Public and Private Strategies to Address Healthcare Provider Consolidation

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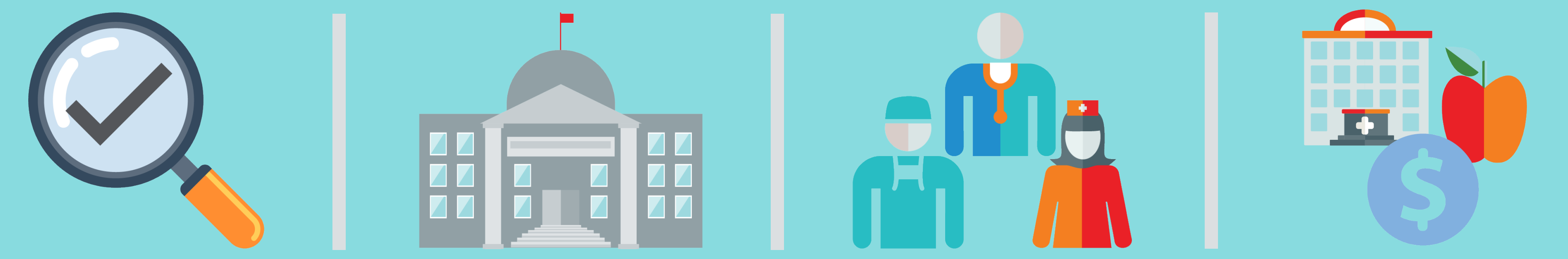


Welcome and Introduction

Lynn Quincy
Healthcare Value Hub

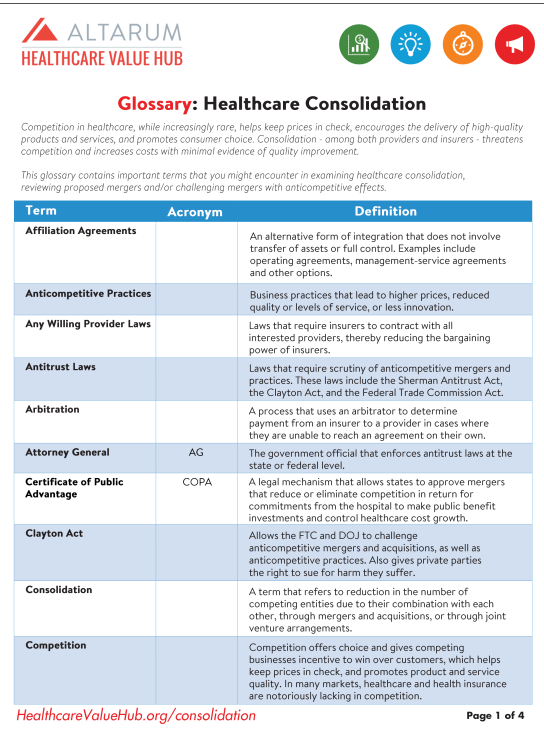
Housekeeping

- Thank you for joining us today!
- All lines are muted until Q&A
- Webinar is being recorded
- Technical problems? Call Dakota Staren at 202-776-5194

Agenda

- **Welcome & Introduction**
- Private Payer Responses to Provider Consolidation
  - Sabrina Corlette, Georgetown Center on Health Insurance Reforms (CHIR)
- Policy and Regulatory Responses to Healthcare Industry Consolidation
  - Claire O'Hanlon, Adjunct Policy Researcher, RAND Corporation
- **Q&A**

Our Glossary May Help…



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Glossary: Healthcare Consolidation

Competition in healthcare, while increasingly rare, helps keep prices in check, encourages the delivery of high-quality products and services, and promotes consumer choice. Consolidation - among both providers and insurers - threatens competition and increases costs with minimal evidence of quality improvement.

This glossary contains important terms that you might encounter in examining healthcare consolidation, reviewing proposed mergers and/or challenging mergers with anticompetitive effects.

