When Hospitals Merge: Updating state oversight to protect access to care

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• 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.

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

<table>
<thead>
<tr>
<th>Hospital Ownership</th>
<th>2001 Hospitals</th>
<th>2001 % of Hospitals</th>
<th>2011 Hospitals</th>
<th>2011 % of Hospitals</th>
<th>2016 Hospitals</th>
<th>2016 % of Hospitals</th>
<th>Change 2001 to 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Church Non-Profit</td>
<td>577</td>
<td>14.4%</td>
<td>528</td>
<td>13.9%</td>
<td>508</td>
<td>13.4%</td>
<td>-12%</td>
</tr>
<tr>
<td>Secular Non-Profit</td>
<td>1,937</td>
<td>48.2%</td>
<td>1,713</td>
<td>45.2%</td>
<td>1,723</td>
<td>45.6%</td>
<td>-11%</td>
</tr>
<tr>
<td>Public</td>
<td>843</td>
<td>21.0%</td>
<td>581</td>
<td>15.3%</td>
<td>556</td>
<td>14.7%</td>
<td>-34%</td>
</tr>
<tr>
<td>For-Profit</td>
<td>660</td>
<td>16.4%</td>
<td>964</td>
<td>25.5%</td>
<td>992</td>
<td>26.3%</td>
<td>+50%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>4,017</td>
<td></td>
<td>3,786</td>
<td></td>
<td>3,779</td>
<td></td>
<td><strong>-6%</strong></td>
</tr>
</tbody>
</table>
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:
  – Women in 179 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**.

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

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**WHEN HOSPITALS MERGE:** Updating State Oversight to Protect Access to Care

**MERGERWATCH**
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.
When Hospitals Merge 

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 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.