

September 18, 2023

Lina M. Khan
Chair
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

FTC-2023-0043

The Honorable Jonathan Kanter
Assistant Attorney General
Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Re: Draft Merger Guidelines

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Dear Chairwoman Khan and Mr. Kanter:

On behalf of the nearly 40,000 members of the American College of Emergency Physicians (ACEP), we appreciate the opportunity to comment on the draft Merger Guidelines. ACEP is the national medical society representing emergency medicine. Through continuing education, research, public education, and advocacy, ACEP advances emergency care on behalf of its members and the more than 150 million patients they treat on an annual basis.

The Federal Trade Commission (FTC) and the Department of Justice (DOJ) (collectively, the “Agencies”) are proposing to update guidelines that explain to the public, business community, practitioners, and courts the factors and frameworks the Agencies consider when investigating potentially illegal mergers. The Agencies begin their merger analysis asking if competition presents itself in a particular market and if the merger at hand risks lessening that competition substantially now or in the future. They then establish 13 guidelines to assess the risk that a merger’s effect substantially lessen competition or tend to create a monopoly.

ACEP has been carefully monitoring how the rapidly growing acquisition of emergency medicine (EM) practices has affected emergency physicians and the patients they serve and appreciates the FTC and DOJ taking on this effort. In less than ten years, the number of emergency physicians working in large, national groups increased from one in seven in 2012 to one in four in 2020.¹ Particularly, ACEP has been hearing about labor-related impacts of the acquisitions and mergers and the effect they have had on physician wages, non-wage benefits and other aspects of emergency physicians’ contracts with their employers, and physician autonomy in their medical decision-making.

¹ Pollock JR, Hogan JS, Venkatesh AK, et al. Group Practice Size Consolidation in Emergency Medicine. *Annals of Emergency Medicine*. 2022;79(1):2-6. doi:10.1016/j.annemergmed.2021.07.122

While mergers and acquisitions are occurring across the health care sector, there are some unique qualities of the EM market that are important for the Agencies to understand. Emergency physicians serve the essential role of strengthening the health care safety net for our communities. We treat all patients who come through our doors, regardless of their insurance status or ability to pay. The Emergency Medical Treatment and Labor Act (EMTALA) requires hospitals to provide a medical screening examination and stabilizing treatment to every individual who “comes to the emergency department” (ED) seeking examination or treatment, regardless of ability to pay. Given this vital responsibility that EM plays as our nation’s health care safety net, ensuring that EDs across the country are appropriately staffed so they can provide care 24 hours a day, 7 days a week, 365 days a year is essential. Hospitals and EM groups have tried to achieve this goal in different ways, and, as described below, mergers and acquisitions have at times come into play.

Further, emergency physicians work in a variety of employment models. While some are employed by or contract with hospitals directly, many are employed by independent entities that contract with the hospital to provide 24/7 ED coverage. These independent entities range in size, from small, independent democratic (i.e., owned by the physicians) groups that serve only one or two local hospitals to larger groups that staff EDs (and sometimes service lines of other specialties) nationwide. While some of these larger groups may still be physician owned and run, more are owned by private equity investment companies, large hospitals and health systems or insurance companies, who have acquired these practices.

Thus, unchecked mergers that substantially lessen competition in the labor market for emergency physicians, in which the employer is the buyer and the physician is the seller, can impact physicians directly by lowering wages or slowing wage growth, worsening benefits or working conditions, or contributing to other degradations in workplace quality. As the trend towards horizontal and vertical consolidation continues to accelerate, emergency physicians are experiencing labor-related impacts for themselves, their livelihood and their patients. They need and deserve to be protected from business practices that jeopardize their quality of life as a physician and their duty and responsibility as safety net clinicians to provide the highest quality of patient care.