Term	Acronym	Definition
Affiliation Agreements		An alternative form of integration that does not involve transfer of assets or full control. Examples include operating agreements, management-service agreements and other options.
Anticompetitive Practices		Business practices that lead to higher prices, reduced quality or levels of service, or less innovation.
Any Willing Provider Laws		Laws that require insurers to contract with all interested providers, thereby reducing the bargaining power of insurers.
Antitrust Laws		Laws that require scrutiny of anticompetitive mergers and practices. These laws include the Sherman Antitrust Act, the Clayton Act, and the Federal Trade Commission Act.
Arbitration		A process that uses an arbitrator to determine payment from an insurer to a provider in cases where they are unable to reach an agreement on their own.
Attorney General	AG	The government official that enforces antitrust laws at the state or federal level.
Certificate of Public Advantage	COPA	A legal mechanism that allows states to approve mergers that reduce or eliminate competition in return for commitments from the hospital to make public benefit investments and control healthcare cost growth.
Clayton Act		Allows the FTC and DOJ to challenge anticompetitive mergers and acquisitions, as well as anticompetitive practices. Also gives private parties the right to sue for harm they suffer.
Consolidation		A term that refers to reduction in the number of competing entities due to their combination with each other, through mergers and acquisitions, or through joint venture arrangements.
Competition		Competition offers choice and gives competing businesses incentive to win over customers, which helps keep prices in check, and promotes product and service quality. In many markets, healthcare and health insurance are notoriously lacking in competition.

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- Link:
  www.healthcarevaluehub.org/consolidation

(included in your email reminder)

Sabrina Corlette

Research Professor

Georgetown University Center on Health Insurance Reforms

Healthcare Value Hub Webinar

Public and Private Strategies to Address Health Care Provider Consolidation

October 25, 2019

Sabrina Corlette, J.D.

About Georgetown's Center on Health Insurance Reforms (CHIR)

- A team of experts on private health insurance
- Conduct research and policy analysis, provide technical assistance to federal and state officials and consumer advocates
- Based at Georgetown University's McCourt School of Public Policy
- Learn more at https://chir.georgetown.edu/
- Subscribe to CHIRblog at http://chirblog.org/
- Follow us on Twitter @GtownCHIR

About the Provider Consolidation Case Study Project

- Funded by the National Institute for Health Care Reform (NIHCR)
- 6 medium-sized health care markets w/ recent consolidation
  - Detroit
  - Syracuse
  - Northern Virginia
  - Indianapolis
  - Asheville
  - Colorado Springs
- Qualitative interviews with providers, payers, employers, experts
- Query: What is impact of consolidation on provider-payer network negotiations?

Why Consolidation Matters

- 9 out of 10 metropolitan areas now considered "highly concentrated"
- Hospital mergers increase prices 6-40%
- Hospital purchase of physician practices increases prices 14%
- Concentration *lowers* the quality of care
- Increased prices = increased premiums
- Average family premium now >$20K/year
- Deductibles up 100% in last decade

Findings: Hospitals are Empire-building

- Motivation: build market share, increase leverage
- Using new leverage to demand price hikes
- Acquisition by large national or regional systems changes tenor of negotiations
- Spillover benefits for non-dominant hospitals
- Some constraints on market power exist, i.e.
  - Anti-trust enforcement
  - Local relationships
  - Dominant, motivated payer

Findings: Payers' Incentive & Ability to Constrain Prices Lacking

- "Middleman" economics: payers benefit from high and growing costs
- Cost containment strategies come with downsides
  - Provider termination, narrow network
  - Tiering, centers of excellence
  - Risk sharing
  - Provider-payer partnerships

Findings: Employers' Tools Limited

- Cost-shifting strategy: Maxed out?
- Wellness programs ineffective
- On-site clinics unproven
- Direct contracting requires size, infrastructure
- Access to data limited, at best

Findings: Current Public Policy Strategies Ineffective

- Anti-trust: too narrow, under-resourced, constrained by courts
- COPAs: subject to regulatory capture
- Certificate of Need laws: jury is out
- Rate-setting, purchasing cooperatives: political, practical challenges
- Access to data limited, at best

Thank you!

