

April 23, 2024

The Honorable Xavier Becerra, Secretary
U.S. Department of Health and Human Services
200 Independence Ave., SW
Washington, DC, 20201

The Honorable Merrick Garland, Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

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

Submitted electronically to www.regulations.gov

RE: Request for Information on Consolidation of Health Care Markets [Docket No. ATR 102]

The American Nurses Association (ANA) is pleased to submit the following comments in response to the request for information (RFI) on consolidation of health care markets. ANA supports the agencies' goals in response to consolidation, but we urge strict protection of nurses and patients who can be harmed by consolidations. Therefore, we ask the agencies to consider the following, as detailed in this comment letter:

- **Consolidation;**
- **Private Equity Ownership; and**
- **Policy Approaches**

Consolidation

Consolidation, including closing and merging of health care practices has had a negative overall effect on the practice of medicine. A main issue is that consolidation reduces choice for patients as consumers. Patients generally prefer to choose their practitioner or healthcare practice based on several factors that are meaningful for a particular person. Examples where consolidation may hurt the patient include: their insurance might not be accepted by the consolidated practice, or the new practice may be located much further away and is not as accessible as when the practitioner or facility was nearby.

Another issue that arises from consolidation is that often the relationship between provider and patient can be affected. Patients have a more difficult time directly communicating with providers or the practice in general when they are part of a larger consolidated system. Small practices are easier to reach through a front desk to schedule an appointment or speak with the billing department if there is a billing question. But when the size of the practice grows it becomes more difficult to reach someone as

large companies frequently use centralized electronic systems where it is difficult to reach a live person if there is a question. That can also occur in health care where the practices are large enough that it can be difficult for patients to reach the practitioner who the patient needs to speak to regarding their medical issue. These shift the focus of providers on patient-centered care that value the relationship with patients to ensure quality care is provided that addresses all health needs.

There has also been an increase in costs due to consolidation. There are fewer choices for facilities, and these may carry facility fees that are frequently not known by patients. The lack of choice and competition has allowed these facility fees to flourish to the detriment of patients.

Employees of the practice also face communications challenges under consolidation. One nurse practitioner (NP) commented that employees of the smaller practice were not informed that the practice was looking at merging with a larger practice until one month before the merger was finalized. This can result in the employees being essentially forced to work for a larger company, which is not what they would have chosen to do. Employees might specifically seek out smaller companies as they feel that the company more closely aligns with their values and the lack of notice before the merger was finalized might not give the employee enough time to find similar employment at another practice.

There are times where consolidation is sold as being a benefit to the employees. There are now more facilities and practitioners so the ownership can negotiate higher rates from private payers. While this may be true, the higher rates are not typically reinvested in the workforce, e.g., higher pay or additional hires, but rather are kept as profit by ownership and possibly the shareholders.

Consolidation can also discourage entry of qualified health practitioners to the market. For example, in Connecticut, advanced practice registered nurses (APRNs) are required to have a collaborating physician to practice for the first 2000 hours and 3 years for practice.¹ Potential collaborating physicians are increasingly employed by these larger, consolidated practices that forbid the physicians to enter into collaboration agreements unless the APRN is affiliated with the organization. This greatly limits employment opportunities for APRNs and forces them to either work for these larger organizations or not practice medicine to the top of their license.

Private Equity

Currently, private equity firms own a very small percentage of health care practices, but they are the owners that have the reputation of maximizing profits over high-quality health care delivery. In reality, while there are private equity firms who buy up medical practices and have this approach, there are also private equity firms that are looking at the best interest of the patient and while they are looking to make a profit, they are also looking for ways to innovate and improve patient care. At the same time, it must be noted that there are hospital CEOs at non-profit hospitals who also look at hospital profits before patients. The greater entry of private equity into the health care system just further exacerbates movement away from patient-centered care.

¹ Conn. Gen. Stat. §20.87a

Another issue that affects patients is that when practices are consolidated into private equity firms, management is accountable to shareholders, and may tend to make decisions that are not in the best interests of patients and communities or driven by medical best practices. Practices do have a vested interest in positive revenue, and this should not be impinged upon, as they would have to shutter or consolidate with other practices if they were not profitable. However, profit margin should not be the only driving goal of the health care practice or its management. Health care entities must prioritize patient care first and foremost and unfortunately, that is not always the case.

Policy Approaches

ANA has specific recommendations for how federal policymakers can intervene to protect both practitioners and patients under consolidation and private equity ownership. First, federal regulators and healthcare purchasers should require timely notice and transparency when practices merge. Nurses and other frontline staff are frequently among the last people to know of pending mergers. Yet these frontline staff are not only closest to the patients, but are also indispensable to carrying out a provider's day-to-day functioning. Their knowledge and understanding of corporate changes inform their ability to deliver continuous care and to comply with administrative and regulatory policies.

Further, ANA urges policymakers to ensure that healthcare staff, including nurses, are included in operational decisions when mergers are taking place in order to minimize disruptions that could undermine patient care such as staffing changes or emergency protocols.

Finally, ANA urges HHS to promulgate the overdue provider nondiscrimination rules. Congress has passed legislation multiple times calling on HHS to promulgate these rules, but APRNs are still discriminated against when it comes to network enrollment and reimbursement rates. These rules will help level the playing field and allow APRNs to practice independently to the full extent of their license.

Conclusion

ANA is the premier organization representing the interests of the nation's over 5 million registered nurses (RNs), through its state and constituent member associations, organizational affiliates, and individual members. ANA advances the nursing profession by fostering high standards of nursing practice, promoting a safe and ethical work environment, bolstering the health and wellness of nurses, and advocating on health care issues that affect nurses and the public. ANA members also include the four advanced practice registered nurse roles (APRNs): nurse practitioners (NPs), clinical nurse specialists (CNSs), certified nurse-midwives (CNMs), and certified registered nurse anesthetists (CRNAs). RNs serve in multiple direct care, care coordination, and administration leadership roles, across the full spectrum of health care settings. RNs provide and coordinate patient care, educate patients and the public about various health conditions including essential self-care, and provide advice and emotional support to patients and their family members.

Nurses are critical to a robust health care system. Nurses meet the needs of patients and provide quality care that leads to better health outcomes for all patients. Moreover, nurses are critical to coordinated care approaches for Medicare beneficiaries in all settings, including hospital outpatient settings. Patient-centered care coordination is a core professional standard for all RNs and is central to nurses' longtime practice of providing holistic care to patients.

ANA appreciates the opportunity to submit these comments and looks forward to continued engagement with your offices. Please contact me at (301) 628-5166 or tim.nanof@ana.org, with any questions.

Sincerely,



Tim Nanof
Vice President, Policy and Government Affairs

cc: Jennifer Mensik Kennedy, PhD, MBA, RN, NEA-BC, FAAN, ANA President
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