When Hospitals Merge:

Updating state oversight to protect access to care

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MERGERWATCH

PROTECTING PATIENTS' RIGHTS WHEN HOSPITALS MERGE

- Founded in 1997 to protect women's health services threatened by mergers of secular community hospitals with religiously-sponsored hospitals. Our scope is now broader, including **any hospital transactions that threaten services needed by women, LGBTQ people and our families.**

- We've worked with community activists, state advocates, physicians, nurses **on hospital merger cases in 39 states.** We've helped to stop **34** hospital mergers and bring about compromises or creative solutions that saved services in **22** cases.

- Our approaches include **public education, community organizing, putting pressure on hospital executives and using state hospital oversight laws** to advocate for preservation of reproductive care.

- In 2018, we joined Community Catalyst, a national consumer health advocacy organization based in Boston.

Hospitals are consolidating rapidly

Trends in Consolidation of Acute Care Hospitals in the U.S.

HOSPITAL OWNERSHIP	2001 HOSPITALS	2001 % OF HOSPITALS	2011 HOSPITALS	2011 % OF HOSPITALS	2016 HOSPITALS	2016 % OF HOSPITALS	CHANGE 2001 TO 2016
Church Non-Profit	577	14.4%	528	13.9%	508	13.4%	-12%
Secular Non-Profit	1,937	48.2%	1,713	45.2%	1,723	45.6%	-11%
Public	843	21.0%	581	15.3%	556	14.7%	-34%
For-Profit	660	16.4%	964	25.5%	992	26.3%	+50%
TOTAL	4,017		3,786		3,779		-6%

Nationwide, hospital mergers and acquisitions **jumped from 66 in 2010 to 115 in 2017**, the largest number in recent history.

Why are hospitals merging, downsizing and closing?

- **Clinical advances** that allow movement of care from inpatient to ambulatory settings.
- Desire for **greater market share** and more leverage in negotiations with health insurers.
- Payer demand for **"value-based" care,** which favors large systems with sophisticated contracting capacity.
- **Lack of access to capital** to renovate aging hospital buildings and upgrade electronic records systems.

Impact of hospital consolidation

- The 25 largest hospital systems have grown bigger and now control more than one third of all acute care hospitals in the U.S.
- More than **119 rural hospitals have closed** since 2005.
- **Maternity care has been particularly hard hit.** For example:
  - 13 of 19 obstetrics units in Philadelphia closed 1997-2012.
  - Women in179 rural counties lost access to in-county obstetric services between 2004 and 2014.
- **All of this consolidation is leading to:**

  Longer travel to hospitals for some patients

  Loss of maternity units, ERs

Snapshot from one state: New York

- **41 acute care hospitals have closed** over the last 20 years, with more than half closing since 2007.

- Many of the remaining community hospitals have joined one of **12 large health systems** that now **control more than half the acute care hospitals and 70 % of the beds** in the state.

- Four **mega-systems** have nearly $14 billion in net assets.

Risks of hospital consolidation

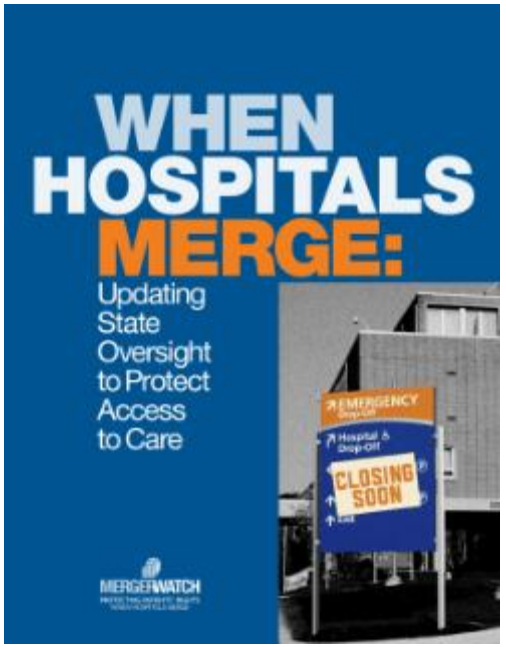
- Health system consolidation and the movement of care **can pose risks to patient safety if not carefully managed.**
- Clinicians frequently must travel to **new practice settings,** navigate **unfamiliar infrastructure and care processes,** and treat **different types of patients**.
- Consolidating a system's service line – such as obstetrics -- at one facility could increase the number of patients being seen there and introduce types of patients with whom the clinicians are not familiar**, creating cultural and other barriers to good quality care.** -- Dr. Atul Gawande, JAMA

