



TODD ROKITA
ATTORNEY GENERAL

April 17, 2025

Dr. Lindsey Weaver, Commissioner
Kelly MacKinnon, Chief Legal Counsel
Indiana Department of Health
2 N Meridian St
Indianapolis, IN 46204

Re: Resubmission of the Application for Certificate of Public Advantage by Union Hospital, Inc. and Terre Haute Regional Hospital, L.P.

Dear Dr. Weaver:

Pursuant to Indiana Code § 16-21-15-4, the Office of the Indiana Attorney General has reviewed documents, testimony, and analysis of the proposed transaction between Union Hospital, Inc. and Terre Haute Regional Hospital, L.P. This letter provides our position and comments concerning the resubmission of the application for a certificate of public advantage.

Healthcare costs and health outcomes are worse in Indiana than they are in many States across the nation. This is due, in part, to the consolidation of healthcare providers and insurers that causes soaring healthcare costs, which is negatively impacting Hoosiers' livelihood, families, and overall well-being. Rural healthcare markets are particularly fragile and present unique concerns compared to their urban counterparts. In rural communities especially, consolidation could have outsized impacts and create more complicated challenges. A solution to this challenge is to ensure vibrant competition, not consolidation, within rural healthcare markets.

The Indiana General Assembly has consistently explored the challenges with, and possible solutions to, healthcare pricing and competition in Indiana markets. However, the application seeking a Certificate of Public Advantage ("COPA") for the transaction between Union Hospital and Terre Haute Regional Hospital will not solve, or even aid, this problem in the Wabash Valley Community. Instead, the transaction's consummation would do the opposite. It is expected to lead to the monopolization of Terre Haute hospital systems that, after the COPA period has ended, will be unchecked in raising healthcare costs, stifling innovation, suppressing wages, and reducing access to care for the citizens of Terre Haute and the surrounding community. **Therefore, the Indiana Attorney General opposes the merger of the two hospitals and recommends that the Department of Health deny the COPA re-application.**

I. Background

Terre Haute Regional Hospital (“THRH”) has a history going back over 135 years beginning as St. Anthony’s Hospital in 1882.¹ THRH is currently owned by HCA Healthcare, which is a for-profit public company. Union Hospital’s connection to the Wabash Valley dates to 1892.² Union Hospital is a part of Union Health, which is a non-profit system that serves their community through various hospitals and medical services.

The COPA statute, Indiana Code § 16-21-15, went into effect on July 1, 2021. Two and a half years later, on September 14, 2023, the Parties filed their first COPA application with the Indiana Department of Health (“IDOH”). After 14 months, the Parties withdrew their application just days before the IDOH was set to make its determination in late-November 2024. The Parties resubmitted another COPA application on February 5, 2025. The renewed application does not alleviate the Attorney General’s concerns that this merger will not be beneficial for the people in and around Terre Haute.

Indiana’s COPA law provides antitrust immunity for hospital transactions that “benefit the population’s health outcomes, healthcare access, and quality of care” in excess of any detriment felt by reduced competition.³ Thus, any application submitted for a COPA must have its potential benefits viewed not on their own but in relation to the transaction’s harm to competition. This is not a unique concept; traditional antitrust theory outside of the COPA analysis also considers merger-specific efficiencies such as lower prices, improved quality, and innovation. To mitigate the effects of reduced competition, these efficiencies must be merger specific. In other words, the parties can only achieve these efficiencies by merging with another entity. If the parties can secure the efficiencies without the merger, then the claimed “efficiencies” do nothing to mitigate the harm that the merger will impose on competition. To be valid, efficiency claims must be substantiated and “will not be considered if they are vague, speculative, or otherwise cannot be verified by reasonable means.”⁴ “Efficiencies almost never justify a merger to monopoly or near-monopoly.”⁵

Over the last 30 years, various states have passed COPA laws and granted COPA applications. No two are the same, and none appear to have been a distinctive triumph that clearly outperformed healthy competition. Like any COPA location, Terre Haute offers a unique community with its own healthcare needs that cannot be shoehorned into fitting the requirements and terms of other COPA applicants. Specifically, rural healthcare presents unique problems and concerns for Indiana. The quality of care and travel distances are obstacles to our rural residents receiving consistent, quality healthcare. Additionally, most rural hospitals face considerable challenges recruiting skilled professionals to less populated areas. However, the solution to those problems is not market consolidation. Rather, the answer is competition between strong competitors that fosters efficiency, ingenuity, and technological advancement.