Sabrina Corlette, J.D.

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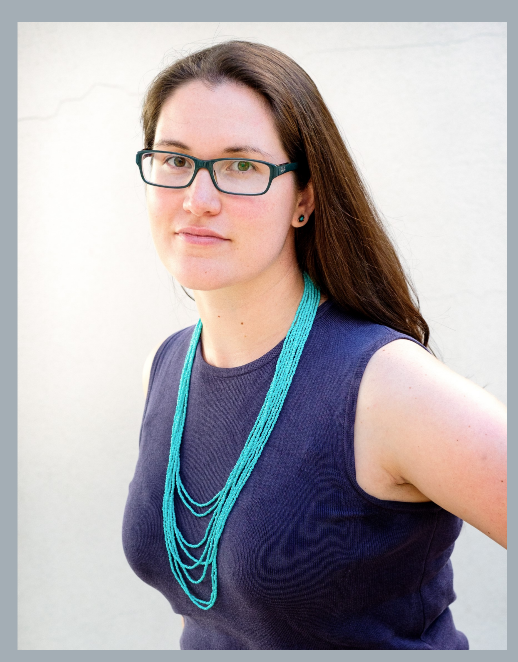

Claire O'Hanlon

Advanced Fellow
VA Center for the Study of Healthcare Innovation, Implementation & Policy

Adjunct Policy Researcher
RAND Corporation

Policy and Regulatory Responses to Health Care Industry Consolidation

Claire E. O'Hanlon, PhD
Fellow, VA Center for the Study of Healthcare Innovation, Implementation & Policy
Adjunct Policy Researcher, RAND Corporation

Altarum Healthcare Value Hub Webinar

October 25, 2019

Acknowledgments and Disclaimer

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The contents do not represent the views of the U.S. Department of Veterans Affairs or the United States Government.

Strategy 1: Antitrust prevents consolidation

Federal Trade Commission/Department of Justice are law enforcement

Many deals not valuable enough to reach regulatory threshold

Limited resources and evidence base

Outcomes in court are unreliable

Strategy 2:
Remove incentives to consolidate

Usually through Medicare payment policy

Examples:

- Facility fees for hospital outpatient department visits
- 340B drug discount program

Strategy 3:
Focus on outcomes, not consolidation itself

Strategies 1 & 2 do not address consolidation that has already occurred

Non-Federal players addressing negative impacts of consolidation

Examples:

- Increased prices in northern California (Sutter)
- Reduced access in western Pennsylvania (UPMC)

Case study 1:
Higher prices in northern California (Sutter)

California Attorney General sued Sutter

Antitrust argument was hospitals could steer and tier

Sutter instituted all-or-nothing contracting

Preliminary settlement as of last week

Lesson 1:
States try to address insurance contracting

Insurance regulated at state level

States could prohibit all-or-nothing contract clauses

Insurers would have more latitude to steer and tier

Limitation: wouldn’t apply to self-insured plans (ERISA)

Case study 2:
Reduced access in western Pennsylvania (UPMC)

UPMC refused to contract with Highmark

State brokered consent decree

Pennsylvania Attorney General sued UPMC over non-profit status

Pennsylvania Representative introduced “any willing insurer” legislation

Local groups and individuals applied pressure

UPMC and Highmark agreed to 10-year contract

Lesson 1 (again!): States try to address insurance contracting

Insurance regulated at state level

States can institute any willing insurer / any willing provider

Basically amounts to binding arbitration to come to a contract

Limitation: wouldn’t apply to self-insured plans (ERISA)