Case example: Mount Sinai Beth Israel

- Beth Israel Medical Center in lower Manhattan became part of the Mount Sinai Health System in 2013 through a merger. Officials promised improvements to quality of care.
- **Hospital workers and consumers voiced concerns about potential downsizing or closing**. A nearby hospital, St. Vincent's Medical Center, had closed precipitously.
- In 2016, Mount Sinai announced plans to **"transform" Beth Israel**, closing the 800-bed hospital and replacing it with a 70-bed facility and outpatient clinics. Patients would go to other Mount Sinai hospitals for obstetrics, cardiac surgery and more.

Who is looking out for consumers?

- Federal and state regulators have **anti-trust authority.**
- State AGs review **non-profit charitable asset changes,** including conversions.
- Some states have **Certificate of Need (CON)** regulation of hospital transactions.
- A 2016 MergerWatch nationwide study of CON programs found that **state oversight of hospital consolidation is woefully inadequate to protect consumer access** to needed health services.



What is Certificate of Need (CON)?

- CON is a system of **state level oversight of transactions involving hospitals, nursing homes and other institutional health providers.**
- Established in **an earlier era** of building and growth of hospitals.
- Focus was on preventing overbuilding of hospital facilities and duplicative purchases of expensive equipment.
- Original goal: **avoid unnecessary increases in cost of health care.**

- After a wave of de-regulation, **only 35 states and DC** still have CON programs in place.

When is CON review required?

- Only **10 states** require a CON when a hospital closes or a service is discontinued

- **24 states** require a CON when a hospital engages in a sale, purchase or lease.
  BUT
- Only **8 states** require review for a looser arrangement like an affiliation agreement or a transfer of board control.
- In NY, however, affiliations can be initiated without CON through "passive parent"

Who performs the review?

- **Only 8 states** require consumer representation on the reviewing body.
- **NYS:** 1 consumer representative, but the seat has been vacant since 2016.
- **NJ:** 5 of 9 review board members
- **MD:** 9 of 15 review board members
- **DE:** 4 of 15 must be from "the public at large," and both chair and vice chair must be from those 4.

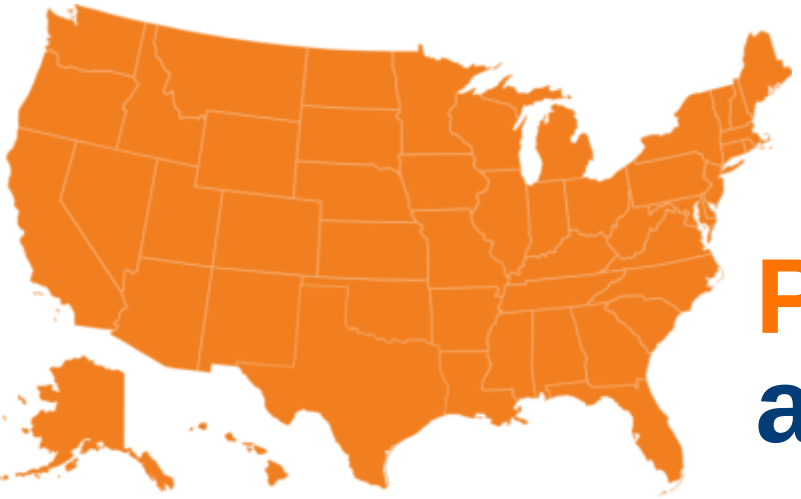
Communications with the public

- State government websites that provide information are often **not consumer friendly.**
- **It's difficult for consumers to learn** about proposed changes to their hospitals.
- 16 states and DC require publication notice in a newspaper, but **usually just in the legal notices section,** where most people won't read it.

