

## FTC Launches Challenges of Utah- and New Jersey-Based Hospital Mergers

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On June 2, 2022, the Federal Trade Commission (“FTC”) continued its aggressive scrutiny of health system mergers, announcing administrative challenges to two proposed mergers – one in [Utah](#), and the other in [New Jersey](#). The Utah challenge seeks to block the proposed merger between HCA Healthcare and Steward Health Care System in the Wasatch Front region of Utah, which surrounds Salt Lake City. The New Jersey challenge is aiming to prevent RWJBarnabas Health’s proposed acquisition of Saint Peter’s Healthcare System in Middlesex County, New Jersey. The FTC is also pursuing injunctive relief in federal court in both cases. The FTC voted unanimously to challenge both mergers.

### **HCA Healthcare and Steward Health Care System**

HCA Healthcare, a Nashville, Tennessee-based health system, owns and operates six hospitals along the Wasatch Front, and is the second-largest provider of inpatient general acute care (“GAC”) hospital services in the FTC’s proposed geographic markets of Weber and Northern Davis Counties (the “Northern Market”), Salt Lake County and southern Davis County (the “Central Market”), and Utah County (the “Southern Market”). Steward Health Care System, a Dallas, Texas-based health care system, is the fourth-largest provider of inpatient GAC hospital services on the Wasatch Front, operating five hospitals in the proposed geographic markets.

According to the FTC complaint, the proposed transaction is likely to substantially lessen competition in the relevant geographic market for inpatient GAC services because each hospital system provides overlapping medical, surgical, and diagnostic services that require an overnight stay. The FTC further alleges that, at present, HCA and Steward compete to be included in commercial insurers’ health plan networks. In those negotiations with commercial insurers, HCA has greater bargaining leverage than Steward because its greater size allows it to receive higher reimbursement rates than Steward. The FTC complaint alleges that Steward offers low-cost healthcare services and innovative contract terms and benefit designs in order to compete with HCA. Additionally, the two compete against each other on non-price dimensions such as facility improvements and patient experience. The FTC believes that not only will this competition disappear should the two systems merge, but also that HCA will be able to obtain even greater bargaining power in its negotiations with commercial insurers. Should that happen, the FTC states that costs

could be passed down to consumers in the form of higher premiums, deductibles, co-pays, and other out-of-pocket expenses.

Both healthcare systems expressed their disappointment in the FTC’s actions, emphasizing the pro-competitive potential of the transaction and the benefits it might provide for patients in Utah. The FTC announced on June 16 that the parties had decided to abandon their merger plans.

**RWJBarnabas Health’s Acquisition of Saint Peter’s Healthcare System**

RWJBarnabas Health operates one of the largest hospital systems in New Jersey, with 12 hospitals, several ambulatory surgical centers, a pediatric rehabilitation hospital, and a behavioral health center. Saint Peter’s Healthcare System runs an independent hospital in Middlesex County, New Jersey known as Saint Peter’s. Within that hospital is a state-designated children’s hospital known as Saint Peter’s University Hospital. The FTC’s proposed relevant market is Middlesex County, New Jersey.

The FTC’s complaint claims that if the merger is consummated, it would enhance RWJBarnabas’ market power to approximately 50% of the relevant market for inpatient GAC services sold to commercial insurers and their members in Middlesex County. It also notes that RWJBarnabas’ flagship hospital, RWJBarnabas-New Brunswick (RWJ-NB), and Saint Peter’s are less than one mile away from each other. Consequently, they are direct competitors for inclusion in insurer plan networks, and they compete with regard to improving quality, offering new services and technology, and increasing patient satisfaction. Eliminating the competition between the two systems, according to the FTC, would lead to higher healthcare prices and diminished incentives to improve non-price dimensions of healthcare services offered. Finally, the complaint notes that should the proposed merger occur, the only other competitors RWJBarnabas would face for inpatient GAC services would be Hackensack Meridian Health and Penn Medicine Princeton Medical Center, both of which would have significantly smaller market shares than the combined RWJBarnabas Health and Saint Peter’s Health Care System.

In a joint statement, the merging parties expressed that they are “incredibly disappointed by these FTC actions about our proposed transaction, which has received full approval from New Jersey’s Attorney General and is supported by grassroots community groups, employer groups, unions, managed care organizations and elected officials at all levels within the state of New Jersey.” The parties noted that they would study the FTC’s complaint and determine how to best move forward.

On June 14, the parties announced their decision to abandon their proposed merger.

**Greater Trend in Hospital Enforcement**

The FTC’s latest challenge to two proposed hospital mergers is not surprising and is consistent with the federal regulator’s publicly stated intention to aggressively challenge hospital mergers in markets where the FTC believes market concentration has either caused prices to increase, consumer choices to reduce, or both. The FTC has forcefully challenged several hospital mergers in the last few years. Since 2020 alone, the FTC has challenged the mergers of Thomas Jefferson University and Einstein Healthcare Network in Pennsylvania, Hackensack Meridian Health and Englewood Healthcare Foundation in New Jersey, Methodist Le Bonheur Healthcare and Tenet Healthcare Corporation in Tennessee, and LifeSpan Corp. and Care New England Health System in Rhode Island. Moreover, President Biden signed an executive order on competition last year, some of which directed the FTC and the Department of Justice to increase their scrutiny and enforcement of hospital mergers.

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