REPORT OF THE COUNCIL ON MEDICAL SERVICE

CMS Report 4-A-24

Subject: Health System Consolidation

Presented by: Sheila Rege, MD, Chair

At the 2023 Annual Meeting, the House of Delegates adopted Policy D-160.907, Health System Consolidation, which directed the American Medical Association (AMA) to: 1) assess and report annually on nationwide health system and hospital consolidation, as well as payer consolidation, to assist policymakers and the federal government; 2) that the annual report on nationwide hospital consolidation be modeled after the "Competition in Health Insurance: A comprehensive study of U.S. Markets" in its comprehensiveness to include for example data and analyses as: a) a review of the current level of hospital and/or health system consolidation at the level of all metropolitan statistical areas, state, and national markets; b) a list of all mergers and acquisition transactions valued above a set threshold amount resulting in hospital and/or health system consolidation; c) analyses of how each transaction has changed or is expected to change the level of competition in the affected service and geographic markets; and d) analyses of how health care costs and price have changed in affected markets after large consolidation transaction has taken place; 3) that the AMA report the initial findings of this study to the House of Delegates by the 2024 Annual Meeting; and 4) that the AMA report the findings of this study to its members and stakeholders, including policymakers and legislators, to inform future health care policy.

The Board of Trustees assigned only the third Resolve clause of Policy D-160.907 to the Council for a report back at the 2024 Annual Meeting. The balance of the directive was assigned to AMA staff to implement (i.e., the AMA's Division of Economic and Health Policy Research). Data were used primarily from the American Hospital Association (AHA) to assess competition in hospital markets. As directed by Policy D-160.907, the requested analysis was modeled after the AMA's Competition in Health Insurance study.

This informational Council report serves as notice to the House of Delegates regarding the report from the AMA's Division of Economic and Health Policy Research. Here we share topline findings from the Policy Research Perspective titled: "Competition in Hospital Markets, 2013-2021" and encourage interested members to reference the full analysis for a more robust discussion of the findings.

BACKGROUND

The economic study was conducted using the AHA's 2013, 2017, and 2021 Annual Survey Databases. These databases were used to calculate shares and concentration levels in markets across the United States. The Herfindahl-Hirschman Index (HHI) indicates the level of market concentration and was calculated for each Metropolitan Statistical Area (MSA). The HHI is calculated as a sum of the squared market shares for all firms found within a market. A higher HHI indicates higher concentration. For example, if a market consisted of four firms and each firm held a 25 percent share, the HHI for that market would be 2,500:

$$25^2 + 25^2 + 25^2 + 25^2 = 2{,}500$$

If the number of firms in a market increased, the HHI would generally decrease, and vice versa.

Appendices A1 and A2 show that in the majority of MSA-level markets, hospitals (or systems) have large market shares. In 97 percent of markets, at least one hospital (system) had a market share of 30 percent or greater in 2021, and 77 percent of markets had one hospital (system) with a share of 50 percent or more in 2021 – up from 70 percent or more in 2013. In 43 percent of markets, a single hospital (system) had a market share of 70 percent or more in 2021 – an increase from 37 percent in 2013. The fraction of hospitals that are a part of a system has also been increasing over time, increasing from 70 percent in 2013 to 76 percent in 2017 to 78 percent in 2021.

Appendix B shows that, on average, hospital markets are highly concentrated and market concentration has been increasing over time. Virtually all hospital markets (99 percent) are highly concentrated.

A complete list of the two largest hospitals' (or systems') market shares and the HHIs by MSA can be found in the full analysis.

AMA POLICY

The AMA has several policies, and the Council has presented several recent reports to the House of Delegates on hospital consolidation and health care mergers and acquisitions.