Consumer Participation

- **21 states and DC** will hold public hearings **only upon request.**
- **Only 19 CON programs** allow **written testimony from the public.**

ONLY SIX STATES REQUIRE A SEPARATE PUBLIC HEARING FOR EACH CON APPLICATION.



Post approval review and enforcement

- **Only 25 states require the state to monitor** the CON holder to see if they comply with conditions imposed through the process.
- **Only 23 states specify provisions for revoking** CON if conditions are not met

State grading: Methodology

We developed a list of **key policies** within CON laws that are essential to ensuring the potential impact of a transaction on community access to care is considered and that affected consumers are engaged in the review process.

- We then evaluated whether these key policies were present in each state's CON program and assigned a point grade from **4** to **0** depending on if the policy was **robust, weak or non-existent.**
- The **grades given to each state** were assigned based on the weighted score.

The Grades

- **ONLY SIX STATES** (CA, CT, IL, NJ, RI, TN) received either an **A** or **A-** for their hospital oversight process. The study found room for improvement in all top-rated states.

The Grades

- Many states fall in the middle of our rankings:
  - **Twelve states and Washington, D.C.** received a grade of **B** or **B-**
  - **Eight states** received a grade of **C**
  - **Five states** received a **D**
  - **TWENTY states** received an **F**
    - This is because they either **have no CON,** have **an extremely limited review** that does not apply to hospitals or have a CON program **that is largely ineffective.**

Model Policies

- CON policies **need to be updated** to reflect the shifting realities of the health care landscape.
- It is important to ensure that oversight policies like CON **can be utilized to protect access to care.**
- Patient access to care will only be protected if consumers can **meaningfully participate in the CON process.** They must be fully informed and able to provide testimony on the potential impact of hospital consolidation on their communities.

Criteria for triggering CON

- CON should be required any time a hospital is involved in **a sale, purchase, lease, affiliation or transfer of board control.**
- CON should be required **when a loss of services** would occur as the result of a proposed transaction.

Organizational structure of review board and transparency

- A state CON review board should to be required to include **community members, consumer advocates and health experts** from various fields.
- **No more than 50%** of members should be representatives of institutional health care providers.

Review standards

- Review **should include** the following:
  - Use of comprehensive**, independently performed health needs assessment** that analyzes health needs of the community and availability of services in community.
  - Review of **transportation** and other access needs.
  - Comprehensive assessment of impact of proposed change **on availability and access to key services.**
  - **Note:** if an existing state health planning document identifies health needs of affected hospital service area, it could be used in the review process.

Communications with the public

- State should ensure the CON process is **transparent.**
- **Adequate information should be given to the public,** especially those likely to be affected by a transaction – information should be in multiple languages, culturally sensitive and easy to access.
- There should be an **easily navigable website** with summaries of each proposed transaction and all relevant CON documents.
- **Information about the proposal should be sent to** at least one local newspaper, posted in local health centers, libraries and distributed to local officials for dissemination.

