

FTC Halts Merger of Chicago Health Systems

On March 7, 2017, *NorthShore University HealthSystem* and *Advocate Health Care* announced their abandonment of plans to merge into one hospital system.¹ This decision was announced approximately fifteen months after the *Federal Trade Commission* (FTC) filed a complaint to enjoin the merger in December 2015.² This potential union would have created the eleventh largest not-for-profit hospital system in the U.S., comprising sixteen hospitals spanning from the north Chicago suburbs to central Illinois.³ In regard to the abandoned merger plans, NorthShore CEO Mark Neaman stated, “we have determined with the Advocate Health Care leadership that the time, cost and uncertainty of pursuing any additional appeals would not be worthwhile.”⁴ Advocate CEO Jim Skogsbergh additionally explained that the two hospital systems “pursued this merger because it aligned with [Advocate’s] mission and values to advance care and lower costs for patients.”⁵

Initial plans to create the “*Advocate Northshore Health Partners*” system were publicized in November 2014.⁶ The December 2015 complaint filed by the FTC and Attorney General for the State of Illinois attempted to threaten this merger.⁷ In the complaint, the FTC argued that the combined entity would violate Section 7 of the Clayton Act, which prohibits mergers whose effect “may be substantially to lessen competition, or to tend to create a monopoly.”⁸ The FTC further argued that the merger would:

- (1) “Significantly increase market concentration and result in such a highly concentrated market that the Transaction is presumptively unlawful”;
- (2) “Increase Defendants’ bargaining leverage with commercial payers, and enhance Defendants’ ability to negotiate more favorable reimbursement terms, including reimbursement rates. Faced with higher rates and other less favorable terms, commercial payers will be forced to pass on those higher healthcare costs to employers and their employees in the form of increased premiums, co-pays, deductibles, and other out-of-pocket expenses”; and,
- (3) “[Diminish] incentive[s] to improve [the] quality of care or increase [the] service offerings to patients in [Chicago].”⁹

Advocate responded to the complaint, stating that the FTC’s claims were “an imprudent and fundamentally unsound application of the antitrust laws to the merger... that seeks to perpetuate the status quo at the expense of innovation that would benefit consumers,”¹⁰ and that the proposed merger would “be precompetitive, and will result in substantial merger-specific pricing efficiencies, cost synergies, and other procompetitive effects all of which will directly benefit consumers and patients throughout Chicago.”¹¹ NorthShore echoed these arguments, stating that “the Complaint [filed by the FTC and Attorney General for the State of Illinois] is fundamentally flawed and reflects a misguided application of the antitrust laws to the merger... because both organizations face robust and increasing competition today and in the future.”¹² NorthShore further articulated that “the merger... will be precompetitive and will further enhance the quality of care for patients and lower the total cost of healthcare.”¹³

On October 31, 2016, after a series of proceedings related to an interlocutory appeal of a preliminary injunction, the Seventh Circuit granted the preliminary injunction to the FTC and State of Illinois.¹⁴ This decision was made after the FTC was able to successfully define the geographic market served by both Advocate and NorthShore.¹⁵ The case was then remanded back to the district court for further proceedings.¹⁶ On March 7, 2017, the district court granted an injunction to the FTC and State of Illinois to enjoin the health systems from merging until after the case was adjudicated.¹⁷ That same day, Advocate and NorthShore announced plans to abandon their proposed merger.¹⁸

On May 5, 2017, shortly after the merger plans terminated, Advocate announced that it was cutting expenses by \$200 million.¹⁹ Advocate asserted that these budget cuts are not directly attributable to the legal costs of the lawsuit, but are instead a consequence of its increasing financial pressures, an issue that many hospitals are facing.²⁰ Over the past few years, numerous Chicago hospitals have experienced an increase in amount of unpaid hospital bills.²¹ In 2016, Advocate saw its uncollectible accounts increase more than 22%.²² Other Chicago hospitals, such as Lurie Children’s Hospital and Swedish Covenant Hospital, experienced increases in bad debt of 22% and 71% in 2015, respectively.²³ David Szandzik, Vice President of

(Continued on next page)

Revenue Cycle at Advocate, blamed this trend on an “increase in deductibles and overall patient financial responsibility under today’s insurance plans.”²⁴ Additionally, Chicago hospitals are facing a unique dilemma, in that they are waiting to be reimbursed for services from the State of Illinois, which has not passed a budget in two years.²⁵ As Advocate Chief Operating Officer, Bill Santulli, noted, “operating in a state with one of the lowest reimbursement rates and significant payment delays due to the lack of state budget exacerbates [this] situation.”²⁶ Had the merger been approved, Advocate Chief Executive Officer, Jim Skogsbergh, claims that both Advocate and NorthShore “would have had a better opportunity to weather [this] storm.”²⁷ In addition to the budget cuts, Advocate is instituting a hiring freeze until at least July 1, 2017, and plans to initiate layoffs and early retirements.²⁸ The system is also in conversations with other rival providers regarding possible consolidation.²⁹

However, not all Chicago hospitals are suffering from paralyzing increases in bad debt. For example, Northwestern Memorial Hospital experienced a six percent *decline* in bad debt in 2016.³⁰ Spokesman Chris King attributed this decrease to improvements in their revenue cycle and “enhanced engagement between our financial counselors and patients to improve access to our financial assistance programs.”³¹ Northwestern and other academic medical centers, such as the University of Chicago, have acquired several community hospitals in an attempt to increase their economies of scale and combat financial uncertainties.³²

Nonetheless, the collapse of the Advocate-NorthShore merger may have a deterrent effect on future mergers both in Chicago and across the U.S.³³ Future consolidation, especially the consolidation of large hospital systems, may draw significant regulatory scrutiny if the amount of market share acquired by healthcare organizations results in too much market power in the eyes of federal and state regulators.³⁴

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- 2 “Federal Trade Commission, et al. v. Advocate Health Care Network, et al.” Case No. 15-cv-11473 (December 22, 2015) Complaint for Temporary Restraining Order and Preliminary Injunction Pursuant to Section 13(b) of the Federal Trade Commission Act, p. 1.
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- 10 “Federal Trade Commission, et al. v. Advocate Health Care Network, et al.” Case No. 15-cv-11473 (January 6, 2016), Advocate’s Response to the Commission’s Allegations, p. 1-2.
- 11 *Ibid.*
- 12 “Federal Trade Commission, et al. v. Advocate Health Care Network, et al.” Case No. 15-cv-11473 (January 5, 2016),

- NorthShore University Health System’s Answer to Administrative Complaint, p. 1-2.
- 13 *Ibid.*
- 14 “Federal Trade Commission, et al. v. Advocate Health Care Network, et al.” Case No. 15-cv-11473 (October 31, 2016), Final Judgment, p. 1.
- 15 “Judge explains the flip-flop that spiked NorthShore-Advocate deal” By Kristen Schorsch, Modern Healthcare (March 16, 2017), <http://www.modernhealthcare.com/article/20170316/NEWS/170319911> (Accessed 5/10/2017).
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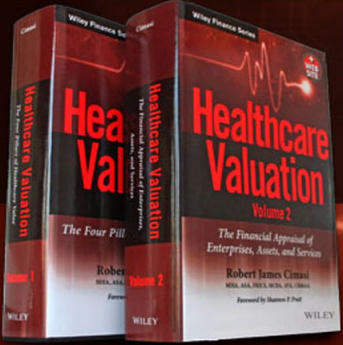
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