CMS Report 8-A-23, Impact of Integration and Consolidation on Patients and Physicians, recommended that the AMA: 1) continue to monitor the impact of hospital-physician practice and hospital-hospital mergers and acquisitions on health care prices and spending, patient access to care, potential changes in patient quality outcomes, and physician wages and labor; 2) continue to monitor how provider mix may change following mergers and acquisitions and how non-compete clauses may impact patients and physicians; 3) broadly support efforts to collect relevant information regarding hospital-physician practice and hospital-hospital mergers and acquisitions in states or regions that may fall below the Federal Trade Commission (FTC)/Department of Justice review threshold; 4) encourage state and local medical associations, state specialty societies, and physicians to contact their state's attorney general with concerns of anticompetitive behavior; and encourage physicians to share their experiences with mergers and acquisitions, such as those between hospitals and/or those between hospitals and physician practices, with the FTC via their online submission form.

CMS 2-I-22, Corporate Practice of Medicine, recommended that the AMA: 1) acknowledge that the corporate practice of medicine has the potential to erode the patient-physician relationship; 2) acknowledge that the corporate practice of medicine may create a conflict of interest between profit and best practices in residency and fellowship training; and 3) amend Policy H-160.891 by addition of two new clauses stating that each individual physician should have the ultimate decision for medical judgment in patient care and medical care processes, including the supervision of non-physician practitioners and physicians should retain primary and final responsibility for structured medical education inclusive of undergraduate and graduate medical education including the structure of the program, program curriculum, selection of faculty and trainees, as well as educational and disciplinary issues related to these programs.

CMS 3-I-22, Health System Consolidation, was an informational report and the first in a series the Council has on this and related topics. CMS 3-I-22 shared background information on vertical and horizontal mergers and acquisitions and highlighted notable transactions from 2020. The Council

will continue its work on this issue and provide additional reports for the consideration of the House of Delegates when appropriate.

Policy D-160.907, established by the adoption of Resolution 727-A-23 as amended, states that the AMA will: assess and report annually on nationwide health system and hospital consolidation as well as payer consolidation, to assist policymakers and the federal government; model this report on nationwide hospital consolidation after the "Competition in Health Insurance" study in its comprehensiveness to include for example, data and analyses such as: a) a review of the current level of hospital and/or health system consolidation at the level of all metropolitan statistical areas, state, and national markets; a list of all mergers and acquisition transactions valued above a set threshold amount resulting in hospital and/or health system consolidation; analyses of how each transaction has changed or is expected to change the level of competition in the affected service and geographic markets; analyses of how health care costs and prices have changed in affected markets after a large consolidation transaction has taken place.

Policy H-160.884 states that the AMA opposes not-for-profit firm immunity from FTC competition policy enforcement in the health care sector, supports appropriate transaction value thresholds, including cumulative transaction values, for merger reporting in health care sectors to ensure that vertical acquisitions in health care do not evade antitrust scrutiny, and supports health care-specific advocacy efforts that will strengthen antitrust enforcement in the health care sector through multiple mechanisms.

Policy H-215.960 states that the AMA: affirms that a) health care entity mergers should be examined individually, taking into account case-specific variables of market power and patient needs; b) the AMA strongly supports and encourages competition in all health care markets; c) the AMA supports rigorous review and scrutiny of proposed mergers to determine their effects on patients and providers; and d) antitrust relief for physicians remains a top AMA priority. The AMA will continue to support actions that promote competition and choice, including (a) eliminating state certificate of need laws; (b) repealing the ban on physician-owned hospitals; (c) reducing administrative burdens that make it difficult for physician practices to compete; and (d) achieving meaningful price transparency; and (3) will work with interested state medical associations to monitor hospital markets, including rural, state, and regional markets, and review the impact of horizontal and vertical health system integration on patients, physicians, and hospital prices.

Policy H-215.969 states that it is the policy of the AMA that, in the event of a hospital merger, acquisition, consolidation, or affiliation, a joint committee with merging medical staffs should be established to resolve at least the following issues: a) medical staff representation on the board of directors; b) clinical services to be offered by the institutions; c) process for approving and amending medical staff bylaws; d) selection of the medical staff officers, medical executive committee, and clinical department chairs; e) credentialing and recredentialing of physicians and limited licensed providers; f) quality improvement; g) utilization and peer review activities; h) presence of exclusive contracts for physician services and their impact on physicians' clinical privileges; i) conflict resolution mechanisms; j) the role, if any, of medical directors and physicians in joint ventures; k) control of medical staff funds; l) successor-in-interest rights; m) that the medical staff bylaws be viewed as binding contracts between the medical staffs and the hospitals; and that the AMA will work to ensure, through appropriate state oversight agencies, that where hospital mergers and acquisitions may lead to restrictions on reproductive health care services, the merging entity shall be responsible for ensuring continuing community access to these services.