We are pleased that the Agencies are actively modernizing enforcement of the antitrust laws regarding mergers, and, in doing so, recognize that the current guidelines for assessing mergers may underemphasize or neglect the labor market effects and non-price elements of competition like innovation, quality, potential competition, or any trend toward concentration. Thus, we support the Agencies’ guidelines in identifying potentially illegal mergers, especially those that assess the indirect and direct implications on the labor market, notably:

- Guideline 1: Mergers Should Not Significantly Increase Concentration in Highly Concentrated Markets
- Guideline 2: Mergers Should Not Eliminate Substantial Competition between Firms
- Guideline 4: Mergers Should Not Eliminate a Potential Entrant in a Concentrated Market
- Guideline 6: Vertical Mergers Should Not Create Market Structures That Foreclose Competition
- Guideline 7: Mergers Should Not Entrench or Extend a Dominant Position
- Guideline 9: When a Merger is Part of a Series of Multiple Acquisitions, the Agencies May Examine the Whole Series
- Guideline 11: When a Merger Involves Competing Buyers, the Agencies Examine Whether It May Substantially Lessen Competition for Workers or Other Sellers
- Guideline 13: Mergers Should Not Otherwise Substantially Lessen Competition or Tend to Create a Monopoly

Guideline 1: Mergers Should Not Significantly Increase Concentration in Highly Concentrated Markets

In the draft revision to the Guidelines, the Agencies seek to reduce the threshold to be considered a highly concentrated market when assessing whether a merger between competitors would significantly increase concentration and result in a highly concentrated market.

ACEP supports this reduction in threshold. In recent years, physician practices, including independent EM practices, have been acquired by hospitals, health systems, and corporate entities (such as private equity and health insurance companies) at a relatively high rate. [A recent study in Health Affairs](#) found that between 2014 and 2018, there was an 89 percent increase in hospital and health system ownership of physician practices. The pressures of staying financially viable during the COVID-19 pandemic seem to have accelerated this trend even further. According to [a report from the Physicians Advocacy Institute \(PAI\)](#), there was a sharp rise in the number of physician practices being acquired by hospitals and corporate entities throughout 2019 and 2020—especially in the first half of 2020 as the pandemic began. Now, PAI reports that 70 percent of all physicians are employed by hospital systems or other private entities—meaning that only 30 percent of physicians practice independently. For emergency physicians specifically, 39.8 percent practice in a clinician partnership, 34 percent are employed by their hospital system, 23 percent by a private equity-owned group, and 2.4 percent by the government.²

Recent assessments have attempted to determine the effect of consolidation in health care on both cost and quality of patient care. In 2020, the Medicare Payment Advisory Commission (MedPAC) issued a [report](#) which looked at all of the available research at the time and concluded that provider consolidation leads to higher prices for commercially insured patients. Conversely, the Kaiser Family Foundation [has noted](#) that when health insurers consolidate hospital prices tend to decrease, “however these lower prices do not necessarily lead to lower premiums...where health insurance markets are more concentrated, premiums tend to be higher.” In other words, insurers do not pass along the savings from below-market provider payments to their policyholders via lower premiums.

MedPAC also looked at whether provider consolidation affects the quality of care that hospitals and clinicians provide but could not draw any definitive conclusions. However, as identified by a questionnaire ACEP sent out to asking our members a series of structured and open-ended questions about their experiences with mergers and acquisitions to formulate [our response](#) to the FTC’s Request for Information (RFI) on Merger Enforcement, anecdotal evidence suggests that patient safety and care quality can suffer under corporate ownership:

“Huge pushes regarding patient disposition and turnaround times. I’m forced to see patients in the waiting room, violating HIPAA, due to these pushes, given that the hospital will not provide sufficient staff/ space to bed them within the emergency department in order to maximize profits.”

“There are endless cuts to staffing and hours that cause significant patient safety concerns and poor patient experiences and outcomes. I feel like my medical license is being exploited by private equity to maximize profits to shareholders at the expense of my patients and coworkers.”

The significant consolidation of health insurance companies has made contract negotiations even more difficult. The American Medical Association (AMA) published a comprehensive study in 2022 of health insurance concentration for 384 metropolitan statistical areas (MSAs), the 50 states, and the District of Columbia. The report detailed some stark, but not shocking, results about the level of concentration of many health care markets across the country. The AMA found that:

- 73 percent of the MSA-level markets were considered highly concentrated according to federal guidelines set

² Leon Adelman, MD, MBA, FACEP; [“2023 State of the Emergency Medicine Employer Market”](#); Ivy Clinicians; Feb 2023.

by the DOJ and FTC.