Accountability and public engagement

- There should be **opportunity** for affected consumers to obtain key CON documents and to submit written comments on the applications
- There should be **a requirement for a public hearing to be held at the location of the proposed transaction,** upon request of the affected consumers.
- Time should be allotted for **testimony from consumers and advocates.**

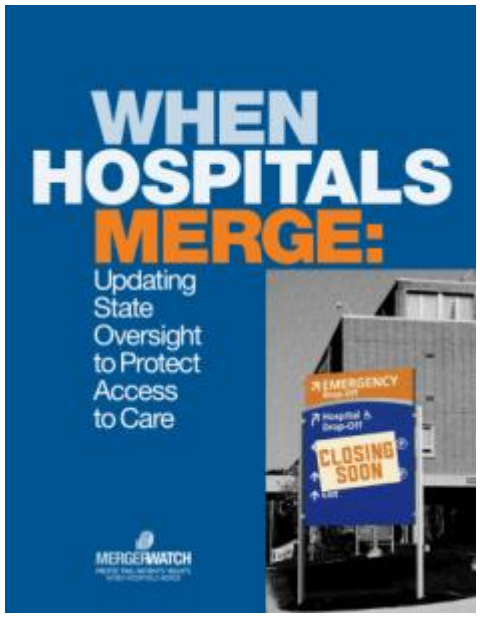
Post-approval review and enforcement

- A robust CON process will include the ability for members of the public to request a **post-approval review process** or have **the ability to appeal** any decision made on the CON.
- Enforcement mechanism should be in place whereby the Dept. of Health or another regulatory body must perform **a review of the CON conditions** at **one year, two year** and **five year** intervals to ensure requirements are being carried out.

Action steps for advocates

- Get to know the CON policies **in your state.**
- Review our Model Policies and the CON policies in neighboring or comparable states to **see how your state stacks up.**
- **Engage allies** in your state who care about health care access to press for updating of CON.

How can we help you?



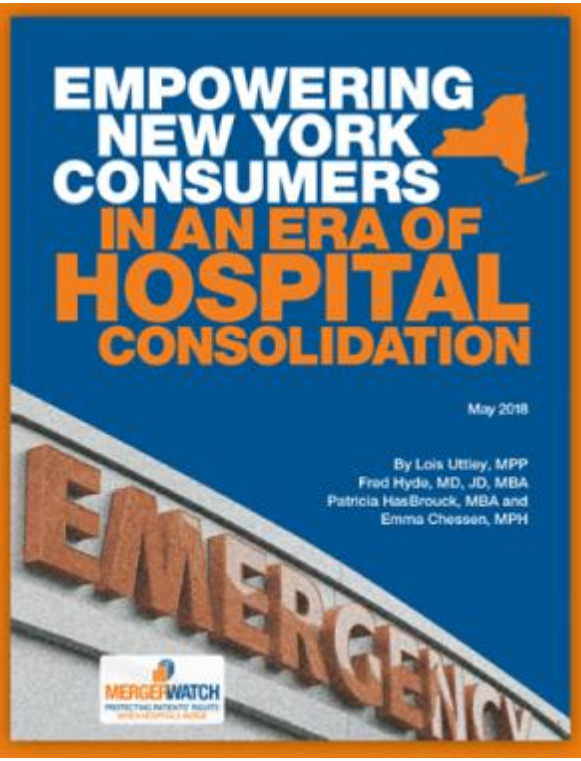
- **Analyzing the terms** of consolidation proposals and suggesting modifications.
- Suggesting **which regulatory approach** would best achieve the desired goal: CON, anti-trust, charitable asset.
- Tips for **public education** and **community organizing.**
- An in-depth study of the **CON process in your state, with recommendations for improvements.**

Example of a state-specific study

A new MergerWatch report finds that NYS oversight of hospital consolidation does not adequately inform or engage affected consumers.

Free copies are available at:
www.WhenHospitalsMerge.org

Funded by NYSHealth



How can you learn more?

- Visit our website at www.whenhospitalsmerge.org
- Download our CON reports:
  - *When Hospitals Merge: Updating State Oversight to Protect Access to Care*
  - *Empowering New York Consumers in an Era of Hospital Consolidation*
- Like our MergerWatch Facebook page
- Contact me at luttley@communitycatalyst.org.