Policy D-215.984 states that the AMA will study nationwide health system and hospital consolidation in order to assist policymakers and the federal government in assessing health care

consolidation for the benefit of patients and physicians who face an existential threat from health care consolidation and regularly review and report back on these issues to keep the House of Delegates apprised on relevant changes that may impact the practice of medicine, with the first report no later than the 2023 Annual meeting.

Policy D-225.995 states that the AMA will continue to monitor and report on current numbers of mergers and break-ups of mergers of hospitals in this country. Policy D-383.980 states that the AMA will study the potential effects of monopolistic activity by health care entities that may have a majority of market share in a region on the patient-doctor relationship and develop an action plan for legislative and regulatory advocacy to achieve more vigorous application of antitrust laws to protect physician practices which are confronted with potentially monopolistic activity by health care entities.

DISCUSSION

As expected, the majority of markets in the United States are characterized by hospitals with large market shares. Virtually all hospital markets are highly concentrated, and, on average, this concentration has been increasing over time.

REFERENCES

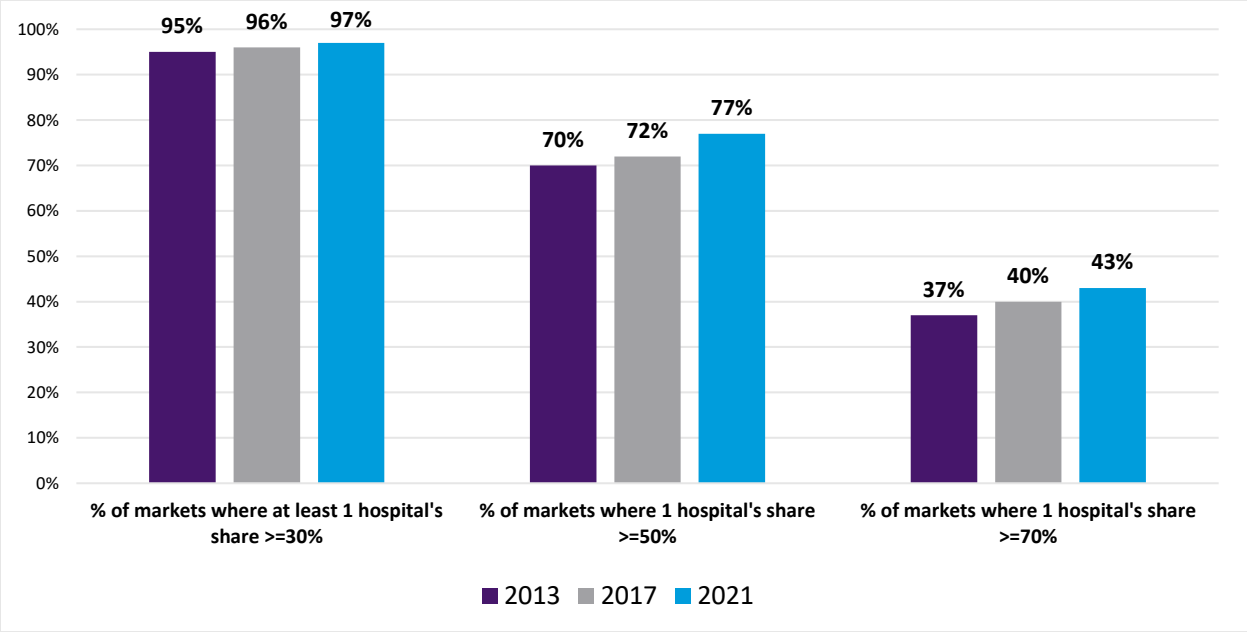
[1]Guardado, José R., PhD. AMA Policy Research Perspectives. *Competition in Hospital Markets, 2013-2021*. American Medical Association. 2024.

