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AHA Report Challenges Price-Focused Hospital Merger Review

On September 14, 2026, the American Hospital Association (AHA) released a report, prepared at its request by the healthcare advisory firm Kaufman Hall, arguing that federal antitrust review of hospital mergers focuses too narrowly on the potential for higher commercial insurance prices.[1] The report contends that regulators should also weigh the patient populations that merging hospitals serve, the financial consequences for target hospitals when transactions fail, and how hospitals actually compete at the service line level.[2] The report was released less than two weeks after the Federal Trade Commission (FTC) publicly credited its own investigation with steering a financially distressed Ohio hospital away from a larger, nearby acquirer.[3] This Health Capital Topics article reviews the regulatory backdrop to the AHA report, summarizes its principal findings, and discusses the competing perspectives on hospital consolidation.

Regulatory Backdrop

The FTC has traditionally reviewed hospital mergers, while the Department of Justice (DOJ) has typically reviewed transactions involving health insurers.[4] In reviewing transactions, the FTC utilizes the 2023 Merger Guidelines, two elements of which Guidelines frame the debate the AHA report joins. First, the Guidelines measure market concentration using the Herfindahl-Hirschman Index (HHI) and treat markets with an HHI above 1,800 as highly concentrated.[5] A transaction that increases the HHI by over 100 points in a highly concentrated market is presumed likely to enhance market power.[6] Second, the Guidelines recognize a failing firm defense, under which an otherwise anticompetitive acquisition may proceed only if the target faces a grave probability of business failure, has dim or nonexistent prospects of reorganizing in bankruptcy, and, after a good-faith search, has found no other available purchaser.[7]

The FTC applied that framework in its most prominent recent hospital matter, involving Fairfield Medical Center (FMC), a general acute care hospital system in Lancaster, Ohio. FTC staff, coordinating with the Ohio Attorney General's Office, raised concerns that FMC's proposed acquisition by OhioHealth, which operates 16 hospitals across central Ohio, would have given the combined system a high share of inpatient admissions in and around Fairfield County.[8] FMC subsequently conducted a broader sale process and, on September 1, 2026, joined Adena Health, which does not operate a hospital in the surrounding area.[9] In June 2026, OhioHealth had separately settled a lawsuit brought by DOJ and the Ohio Attorney General alleging that it used contract terms with commercial insurers to restrict competition in the Columbus area.[10]

In a September 2, 2026 statement joined by Commissioner Mark Meador, FTC Chairman Andrew Ferguson acknowledged that acquisition may serve the interests of a struggling hospital's patients and employees, but cautioned that financial distress is "not a blank check" for mergers that substantially reduce competition.[11] The statement explained that a distressed hospital may rely on the failing firm defense only if it can show that its sale process engaged with buyers presenting fewer competitive concerns, and that it may not accept an anticompetitive offer simply because it is more lucrative.[12] The FTC also indicated that it may require a seller with a deficient process to re-shop itself.[13] Although the AHA report does not cite any specific enforcement action, its emphasis on the consequences of cancelled transactions and its critique of concentration measures engage directly with the reasoning the FTC applied in the FMC matter.

The AHA report also arrives amid a separate dispute between the AHA and the agencies over premerger notification. Under the Hart-Scott-Rodino (HSR) Act, parties to transactions above specified size thresholds must notify the FTC and DOJ and observe a waiting period before closing, giving the agencies an opportunity to identify transactions that warrant closer review.[14] An updated HSR notification form, which expanded the information filing parties must submit, took effect on February 10, 2025.[15] A federal district court vacated that form on February 12, 2026, and the FTC has appealed.[16] On March 25, 2026, the FTC and DOJ requested public comment on potential revisions, with the FTC indicating that it may pursue a new rulemaking regardless of the appeal's outcome.[17] In May 2026 comments, the AHA urged the agencies to exclude hospital mergers from any revised form, arguing that hospital transactions have not evaded FTC review and that additional reporting burdens would outweigh any benefit.[18] The AHA noted, for example, that the FTC has filed 15 lawsuits challenging hospital mergers since 2010.[19] The AHA report extends that advocacy from the procedural question of what hospitals must disclose before a transaction to the

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substantive question of how the agencies evaluate the transaction itself.

