

ConnectedHealthInitiative

September 20, 2024

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, DC 20580

Mr. Jonathan Kanter
Assistant Attorney General
Antitrust Division
Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

Re: *Connected Health Initiative Response to Department of Justice and Federal Trade Commission's Request for Information for Public Comment on Corporate Consolidation Through Serial Acquisitions and Roll-Up Strategies*

The Connected Health Initiative (CHI) respectfully submits the following comments in response to the Department of Justice (DOJ) and Federal Trade Commission (FTC) joint public inquiry to identify serial acquisitions and roll-up strategies throughout the economy that have led to consolidation that has harmed competition.¹ CHI represents a wide range of stakeholders in digital health, from research universities to payors to patient groups that come together to advocate for policies that support digital health innovation, access, and affordability.

We share DOJ's and FTC's effort in understanding sectors of the economy being impacted by serial acquisitions. While some instances of merger activity has resulted in bad outcomes for patients and providers, we do not observe widespread or systematic harms to competition in healthcare markets due to serial acquisitions as defined in the RFI (when "the same firm consolidate[es] a fragmented market through a number of acquisitions, typically of many relatively small companies"). We are concerned with this RFI's framing (as well as framing in related requests for information, such as the tri-agency DOJ, FTC, and Department of Health and Human Services inquiry into certain health care market transactions²) of mergers and acquisitions as inherently anticompetitive and to the detriment of consumers, workers, and innovation when such a claim is not supported by a strong evidence base. We strongly encourage DOJ and FTC to recognize that acquisitions are frequently pro-competitive. Without the resources needed to innovate and evolve to meet patient and provider needs, innovators of all sizes in the healthcare sector risk losing the mechanism that underscores and drives competition and, in turn, increases quality while lowering prices.

¹ Press Release, Fed. Trade Comm'n, FTC and DOJ Seek Info on Serial Acquisitions, Roll-Up Strategies Across U.S. Economy (May 23, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/05/ftc-doj-seek-info-serial-acquisitions-roll-strategies-across-us-economy>.

² Press Release, Fed. Trade Comm'n, Federal Trade Commission, the Department of Justice and the Department of Health and Human Services Launch Cross-Government Inquiry on Impact of Corporate Greed in Health Care (Mar. 5, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/03/federal-trade-commission-department-justice-department-health-human-services-launch-cross-government>.

The incentive to turn a profit alone should not be held against healthcare organizations when financial transactions are so often required to facilitate growth. In many instances, external investment and related transactions allow for the expansion of services and reallocation of resources to meet the needs and demands of patients and providers – all with the intent of creating a better experience. The federal government should not presume that profit alone is the only factor explaining the declining conditions and worsening outcomes at for-profit owned facilities, as discussed by experts in hearings at the state and local level. It is both misaligned and narrow-sighted to believe the entire capital investment industry, and other for-profit entities, to have nefarious intent when entering the healthcare industry. Micromanaging healthcare providers' finances for any healthcare services would be an unnecessarily costly intervention to address a narrower set of specific issues such as those that have arisen in rare and extreme cases. In the healthcare sector where margins are thinner and thinner, the ability to seek investment and be acquired is critical to support healthcare access and offerings. For many early-stage healthcare companies constrained by existing financials, only two options are available: going public or seeking external financing. Without these levers available, or subjecting these entities to overly burdensome oversight, competition will be diminished. We also note that in the Federal Trade Commission Act, the Sherman Act, and the Clayton Act, regulators today have the tools they need to address potential anticompetitive behavior in healthcare.³

Finally, we are concerned about the potential for overbroad regulatory action to discourage pro-competitive and pro-patient transactions in the marketplace. Often, healthcare businesses are founded with the expectation that they will be acquired after their potential has been sufficiently developed and demonstrated. And, for many, this is the only path forward. Such an acquisition can connect founders and entrepreneurs to the scale and resources needed to develop their innovation to its full potential and allow them to move on to develop new businesses equipped with the additional skills and resources from the successful exit. Patients and healthcare workers across the United States have benefited tremendously from the creativity of individuals when combined with the resources and institutional knowledge of businesses that acquire their innovations. A merger that helps produce better products or services for consumers is both a natural and beneficial end for some companies and is healthy from a competition policy perspective. Mergers and acquisitions should be examined individually, considering case-specific variables related to market power and patient needs. Any changes to U.S. merger policy must retain rigorous economic analysis as a cornerstone of any review or enforcement to provide a transparent and objective method of evaluation in enforcements and allow our communities to predict when their actions will and will not create antitrust enforcement concerns.

Investments in healthcare services, whether in the form of acquisitions, mergers, or capital infusions, involve both parties agreeing to a legal structure. Physician groups, technology companies, and investors have actively chosen to partner in unique ways to innovate, build, and deploy new treatments and care delivery models. This collaboration helps address the worsening provider shortage and was vital during the COVID-19 pandemic. With the growing costs of healthcare and downward pressure from reimbursements, healthcare innovators will continue to require financial partners to continue serving patients. Partnering with business professional organizations and receiving capital from investors, including through acquisitions,

³ *E.g.*, Press Release, Fed. Trade Comm'n, FTC Challenges Private Equity Firm's Scheme to Suppress Competition in Anesthesiology Practices Across Texas (September 21, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-challenges-private-equity-firms-scheme-suppress-competition-anesthesiology-practices-across>.

helps practices gain efficiencies, reduce overhead costs, streamline administrative tasks, and evaluate current practices for improvement without encroachment into clinical care decision-making.

We welcome the opportunity to work with you to develop targeted policy changes to protect patients and healthcare workers, improve quality and accessibility, and enhance competition across the healthcare ecosystem.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Scarpelli", with a stylized flourish at the end.

Brian Scarpelli
Executive Director

Chapin Gregor
Policy Counsel

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