- 46 percent of MSA-level markets and fourteen states had one insurer with a share of 50 percent or more of the commercial health insurance market.
- 57 percent of markets became more concentrated in 2020 compared to their concentration level in 2014.

Guideline 2: Mergers Should Not Eliminate Substantial Competition between Firms

The Agencies recognize that a merger eliminates competition between the merging firms by bringing them under joint control. If evidence demonstrates substantial competition between the merging parties prior to the merger, the Agencies can determine that the merger may substantially lessen competition. In the EM marketplace, decreased competition that results from increased consolidation has had tangible impacts on emergency physicians' livelihood, and therefore ACEP supports this proposed guideline.

Last year, in response to the Agencies' joint RFI on Merger Enforcement, ACEP asked our members a series of both structured and open-ended questions to gain specific and up-to-date information on how mergers and acquisitions are impacting their lives, their jobs and the care they provide. We received over 110 responses to this questionnaire. The questionnaire results, including both quantitative analyses and actual anecdotal quotes directly from emergency physician responders (all italicized), revealed numerous examples of where mergers within hospital systems, insurers, and physician practices have had effects on their day-to-day practice and experiences in the workplace, most notably infringing on their clinical decision-making autonomy, patient-physician relationships, and their ability to place the needs of patients over profits as compared to prior to the mergers they experienced.

Medical Decision-Making

Emergency physicians complete 10,000-16,000 hours of clinical education and training during their four years of medical school and three to seven years of residency training and should be trusted to have the utmost expertise in medical decision-making (MDM), especially in the most urgent situations. However, 53 percent of respondents indicated that their MDM autonomy was curtailed following the merger or acquisition of their practice. They noted that there was now "pressure to take short cuts [and] give inappropriate and potentially harmful care" to meet profit-driven metrics, that patients "are treated as numbers rather than individuals," and care is no longer patient-centered but "metric-centered." Some further examples from questionnaire responses include:

"Worsened in that heavy handed pressure placed on meeting nonclinical metrics and removal of RVU payment for nonbillable patients seen in the ER. Pressure on hospitalist to discharge all patients in 4 days which has led to significant increase in return visits and readmissions. Not to mention poor care and sicker patients in the community."

"Directly, no change. Indirectly by increasing the required patients per hour, Press Gainey results, etc it resulted in a pressure to take short cuts, give inappropriate and potentially harmful care in the name of 'customer satisfaction'."

"Worsen. We have already had several emails from our more recent director re: test utilization. Instead of getting to the root cause of why these tests were ordered, such as looking at the patients that the physicians felt required them and why, these remains essentially targeted the physicians who ordered the most of whatever test they would like us to perform less."

"Worsened my ability to do medical decision-making. The rate at which we see patients, now in the 5-7 patients per hour sustained for up to 8 hours at a time is too much. We do not have the mental bandwidth to make so many decisions on so many patients in that short of a period of time. In addition, we are unable to spend any time at bedside with patients to elucidate histories or physicians that would help our MDM."

Workload and Staffing

Emergency physicians reported seeing more patients per hour without a commensurate pay increase following a merger. For example:

“Huge pushes regarding patient disposition and turnaround times. I’m forced to see patients in the waiting room, violating HIPAA, due to these pushes, given that the hospital will not provide sufficient staff/space to bed them within the emergency department in order to maximize profits.”

“There are endless cuts to staffing and hours that cause significant patient safety concerns and poor patient experiences and outcomes. I feel like my medical license is being exploited by private equity to maximize profits to shareholders at the expense of my patients and coworkers.”

“They incorporated metric based pay on items we do not control, such as length of stay in the ED. We do not control many things that affect length of stay, such as nursing, radiology, labs, etc. This has led to a metric that is impossible to meet, and in effect, a pay cut.”