¹ <https://regionalthospital.com/about/>

² <https://www.union.health/about-us/annual-report>

³ Ind. Code § 16-21-15-4(c).

⁴ U.S. Dep’t of Justice & Fed. Trade Comm’n, Horizontal Merger Guidelines, § 10 (2010).

⁵ *Id.*

II. Analysis

a. Application Insufficient and Inapplicable

Without IDOH granting the Parties' COPA application, this transaction would likely be challenged by state and/or federal regulators. The transaction, if approved, would grant Union a monopoly on hospital services within the Terre Haute community and neighboring Illinois communities. Given this, the Parties are required to show substantial merger-specific efficiencies that would mitigate the negative competitive impacts of monopolization. The re-application falls short and provides no justification for the monopolization of Terre Haute healthcare.

As an initial matter, the Parties' re-application presents a threshold concern about whether it even statutorily qualifies for review by IDOH. Indiana's COPA statute limits the application to, among other things, "a merger agreement between hospitals located in a county that . . . has only two (2) hospitals that are both in the statewide comprehensive trauma care system under IC 16-19-3-28."⁶ Pursuant to 410 IAC 34-1-16, "Trauma center" is defined as a hospital that provides trauma care and has been verified as a trauma center by the American College of Surgeons (ACS), has been designated a trauma center under state designation system that is substantially equivalent to the ACS verification process, or has been deemed to be in the process of ACS verification pursuant to 836 IAC 1-2.1. The Legislature's inclusion of the word "care" as part of the threshold for a COPA is important. The use of "care" in conjunction with the focus on a predominantly rural community reveals that the Legislature intended both hospitals to have trauma centers to ensure that the population would have access to care after the completion of the merger. As of August 1, 2024, Terre Haute Regional closed their trauma center – disqualifying the Parties from submitting a COPA application as THRH is no longer part of Indiana's trauma care system. In addition to disqualification, the act of closing is also a demonstration of lowering access to care and the consolidation of health care services *before the potential merger has even closed*.

b. Deficiencies of the Application Terms

The terms the Parties have provided have convinced the Attorney General that this transaction will not benefit Hoosiers. Instead, the transaction will, with reasonably certainty, lead to higher prices, potentially lower quality of care, and more limited access for patients. The Parties had ample time to demonstrate how to make this transaction an overall benefit for the citizens of the Wabash Valley Community – if even possible – and have failed to do so. Although the Parties had more than two months to generate concrete, substantive changes to their original application after their withdrawal, the new application submitted in February is substantively similar to the original application and does not alleviate the competitive concerns with overwhelming benefits to justify monopolization of the hospital market in Terre Haute.

The re-application does provide new commitments that the Parties did not include in the 2023 application. However, much of the re-application simply restates inadequate commitments from their 2023 application as well as already applicable legal obligations under the COPA statute

⁶ Ind. Code § 16-21-15-1.

and existing laws. In addition, contrary to their claims, the Parties' commitments aim to consolidate services leading to lower access to care, provide inadequate investment metrics, and do not thoroughly explain recruitment programs that will remedy their rural recruiting problems.