Key Findings

The AHA report's first argument centers on payor mix. According to Kaufman Hall, the antitrust agencies typically confine their price analysis to commercially insured patients, and commercial payors accounted for 69.2% of U.S. hospital net revenue in 2023.[20] However, that figure includes Medicare Advantage (MA), which is administered by commercial insurers but reimbursed based on government-set rates. In 2024, 54% of eligible Medicare beneficiaries were enrolled in MA.[21] When MA days are reclassified as governmental, Kaufman Hall estimates that nearly 60% of acute care hospital patient days are attributable to Medicare, Medicaid, and MA beneficiaries, patients the AHA report contends face little or no pricing impact from a merger but could lose access to care if a struggling hospital reduces services or closes.[22]

The AHA report further finds that, among the 12 hospital transactions the FTC has sued to block since 2015, governmentally insured patients accounted for an average of 64% of target hospitals' patients, compared with 60% for the would-be acquirers.[23] Kaufman Hall also reports that 67% of the target health systems in those transactions experienced a facility closure, workforce reduction, service closure, bankruptcy, or quality downgrade in the four years preceding the proposed deal.[24]

Kaufman Hall also examined 88 proposed transactions that were ultimately cancelled, finding that the would-be target hospitals experienced a median 50% decline in operating profit margin in the year following cancellation.[25] Median days cash on hand declined by 38% over the same period.[26] While acknowledging that some of these hospitals were already under financial pressure, the AHA report suggests that a failed partnership may accelerate decline by removing access to capital and operational expertise.[27]

Finally, the AHA report questions reliance on market-wide concentration measures such as the HHI. Kaufman Hall examined the 221 U.S. counties containing only two short-term acute care hospitals under separate ownership.[28] Measured by overall volume, 58 of those counties showed a roughly even split between the two hospitals.[29] Measured service line by service line, however, only 13 counties showed an even split, with most hospital pairs instead concentrating in different service lines.[30] Kaufman Hall characterizes these relationships as complementary rather than competitive and suggests that, where one hospital is in a significantly stronger financial position, a transaction may preserve the full range of services in the community.[31]

Competing Perspectives

The AHA report's conclusions remain contested. At a House Judiciary subcommittee field hearing held the same day the report was released, Brian Miller, MD, of Johns Hopkins University cited published studies finding that hospital mergers raise prices by between 7% and 9%.[32] Trade press coverage also noted that the AHA report does not specify whether antitrust scrutiny caused the cancellations it analyzed.[33] Most academic researchers, along with many state and federal policymakers, regard health system consolidation as a significant contributor to rising healthcare costs.[34]

The FMC matter also illustrates the enforcement agencies' preferred response to the scenario the AHA report describes. Rather than litigating to block the transaction, the FTC prompted the seller to identify a buyer that did not raise the same competitive concerns, an outcome the agency characterized as allowing FMC to continue serving patients over the long term.[35] That approach presumes that a viable, less concentrated alternative buyer exists. Adena Health, FMC's eventual acquirer, reported a 0.9% operating margin for fiscal year 2025.[36]

Conclusion

The AHA-commissioned report seeks to reframe hospital merger review around patient populations, hospital finances, and service line competition, rather than commercial price effects alone. Its timing, closely following the FTC's FMC statement and amid ongoing disputes over premerger notification, underscores a widening divergence between the hospital industry and federal enforcers regarding the weight that financial distress and payor mix should carry in merger analysis. Under the FTC's current approach, the adequacy of a distressed hospital's sale process, rather than its financial condition alone, is likely to determine whether a combination with a nearby competitor survives antitrust review.

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