Due Process Rights

Over fifty percent of respondents indicated that their due process rights worsened or were eliminated after the merger. Due process plays a foundational role in ensuring a physician can carry out their promise to patients without fear of retribution or termination by their employer, so further erosion in contracts following acquisition is a significant concern. Among questionnaire responses:

“[The acquisition] worsened our right to due process because the corporate entity’s contract with the hospital eliminated our rights as hospital medical staff physicians to be the same as other members of the medical staff with regard to a fair hearing before the medical staff’s executive committee as our democratic group previously had.”

“The contracts with the new group have a clause that I will not resolve any “disagreements” in court, but through a mediator.”

“We used to have due process but the acquisition forced us to give up those rights through a 3rd party agreement between the hospital and [large national group].”

Physician Burnout

Consolidation in the EM market has contributed to the high rate of burnout among emergency physicians. This was reflected in the survey, where respondents associated consolidation with decreased morale and burnout. Many emergency physicians are citing the current working conditions at large national groups as reasons for quitting medicine altogether, for they feel that they are trapped in a system that does not respect their autonomy or mental well-being and that there are no other options for their employment in the EM sector. The potential of a significant exodus of emergency physicians from the workforce threatens the maintenance of the health care safety net that emergency medicine provides:

“I no longer feel that the medicine I practice is safe or good, and that I am pushed to see more patients in less time to turn a profit. I feel this is at odds with the oaths I took as a physician, and sadly, am actively searching for ways out of medicine.”

“Medicine has changed for the worse with the rise of these stockholder driven corporate groups. I don’t recommend being a doctor to young people.”

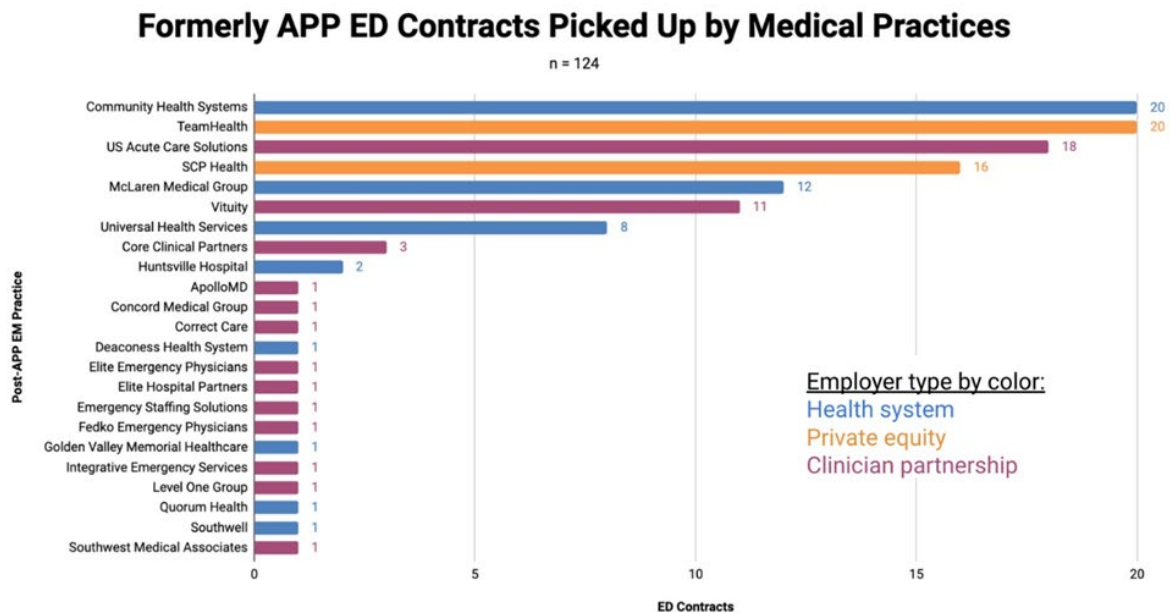
“We are continually asked to do more with less resources, for less income, and work in unsafe environments, yet with the same liability. I am actively pursuing career opportunities outside of clinical medicine.”