Appendix A1
Hospital Market Shares and System Membership, 2013-2021

Variable	2013	2017	2021
% of Markets where at least 1 hospital's share >=30%	95%	96%	97%
% of Markets where 1 hospital's share >=50%	70%	72%	77%
% of Markets where 1 hospital's share >=70%	37%	40%	43%
% of Hospitals that are members of systems	70%	76%	78%
Number of hospitals	1946	2021	2002
Number of systems	276	273	268
Number of markets	363	387	389

1. Source: Author's calculations of data from the 2013, 2017 and 2021 American Hospital Association Annual Surveys.
2. This paper defines geographic markets as metropolitan statistical areas (MSAs). For MSAs that are very large (e.g. New York, Chicago), markets are defined as smaller parts of those MSAs called metropolitan divisions.
3. A "hospital" in the first three rows of this Exhibit relating to market shares can either refer to a hospital or a hospital system. Some hospitals belong to systems, while others do not. If there is more than 1 one hospital belonging to the same system in an MSA, the admissions are aggregated up to the system level. Market shares are calculated from system-wide admissions in an MSA. In those cases, the "hospital's" market share here refers to the system's share.

Appendix A2
Hospital Market Shares, 2013-2021



1. Source: Author's calculations of data from the 2013, 2017 and 2021 American Hospital Association Annual Surveys.
2. This paper defines geographic markets as metropolitan statistical areas (MSAs). For MSAs that are very large (e.g. New York, Chicago), markets are defined as smaller parts of those MSAs called metropolitan divisions.
3. A "hospital" in the first three rows of this Exhibit relating to market shares can either refer to a hospital or a hospital system. Some hospitals belong to systems, while others do not. If there is more than one hospital belonging to the same system in an MSA, the admissions are aggregated up to the system level. Market shares are calculated from system-wide admissions in an MSA. In those cases, the "hospital's" market share here refers to the system's share.

Appendix B
Hospital Market Concentration, 2013-2021

Variable	2013	2017	2021
Weighted average HHI	3722	3853	4062
% of Markets that are highly concentrated	97%	98%	99%
Number of markets	363	387	389

1. Source: Author's calculations of data from the 2013, 2017 and 2021 American Hospital Association Annual Surveys.
2. This paper defines geographic markets as metropolitan statistical areas (MSAs). For MSAs that are very large (e.g. New York, Chicago), markets are defined as smaller parts of those MSAs called metropolitan divisions.
3. HHI is the Herfindahl-Hirschmann Index, which is a measure of market concentration. The average HHI is weighted by metropolitan-area population.

Relevant AMA Policy
Health System Consolidation

Health System Consolidation, D-160.907
1. Our American Medical Association (AMA) will assess and report annually on nationwide health system and hospital consolidation, as well as payer consolidation, to assist policymakers and the federal government.
2. Our AMA annual report on nationwide hospital consolidation will be modeled after the "Competition in Health Insurance: A Comprehensive Study of U.S. Markets" in its comprehensiveness to include for example data and analyses as:
a) A review of the current level of hospital and/or health system consolidation at the level of all metropolitan statistical areas, state, and national markets;
b) A list of all mergers and acquisition transactions valued above a set threshold amount resulting in hospital and/or health system consolidation;
c) Analyses of how each transaction has changed or is expected to change the level of competition in the affected service and geographic markets;
d) Analyses of health care costs and prices have changed in affected markets after a large consolidation transaction has taken place.
3. Our AMA will report the initial findings of this study to the House of Delegates by Annual 2024.
4. Our AMA will report the findings of this study to its members and stakeholders, including policymakers and legislators, to inform future health care policy.
(Res. 727, A-23)