Many of the Parties' commitments stem from existing legal obligations. Under the COPA statute, the Parties must limit the increase in the charge for each individual service to less than the increase in the preceding year's annual average consumer price index for medical services.⁷ The statute also requires the Parties to provide annual reports in a manner determined by the IDOH⁸ and reinvest cost savings for the benefit of the local community.⁹

Although the re-application asserts "this merger will ensure continued access to hospital and healthcare services," the Parties' commitments at the outset of this transaction already outlay their plans for consolidation of services and reduced access for patients. It is acknowledged that integration of services can lead to cost savings for patients, and that the cost savings during the COPA term from this merger will be passed on to consumers in the form of a community benefit pursuant to the COPA statute. However, the Parties proposed consolidation is extensive and does not "benefit health care access" as required by the COPA statute.

To be sure, rural healthcare is challenging. And these two hospitals have been doing good work serving this community for over 133 years. That said, "[i]n the typical rural hospital market there is one, or perhaps two, hospitals that provide virtually all of the in-patient care to a poor and sparse population. In such market[s] it is rare that hospitals, or for that matter physicians, feel much competitive pressure to innovate with respect to services or prices."¹⁰ When rural hospitals face difficult market conditions and pressure from payers on cost and patients on quality of care, consolidation is one response that many hospitals look to in order to relieve that pressure.¹¹

Recruiting skilled physicians to rural healthcare jobs is difficult and a primary reason many rural healthcare providers struggle financially. The Parties' commitments in this area are admirable, but do not explain how the merger will substantially impact their ability to recruit *new* physicians to the Community nor how their recruiting methods will change to allow Union to do so. The Parties may make sizeable efforts to complete their lofty recruitment goals, but there is little that the IDOH can do if they do not meet those commitments.

Finally, the Parties have frequently pointed to the "success" of the COPA application in Tennessee and Virginia granted to Ballad Health and discussed that case at length as an example. It also has been used in discussion in this current legislative session.¹² While there are lessons to be learned from other COPAs, that transaction concerned the merger of entire hospital systems involving approximately twenty hospitals. No two communities are exactly alike, and the Parties'

⁷ Ind. Code § 16-21-15-7(c).

⁸ Ind. Code § 16-21-15-8.

⁹ Ind. Code § 16-21-15-7(d).

¹⁰ Antitrust Issues in Rural Markets: Antitrust Analyses of Hospital Conduct in Rural Areas, AHLA-PAPERS P02259919.

¹¹ *Id.*

¹² Indiana General Assembly 2025 Session, House Public Health Committee Hearing on SB 119 (Apr. 1, 2025), https://iga.in.gov/session/2025/video/committee_public_health_1500.

arguments in this respect are not persuasive. More importantly, the solution for other states working to integrate a hospital system with more than 20 hospitals is not a fair comparison or likely to work for a rural, two-hospital town.

c. COPA Resolution

If the COPA is granted, Indiana will be unable to adequately remedy the negative repercussions of allowing the deal to initially close. While costs are contained initially, that is only for the life of the COPA. As economist Dr. Zack Cooper from Yale University noted in his public comment, “the Parties will be free to set prices at any levels after the seven-year moratorium ends.”¹³

Reversing a merger is largely impracticable after the integration of the companies and could lead to further injustices of competition. Additionally, changing the terms of the COPA to provide for stricter regulations of the hospital system, as has been done in many other COPAs granted across the country, is an expensive and burdensome process on states – and doesn’t appear to remedy the underlying issue.¹⁴ To grant the COPA, IDOH would need to safeguard Hoosier interests by ensuring the terms provided at the time the COPA is granted are sufficient to guarantee proper regulation consistent with a competitive market and not hope that hypothetical future regulation and amendments will suffice. Once the COPA term expires, the State will have limited jurisdiction or authority to directly prevent Union’s monopoly from imposing significant challenges to Indiana’s already critically-impacted healthcare market.