Guideline 4: Mergers Should Not Eliminate a Potential Entrant in a Concentrated Market

The Agencies note that mergers can substantially lessen competition by eliminating a potential entrant. The more concentrated the market, the greater the magnitude of harm to competition from any lost potential entry and the greater the tendency to create a monopoly. Accordingly, for mergers involving one or more potential entrants, the higher the market concentration, the lower the probability of entry that gives rise to concern.

ACEP shares these concerns and therefore supports this proposed guideline. As consolidation grows, in many markets it has become increasingly difficult for smaller, independent emergency physician groups to establish themselves and enter what in many areas is an already-concentrated market.

One stark example of these barriers has emerged with the recent collapse of American Physician Partners (APP). On July 16th, private equity-backed APP provided physician staffing to more than 130 emergency departments across 18 states. The next day, they announced they would completely close operations in just under 2 weeks. While thousands of disrupted physicians continued serving patients, hospitals scrambled to sign new contracts with other physician groups. Our members, loyal to their facilities and their communities, had to decide in a matter of days to sign new contracts with little leverage to negotiate or go elsewhere. While this sudden exit from the market provided a rare opportunity for the emergency physicians practicing at these APP sites to establish themselves as a small group and take over the contract from the hospital, in the end, few (less than 1%) were able to do so.



Source: Leon Adelman; Emergency Medicine Workforce Newsletter; [“American Physician Partners is Not Dead Yet”](#);

The inability to negotiate fair contracts with insurance companies that have a large market share is at the top of the list of reasons that smaller EM practices struggle to stay in business. As noted previously, the significant consolidation of health insurance companies, especially in highly concentrated markets, 46 percent of MSA-level markets and fourteen states had one insurer with a share of 50 percent or more of the commercial health insurance market. Ten percent of respondents to the ACEP poll previously referenced who were employed by a large national physician group said that the main rationale for their smaller group moving forward with its acquisition was the inability to

negotiate with insurers. Some independent practices struggle to even have insurance companies respond to exploratory inquiries, much less agree to work with them. Respondents noted that:

“Our independent EM group (120 providers) had our contract with the hospital system for 50 years. We managed 12 EDs in [state]...Because we were a smaller to medium size independent group, the insurance companies would not negotiate or give us better rates/payments. As such, we were forced out of our 50-year contract and the majority of our providers were forced to join the EM Mega group that won the contract and has the ability to negotiate better payment rates from insurers and is able to take bigger risks.”

“We were a democratic group of only boarded EM physicians. We were finding it increasingly difficult to acquire cost effective benefits, malpractice insurance and dealing with insurance companies.”

Guideline 6: Vertical Mergers Should Not Create Market Structures That Foreclose Competition

The Agencies’ proposed guidelines offer that if a merged firm will control more than 50 percent of a given market, that alone could establish that the merger may substantially lessen competition. Below 50 percent, the draft Guidelines consider other factors to determine if a vertical merger is potentially anticompetitive, including whether the merger is part of a trend towards vertical integration, whether the nature and purpose of the merger is to foreclose rivals, whether the relevant market is already concentrated, or if the merged firm will increase barrier to entry.

ACEP appreciates the Agencies’ consideration of other factors, especially whether a merger is part of a trend towards vertical consolidation. While much of the focus has been on consolidation of physician groups with other physician groups or hospital systems, insurers have recently played an even bigger role in acquisition of physician practices—in 2021, for example, health plans made the majority of physician practice acquisitions.³ And now in 2023, UnitedHealth Group’s Optum is the largest employer of physicians in the nation, employing or associating with over 70,000 physicians.⁴ In 2018, Optum entered emergency medicine by purchasing a large ownership stake in Sound Physicians for \$2.2 billion – it is now the eighth-largest employer of emergency physicians in the country.⁵

This vertical consolidation raises several concerns. Notably, there is much less of a need for contract negotiation between providers and insurers, which tend to have a modulating effect on prices and access. For those physician groups that do remain in that market competing with the new insurer-owned physician group, the insurance company can decrease their contracted payments to ensure its own physician group has a competitive advantage. Similarly, the same can be done by the insurer to hospitals that contract with a competitor, thus allowing the insurer-owned physician group to be an attractive alternative to these hospitals by offering even a small increase in reimbursement. At that point, any remaining independent provider groups will likely be pushed out of the market, and the insurer-owned provider group could increase prices in order to maximize profits with little competing pressure from other groups.

