

Tennessee Department of Health Public Hearing Testimony

November 21, 2016

Good Evening. I'm Alexis Gilman, the Assistant Director for the Mergers IV Division at the Federal Trade Commission. These remarks reflect the views of FTC staff regarding the potential issuance of a certificate of public advantage or COPA for the proposed merger of Mountain States and Wellmont. While these remarks do not necessarily represent the views of the Commission, the Commission has authorized me to appear before you today. My remarks tonight highlight only a few key points from the written public comment submitted by FTC staff.

The FTC has extensive experience evaluating hospital mergers and assessing their likely impact on competition and consumers. FTC staff has spent more than a year investigating the proposed merger between Mountain States and Wellmont. That investigation has led to significant concerns about the negative effects that this merger of such vigorous and close competitors is likely to have on hospital pricing, quality of care, and the availability of services. Together, the hospitals would have a dominant market share of inpatient services and a significant market share in several outpatient and physician-specialty service lines in the 21-county area they propose to serve.

When hospital mergers substantially reduce competition, prices for health care services increase significantly and the incentive to maintain or improve the quality of care decreases. Price increases are borne by members of the local community. Public and private employers, as well as patients, pay for these price increases in the form of higher premiums, higher co-pays, higher deductibles, and reduced insurance coverage. Decreases in quality affect all patients—the commercially insured, those covered by Medicare or Medicaid, and the uninsured. Because Mountain States and Wellmont are each other's closest competitors over a large geographic area, the proposed merger is highly likely to generate such adverse effects.

The hospitals have proposed commitments they claim would control and mitigate any anticompetitive effects, but despite some recent revisions, these commitments are insufficient and unlikely to achieve this result. In particular, the proposed rate caps may not fully control prices. Even if they did fully control prices, the rate caps would do nothing at all to prevent harm to quality of care, and would in fact make that quality harm more likely. Ultimately, the commitments being offered will be difficult to construct in a way that prevents the likely harm to consumers, will be difficult to monitor, and will be difficult to enforce.

We have also examined the cost savings and quality benefits that the hospitals claim will result from the merger. In short, even the revised commitments proposed by Mountain States and Wellmont still fail to provide sufficient detail to evaluate whether these benefits will be achieved. We appreciate the serious healthcare challenges faced by the local community—and we encourage ongoing regional and state level efforts to address these problems. The hospitals, however, have not sufficiently justified why this highly anticompetitive merger is *necessary and the only way* to achieve their claimed benefits. They have failed to show why they cannot pursue alternatives short of a merger to achieve many of their claimed healthcare benefits, without the risk of harm to competition and the need for the Department to impose and monitor burdensome and complex regulation. The Tennessee Hospital Cooperation Act requires the hospitals to show

by “clear and convincing” evidence that the benefits of the merger outweigh the harm from the loss of competition. They have fallen far short of that standard.

Additionally, it is important to understand that once a merger is consummated—whether under a COPA or otherwise—it is extremely difficult to unwind. The Plan of Separation submitted by the hospitals does little to alleviate the significant challenges of “unscrambling the eggs” following a hospital merger, particularly one of this size. Approving the COPA means risking that the merger will become permanent. Meanwhile, the constraints on the parties and the commitments they propose are apparently intended to end after 10 years. If that happens, the region will have a virtual hospital monopolist, unconstrained by meaningful competition or state regulation. In other words, the parties’ commitments appear to be temporary, but the harm to Tennessee consumers could be permanent. Thus, we recommend that the Tennessee Department of Health deny the hospitals’ COPA application.

Finally, we take our role of protecting consumers in this region seriously. We also appreciate the opportunity to work with state and local regulators and enforcers. As we have indicated on prior occasions, we are available as a resource to the Department of Health and the community. Thank you again for your consideration.