Strengthening Efforts Against Horizontal & Vertical Consolidation, H-160.884
1. Our AMA opposes not-for-profit firm immunity from FTC competition policy enforcement in the health care sector.
2. Our AMA supports appropriate transaction value thresholds, including cumulative transaction values, for merger reporting in health care sectors to ensure that vertical acquisitions in health care do not evade antitrust scrutiny.
3. Our AMA supports health care-specific advocacy efforts that will strengthen antitrust enforcement in the health care sector through multiple mechanisms.
(Res. 813, I-23)

Hospital Consolidation, H-215.960
Our AMA: (1) affirms that: (a) health care entity mergers should be examined individually, taking into account case-specific variables of market power and patient needs; (b) the AMA strongly supports and encourages competition in all health care markets; (c) the AMA supports rigorous review and scrutiny of proposed mergers to determine their effects on patients and providers; and (d) antitrust relief for physicians remains a top AMA priority; (2) will continue to support actions that promote competition and choice, including: (a) eliminating state certificate of need laws; (b) repealing the ban on physician-owned hospitals; (c) reducing administrative burdens that make it difficult for physician practices to compete; and (d) achieving meaningful price transparency; and (3) will work with interested state medical associations to monitor hospital markets, including rural, state, and regional markets, and review the impact of horizontal and vertical health system integration on patients, physicians, and hospital prices.
(CMS Rep. 07, A-19; Reaffirmation, I-22)

Hospital Merger Study, H-215.969
1. It is the policy of the AMA that, in the event of a hospital merger, acquisition, consolidation, or affiliation, a joint committee with merging medical staffs should be established to resolve at least the following issues:
(A) medical staff representation on the board of directors;

(B) clinical services to be offered by the institutions;
(C) process for approving and amending medical staff bylaws;
(D) selection of the medical staff officers, medical executive committee, and clinical department chairs;
(E) credentialing and recredentialing of physicians and limited licensed providers;
(F) quality improvement;
(G) utilization and peer review activities;
(H) presence of exclusive contracts for physician services and their impact on physicians' clinical privileges;
(I) conflict resolution mechanisms;
(J) the role, if any, of medical directors and physicians in joint ventures;
(K) control of medical staff funds;
(L) successor-in-interest rights;
(M) that the medical staff bylaws be viewed as binding contracts between the medical staffs and the hospitals; and
2. Our AMA will work to ensure, through appropriate state oversight agencies, that where hospital mergers and acquisitions may lead to restrictions on reproductive health care services, the merging entity shall be responsible for ensuring continuing community access to these services.
(CMS Rep. 4, I-01; Reaffirmed: CMS Rep. 7, A-11; Appended: Res. 3, I-13; Reaffirmed: CMS Rep. 07, A-19)

Health System Consolidation, D-215.984
Our AMA will: (1) study nationwide health system and hospital consolidation in order to assist policymakers and the federal government in assessing health care consolidation for the benefit of patients and physicians who face an existential threat from health care consolidation; and (2) regularly review and report back on these issues to keep the House of Delegates apprised on relevant changes that may impact the practice of medicine, with the first report no later than the 2023 Annual meeting.
(Res. 702, A-22)

Hospital Merger Study, D-225.995
Our AMA will: (1) urge its AMA Commissioners to the Joint Commission to seek the inclusion of a standard in The Joint Commission hospital accreditation program requiring a medical staff successor-in-interest standard in the hospital medical staff bylaws; (2) seek inclusion of medical staff bylaw successor-in-interest provisions in the Medicare Conditions of Participation and in the rules and regulations of other public and private hospital accreditation agencies; and (3) continue to monitor and report on current numbers of mergers and break-ups of mergers of hospitals in this country.
(CMS Rep. 7, I-00; Modified: CMS Rep. 6, A-10; Reaffirmed: CMS Rep. 01, A-20)

Health Care Entity Consolidation, D-383.980
Our AMA will (1) study the potential effects of monopolistic activity by health care entities that may have a majority of market share in a region on the patient-doctor relationship; and (2) develop an action plan for legislative and regulatory advocacy to achieve more vigorous application of antitrust laws to protect physician practices which are confronted with potentially monopolistic activity by health care entities. (BOT Rep. 8, I-15)