulators can approve and meet existing network adequacy or other standards.

In spite of the promises that accompanied many of these transactions, the result over time was inevitable: Higher prices and lower incentives to compete in other areas such as quality.

Recommendations for Mitigating the Harmful Impact of Anticompetitive Vertical Consolidation Among Health Care Providers

While no policy can fully undo the damage of lost competition from anticompetitive consolidation, there are policy steps that could mitigate the harm. Moreover, preventing further anticompetitive vertical (and horizontal) transactions will avoid the tragedy of history repeating itself in a cycle of promised benefits followed by concrete harm from provider consolidation.

We offer the following recommendations to address concerns about anti-competitive provider consolidation:

- **Ensure that the Federal Trade Commission (FTC) and the Department of Justice (DOJ) have the resources and authority to prevent anticompetitive vertical provider consolidation.** The best way to protect competition is to prevent its elimination in the first place. The FTC and the DOJ should have both the resources and the mandate to challenge vertical anticompetitive provider consolidation.

- **Request that the FTC engage in a retrospective review of vertical provider consolidation and utilize the findings of that review to challenge transactions that have led to consumer harm.** The FTC's retrospective review of hospital consolidation significantly advanced understanding of the actual harm that resulted from such consolidation. In a May 2019 speech, FTC Commissioner Rebecca Kelly Slaughter suggested that "the FTC should consider conducting retrospectives of vertical healthcare provider mergers, such as hospital-physician transactions."[8] We agree that the time is ripe for another retrospective review by the FTC. Given the increasing role of vertical provider consolidation, the scope of the FTC's review should include a focus on such consolidation.

- **Require the Centers for Medicare & Medicaid Services (CMS), jointly with the FTC and the DOJ, to engage in a review of its payment and other policies to determine which are likely to have the unintended consequence of leading to provider consolidation.** The federal government's actions are not limited to those of a market regulator. It is also a market participant through Medicare, Medicaid, and other programs. In many ways, CMS is the most significant market participant. The policies that apply to these programs have impacts that ripple throughout markets. For example, differences in Medicare payments based on site of service have been identified as a factor in vertical provider consolidation. CMS should, with the assistance of the federal antitrust agencies, review its policies to determine which are or have the potential to harm competition.

- **Require CMS to utilize the results of such a review to modify its payment and other policies to reduce the risk of this unanticipated consequence.** This step will reduce the risk that CMS policies harm competition in provider markets.

- **Require federal health programs and the individual marketplace to, as appropriate, allow for innovations in care delivery to replace traditional care delivery in establishing adequate networks in order to reduce the market power of today's provider monopolists.** Innovations involving the use of telemedicine, retail clinics and urgent care centers, care at home, nurse practitioners (i.e., practicing to the full scope of their license), and ambulatory service centers have promise in promoting greater competition and lower cost—especially for markets in which all of the "traditional" sources of care have been captured by vertically consolidated provider systems.

Conclusion

Thank you for considering our recommendations on these important issues. Health insurance providers, while operating in competitive markets, are working hard to ensure that their enrollees receive high quality health care at competitive prices. Vigorous competition in hospital and

[8] Remarks of FTC Commissioner Rebecca Kelly Slaughter before Center for American Progress, May 14, 2019. https://www.ftc.gov/system/files/documents/public_statements/1520570/slaughter_-_hospital_speech_5-14-19.pdf

physician markets is crucial to promoting a fair system that serves the best interests of consumers, but is undermined by anticompetitive vertical provider consolidation. We look forward to continuing to work with the committee to promote competition with the goal of further expanding access to high quality, affordable health care.