Lesson 2:
State/local attempts to use non-profit status

City of Pittsburgh sued over charitable status

Pennsylvania Attorney General sued over charitable status

Federal laws (e.g. ACA) specify some rules for non-profit hospitals

Limitations: changes could affect other non-profit organizations

Lesson 3:
Local groups and leaders apply pressure

SEIU organized postcard campaign to demonstrate public opinion

Paul O’Neill asked UPMC board for support of leadership in writing

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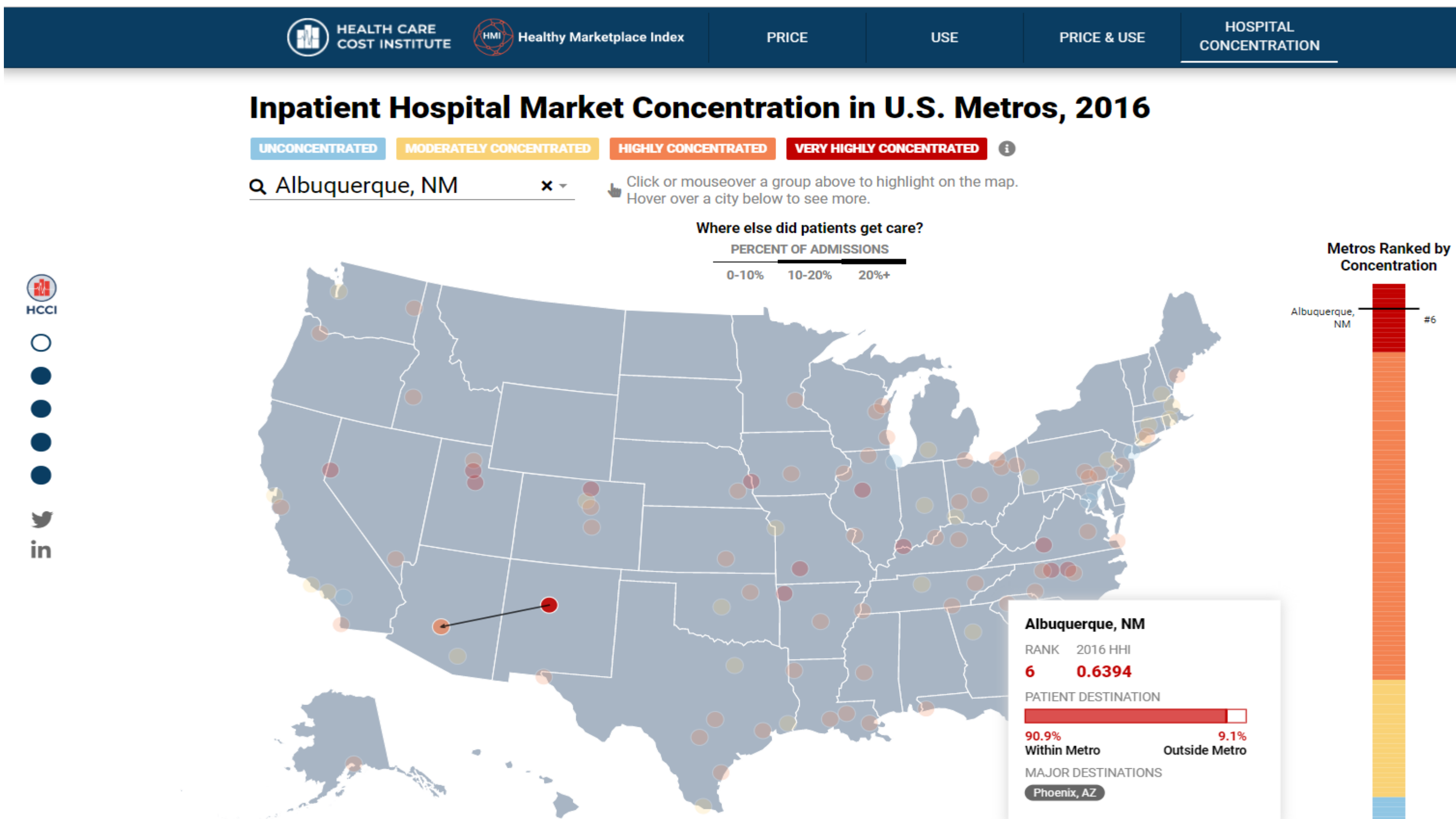
Questions for our Speakers?

