

# Hospital Competition and Restrictions on Physician-Owned Hospitals

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Hospital markets have become increasingly consolidated in recent decades, with over 1,412 Hospital mergers between 1998-2015. This concerning trend in consolidation and increased market power coincides with increased prices, decreased patient options, and lesser patient experience. Hospital consolidation also affects health care providers – nurses, physicians, and pharmacists – who frequently face hospitals and health systems with upstream market power in labor markets. Policymakers have few effective tools to stall or reverse consolidation. with the removal of restrictions on the growth on physician-owned hospitals (POHs) presenting one such option.

Physicians, given their role in care delivery, are particularly well-positioned to identify opportunities for market entry and innovation. Physicians also have distinct incentives to overcome the market power of incumbent hospitals, as it can affect both upstream and downstream markets. Indeed the historical growth of physician-owned hospitals (POHs) before 2010 was a rare counterpoint to trends toward consolidation and physician corporate employment. POHs also drove innovations in service delivery. POHs include both physician-owned general acute care (or community) hospitals and physician-owned specialty hospitals. POHs can offer important competition to traditional hospitals on cost, quality, and innovation that benefits payers, patients, and consumers, while simultaneously increasing competition for physicians and staff.

Hospital industry groups, however, advocated and succeeded in achieving a functional ban on new or expanded POHs by preventing them from billing Medicare, passed as part of a peripheral provision of the Patient Protection and Affordable Care Act (ACA) of 2010. The ban was not directly related to the main provisions of the ACA, such as the creation of managed competition marketplaces for individual insurance, but instead was part of the legislative horse-trading required to garner support, as industry groups freely admitted.

The paper reviews factors which position POHs as potential hospital market entrants, and how the accrual of market power by incumbent health systems makes this potential market entry that much more important. In addition to simply increasing competition in markets for hospital services, POH market entry would promote:

- Care delivery innovation and the development of specialized care models – Physicians are well-positioned to innovate in care delivery, redesigning care around a specific area of medicine or process

- Increased flexibility in hospital supply – During the COVID-19 pandemic, hospitals struggled to adapt to the changing clinical landscape and increasing capacity. However, Doctors Hospital at Renaissance (a POH) quickly converted its rehabilitation hospital into a 102-bed COVID hospital in 10 days, a speed of innovation facilitated by its physician leadership that saw the urgent need
- Workforce recruiting and retention – Giving physicians an ownership stake, akin to employee stock ownership plan models, can improve recruiting and retention
- Combatting monopsony power in labor markets – POHs present a counterweight to rising physician corporate employment and hospital monopsony power in labor markets, leading to increased competition in markets for physician services
- Increased patient choices for medical services – An increased number of community hospitals in addition to the development of specialty hospitals would increase competition, driving down prices and raising quality through price and non-price competition
- Increased competition in hospital service markets – Increased price, quality, and innovation for hospital services serving patients and for payors constructing networks including hospital services

Policy considerations regarding problems inherent in all hospital markets – agnostic to ownership model – are addressed along with potential benefits of relaxing the POH ban coupled. In conclusion, the paper recommends that Congress consider removing the POH ban.

*The views expressed here and in the paper are the authors' own and are not necessarily those of the Federal Trade Commission, its Commissioners, or the U.S. Department of Justice.*