Guideline 7: Mergers Should Not Entrench or Extend a Dominant Position

The draft Guidelines examine whether one of the merging firms already has a dominant position in the relevant market that will be reinforced via the merger. A dominant market position arises either from direct evidence of the power to raise prices or reduce output or from one of the merging firms having more than a 30 percent market share. Reinforcement of market dominance may take many forms, including increased barriers to entry, increased switching costs, interference with competitive alternatives, adverse impacts on rivals and the elimination of nascent competitors.

³ Nona Tepper; [“Vertically integrated payer-provider groups raise antitrust concerns”](#); Modern Healthcare; 22 March, 2022.

⁴ Jakob Emerson; “Meet America’s largest employer of physicians: UnitedHealth Group”; Becker’s Payer Issues; 16 Feb, 2023.

⁵ Leon Adelman, MD, MBA, FACEP ; “2023 State of the Emergency Medicine Employer Market”; Ivy Clinicians; Feb 2023.

ACEP supports this approach, especially given that a number of areas already see over 30 percent of market share by emergency physician groups.⁶ We also urge the Agencies to consider how best to ensure that sufficient information is evaluated to determine level of market dominance. To our knowledge, no existing data sources fully capture the ownership structure of physician groups. Many larger physician groups bill to Medicare under multiple names and taxpayer identification numbers (TINs), often derived from the smaller groups they had previously acquired. Therefore, at first glance, a large physician group may not appear to have a large concentration in a particular market. But these smaller groups no longer exist, only the large entity does, and therefore, if it is about to merge with yet another group, it will be important for the FTC to be able to accurately assess its level of market dominance, both pre- and post-merger. Appendix A of the previously cited research paper explains the complicated methodology that had to be used in order to assess the market penetration of physician groups in various markets.⁷

Guideline 9: When a Merger is Part of a Series of Multiple Acquisitions, the Agencies May Examine the Whole Series

The Agencies note that a cumulative series of mergers can “convert an industry from one of intense competition among many enterprises to one in which three or four large [companies] produce the entire supply.” Accordingly, the Agencies propose to consider individual acquisitions in light of the cumulative effect of related patterns or business strategies. The Agencies may do so by examining both the firm’s history and current or future strategic incentives, and where one or both of the merging parties has engaged in a pattern or strategy of pursuing consolidation through acquisition, the Agencies will examine the impact of the cumulative strategy under any of the other guidelines to determine if that strategy may substantially lessen competition or tend to create a monopoly.

ACEP supports this approach, as a pattern of “roll-up” acquisitions, especially by private equity groups, has emerged in emergency medicine in the past years, with significant effects. Often these acquisitions are small enough that none would require a pre-merger notification filing under the Hart-Scott-Rodino Act, but over time, grow the entities large enough to have potential anticompetitive effects.

As with our comments on Guideline 7, we urge the Agencies to consider how they can ensure they become aware of such acquisitions in order to be able to assess them. With the recent collapse of American Physician Partners, many physicians employed by the group still have not been paid for shifts worked in June and July. Yet APP continues to collect revenue as the months-long medical billing process cycles through to its conclusion, and until bankruptcy is declared, there is no legal obligation for the entity to pay out wage claims to these physicians. As well, since malpractice claims can often be filed years after a clinical encounter, many former APP emergency physicians suddenly faced having to personally fund retroactive malpractice insurance coverage, which could easily exceed \$50,000 in cost. Additionally, international physicians with visas sponsored by APP saw them [suddenly invalidated](#), and had to factor in the potential for complex visa transfer arrangements when seeking new employment. Yet APP is not unique, and the significant impacts of its collapse demonstrate the broad reach and market influence that such larger groups hold.

