Whereas, despite robust evidence for the effects of both horizontal and vertical consolidation on patient outcomes, physician pay and work conditions, and market performance, FTC and DOJ are hesitant to try cases due to inadequate finances and a history of losses, including several in the early 2000s and recent cases only won after appeals requiring major funds; and

Whereas, while healthcare merger activity rose 50% from 2010-2020, Federal Trade Commission (FTC) and Department of Justice (DOJ) budgets declined, and the amount of resources needed per antitrust lawsuit increased; and

Whereas, nonprofit hospitals account for the majority of US hospitals but are immune from antitrust enforcement, despite also being impacted by the harms of consolidation; and

Whereas, most vertical healthcare mergers are not reported because they fall beneath the $50 million threshold for mandatory reporting, even though they account for $30 to 40 billion in total value, making FTC and DOJ ineffective in preventing vertical consolidation; and

Whereas, FTC and DOJ struggle in cases due to the extremely high evidentiary burdens placed on plaintiffs, such as proof that a merger will lead to “likely harm to competition,” which requires additional funds to effectively demonstrate and exacerbates budgetary concerns; and

Whereas, while most healthcare mergers are challenged preemptively, FTC has previously challenged mergers retroactively, and given the inadequacies of existing enforcement, retroactive challenges will likely be necessary to restore effective markets; therefore be it

RESOLVED, that our American Medical Association advocate to adequately resource competition policy authorities such as the Federal Trade Commission (FTC) and Department of Justice Antitrust Division to perform oversight of healthcare markets (Directive to Take Action); and be it further

RESOLVED, that our AMA oppose not-for-profit firm immunity from FTC competition policy enforcement in the healthcare sector, which represent the majority of U.S. hospitals (New HOD Policy); and be it further

RESOLVED, that our AMA support lowering the transaction value threshold for merger reporting in healthcare sectors to ensure that vertical acquisitions in healthcare do not evade antitrust scrutiny (New HOD Policy); and be it further

RESOLVED, that our AMA support healthcare-specific advocacy efforts which will strengthen antitrust enforcement in the healthcare sector through multiple mechanisms, including but not
2. Tenn, Steven. 2011. "The Price Effects of Hospital Mergers: A Case Study of the Sutter-Summit Transaction." International Fiscal Note: Moderate - between $5,000 - $10,000
34. United States and the State of North Carolina v. The Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Healthcare System. 2019
40. Cooper, Zach and Gaynor, Martin. Addressing Hospital Concentration and Rising Consolidation in the United States. 1% Steps for Health Care Reform Project.

RELEVANT AMA POLICY

D-160.907 Health System Consolidation
1. Our American Medical Association 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 an 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 healthcare costs and prices have changes 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 healthcare policy. [Res. 727, A-23]

D-160.908 Vertical Consolidation in Health Care – Markets or Monopolies
Our American Medical Association: (1) advocates against anticompetitive business practices that have the potential to adversely affect the physician patient relationship, to result in higher costs or decreased quality of care, or are not in the best interest of patients, the public and/or physicians; (2) supports efforts to increase transparency, review, and enforcement of laws with respect to vertical mergers that have the potential to negatively impact the health care industry; and (3) will work with all appropriate stakeholders to create model legislation to prohibit anticompetitive business practices within the health care sector. [Res. 723, A-23]

H-160.885 Impact of Integration and Consolidation on Patients and Physicians
Our AMA will:
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. 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 attorney general with concerns of anticompetitive behavior.

5. 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 Rep. 08, A-23]

D-215.984 Health System Consolidation
Our AMA will: (1) study nationwide health system and hospital consolidation in order to assist policymakers and the federal government in assessing healthcare consolidation for the benefit of patients and physicians who face an existential threat from healthcare 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]

H-215.960 Hospital Consolidation
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]

D-383.980 Health Care Entity Consolidation
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]