There has been concern that without the merger, the path forward with THRH is uncertain. That is, if THRH were to close, Union could be left with a monopoly regardless of the outcome of this transaction. The Attorney General agrees with the FTC and Dr. Cooper that THRH has greater profit margins than many other hospitals in the U.S. and is likely an appealing target for another buyer that is not a rival competitor in the same community.¹⁵

Should the Department of Health deny the COPA re-application, it is likely that THRH will be able to find another buyer or, alternatively, to continue running a profitable hospital. Most alternative buyers would be better situated to offer the citizens of the Wabash Valley competitive prices and quality services – avoiding a monopoly on hospital services in Terre Haute. While the Parties cite to the Novant Healthcare transaction to indicate the risks and burdens on hospitals in financial jeopardy, the two CHS hospitals in that transaction were able to find other, highly respectable buyers soon after the initial transaction with Novant was halted.¹⁶ An alternative buyer

¹³ Public Comment to IDOH, Dr. Zack Cooper of Yale University, (March 21, 2025).

¹⁴ The COPA application granted to Ballad Health in Tennessee and Virginia is on its fifth term list since 2018. The COPA application granted to Shannon Health in Texas is on its third term sheet since 2020.

¹⁵ Cooper Comment p. 1.

¹⁶ Stephanie Lopez, *Duke Health Completes Acquisition of Lake Norman Regional Medical Center*, DUKE HEALTH (Apr. 1, 2025), <https://corporate.dukehealth.org/news/duke-health-completes-acquisition-lake-norman-regional-medical-center#:~:text=%2D%2D%20Duke%20Health%20has%20finalized,Duke%20Health%20Lake%20Norman%20Hospital> (last accessed Apr. 8, 2025); Iredell Health System Officially Purchases Davis Regional Psychiatric Hospital, Davis Regional Medical Center, IRADELL HEALTH SYSTEM (Oct. 1, 2024), <https://www.iredellhealth.org/news/releases/iredell-health-system-officially-purchases-davis-regional-psychiatric->

would limit the effects of Terre Haute’s already consolidated hospital market and provide fierce competition to improve prices, quality, and overall patient welfare. Alternatively, as the FTC and others have noted, THRH has continued to operate a profitable hospital – more profitable, in fact, than 70-80% of U.S. hospitals.¹⁷

III. Conclusion

For the above stated reasons, the Indiana Attorney General continues to oppose this transaction and recommends that the Department of Health deny the COPA application. The Terre Haute community will be better served from healthy competition between competing firms, and the Parties have not provided sufficient assurances that unification of Vigo County’s only two hospitals would improve quality, access, or affordability of healthcare in the region.

Union cannot be permitted to purchase its primary competitor and eliminate competition for hospital services in the Terre Haute market. The COPA statute is an antitrust immunity statute, and the Department of Health must use traditional antitrust analysis in combination with COPA statute guidelines. “The antitrust laws were enacted for ‘the protection of *competition*, not *competitors*.’”¹⁸ Union Hospital should not be permitted to utilize the COPA statute or community pressure to reduce competition under the guise of community benefit.

The Office appreciates IDOH hosting a town hall on May 1, 2025, at the Ivy Tech campus in Terre Haute to receive comments concerning the implications of this merger on the Wabash Valley Community. Like IDOH, the Attorney General encourages all impacted and concerned citizens to attend the town hall to discuss this proposed merger. This is an important issue for the Terre Haute area and more generally for the healthcare industry in Indiana.

Respectfully,

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Scott L. Barnhart
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hospital-davis-regional-medical-center/#:~:text=Effective%20Oct.,(NYSE%3A%20CYH) (last accessed Apr. 8, 2025).

¹⁷ FEDERAL TRADE COMMISSION, FEDERAL TRADE COMMISSION SUPPLEMENTAL STAFF SUBMISSION TO INDIANA HEALTH DEPARTMENT REGARDING 2025 CERTIFICATE OF PUBLIC ADVANTAGE APPLICATION OF UNION HEALTH AND TERRE HAUTE REGIONAL HOSPITAL 3 (March 17, 2025).

¹⁸ *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488 (1977) (quoting *Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962)).