Guideline 11: When a Merger Involves Competing Buyers, the Agencies Examine Whether It May Substantially Lessen Competition for Workers or Other Sellers

The Agencies note that the same general concerns as in other markets apply to labor markets where employers are the buyers of labor and workers are the sellers and will therefore consider whether workers face a risk that the merger

^{6,7} Loren Adler, Conrad Milhaupt, Samuel Valdez, Measuring private equity penetration and consolidation in emergency medicine and anesthesiology, *Health Affairs Scholar*, Volume 1, Issue 1, July 2023, qxad008, <https://doi.org/10.1093/haschl/qxad008>

may substantially lessen competition for their labor. Where a merger between employers may substantially lessen competition for workers, that reduction in labor market competition may lower wages or slow wage growth, worsen benefits or working conditions, or result in other degradations of workplace quality. To assess this dominance in labor markets (see Guideline 7), the Agencies often examine the merging firms' power to cut or freeze wages, exercise increased leverage in negotiations with workers, or generally degrade benefits and working conditions without prompting workers to quit.

ACEP is supportive of this approach. In the EM marketplace, emergency physician staffing groups are the buyers of labor, and the emergency physician workers are the sellers. Increased consolidation via mergers and the resulting decreased competition have indeed had tangible impacts on emergency physicians' wages, non-cash benefits, right to due process, and autonomy for medical decision-making. ACEP's previously referenced poll revealed numerous examples of where mergers within hospital systems, insurers, and physician practices had impacts on competitiveness in the EM labor market and to the emergency physician, notably in terms of their wages and their ability (or lack thereof) to find or keep employment.

Wages

Overall, the impact on wages from these acquisitions seemed to vary. Sixty percent of respondents reported that their wages had been reduced, with around forty percent of them indicating a pay cut of more than 20 percent. Forty percent of respondents indicated that they experienced no change in pay or a pay raise after the merger. However, although these respondents' pay itself stayed the same or increased, in many instances their overall hours were cut, still resulting in an overall wage decrease. Examples of responses included:

"Roughly 25-30% reduction due to lowered hourly rate and fewer hours."

"Compensation has remained flat or down. Under the democratic group, there were yearly cost of living and performance based increases. Those disappeared. Benefits like CME were cut. Performance demands increased, with productivity going from 1.9 patients per hour to 2.0 to 2.2 in the course of two years."

"Increased current, decreased later earning potential"

"Hourly rate increased but overall much worse when factoring in benefits, insurance, retirement."

Ability to Find or Keep a Job

When asked how mergers and acquisitions affect competition in the local job market for emergency physicians, 63 percent of respondents to our questionnaire indicated that the presence of larger national groups (often called contract management groups, or CMGs) made it more difficult to find and/or keep a job.

"Merger made it harder to find jobs since the new group monopolized the market in my area. The monopoly essentially lowered over market value and drove down the pay significantly."

Many respondents remarked that they in fact had no job options other than the large national group that had acquired their practice due to regional consolidation and horizontal integration:

"[Large national group] own[s] nearly all of the contracts in emergency departments within driving distance to my home. I essentially have no choice but to work for them as I have a family and cannot travel. I do not agree with their practices, but have to comply due to this CMG having a regional monopoly of ED contracts."

"Shortly after taking over, the corporation moved to cut physician hours...By cutting hours, it made it more difficult to get a job in the local area because there were not as many physicians required to perform the same services."

Guideline 13: Mergers Should Not Otherwise Substantially Lessen Competition or Tend to Create a Monopoly

We are especially supportive of Guideline 13, as we agree that the set of guidelines should be a non-exhaustive list to give the Agencies flexibility in assessing the ways that a merger may substantially lessen competition or tend to create a monopoly because of the variation of factors across industries that indicate monopolies or reduced competition.

Conclusion

ACEP appreciates the Agencies' work to refine the guidelines to better take into account how a merger could potentially impact the labor market, including working conditions and wages. **We urge the Agencies to finalize these changes.**

Thank you for the opportunity to share our comments. If you have any questions, please contact Laura Wooster, ACEP's SVP of Advocacy & Practice Affairs, at lwooster@acep.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher S. Kang". The signature is fluid and cursive, with a large initial "C" and a long, sweeping tail.

Christopher S. Kang, MD, FACEP
ACEP President