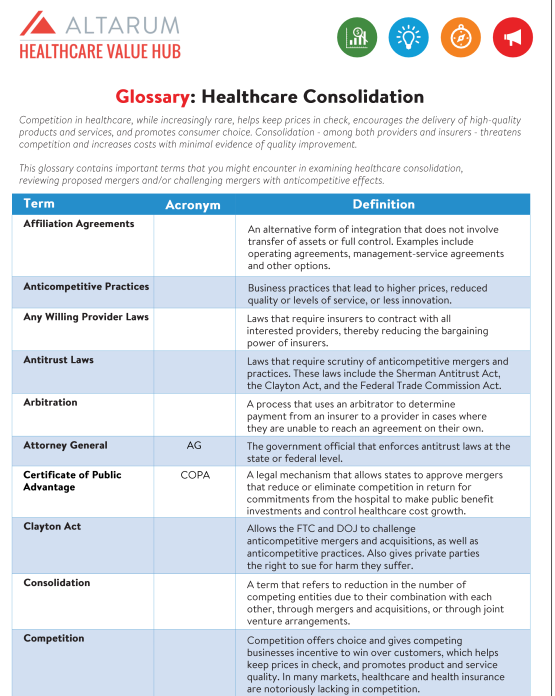
- Use the chat box or to unmute, press *6
- Please do not put us on hold!

How concentrated is YOUR market?



https://www.healthcostinstitute.org/research/hmi/hmi-interactive#HMI-Concentration-Index

Resources from the Hub



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When Antitrust Fails: Limiting Consumer Harm from Healthcare Consolidation

Competition in healthcare, while increasingly rare, helps control prices, encourages the delivery of high-quality products and services, and promotes consumer choice. However, antitrust laws designed to preserve competition have been largely ineffective since the 1990s, and persistent consolidation among providers and insurers has contributed to high (and rising) healthcare costs. As a result, states have relied upon alternative approaches to mitigate anti-competitive effects after mergers occur. This brief describes these efforts and identifies additional strategies to prevent future consolidation.

What are Antitrust Laws and Who Can Enforce Them?

Antitrust laws aim to preserve the benefits of competition in healthcare markets by prohibiting certain anti-competitive behaviors. Federal antitrust laws prohibit three categories of conduct that undermine competition:

- agreements by two or more businesses not to compete, or to limit competition;
- efforts by one or more companies to undercut competition by others in order to secure a monopoly; and
- mergers (or acquisition of business assets) that would significantly reduce competition.

Each of these categories has specific requirements and limitations reflecting the interpretation of the law by the courts. These laws can be enforced by the U.S. Department of Justice, the Federal Trade Commission and by states' attorneys general. Most states also have their own versions of antitrust law, enforced by the state attorney general.

What Happens When Mergers and Acquisitions are Allowed to Proceed?

Studies have found that antitrust laws are generally under-enforced. For a variety of reasons, many mergers and acquisitions are allowed to move forward, forcing regulators to grapple with the subsequent anti-competitive effects.

In the healthcare sector, antitrust activity primarily focuses on mergers between competitors in a single market (a.k.a., horizontal mergers). However, evidence is mounting that mergers between organizations in different markets (i.e., cross-market mergers) and mergers between organizations at different stages of the supply chain (i.e., vertical mergers) can also have negative implications for consumers.

Current Evidence on Healthcare Consolidation

Healthcare organizations typically argue that mergers improve efficiency and create economies-of-scale, improving quality and reducing costs. Yet little reliable evidence supports this claim. In fact, ample evidence demonstrates that healthcare mergers increase prices and that less competition may lead to lower quality. Mergers may also negatively affect other important aspects of the healthcare system, such as the healthcare workforce, health systems' responsiveness to community concerns and access to care.

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www.healthcarevaluehub.org/Consolidation

www.healthcarevaluehub.org/When-Antitrust-Fails

Other Resources

- Six Georgetown CHIR Case Studies on Provider Consolidation
- Health Affairs, ***What Can State Regulators And Lawmakers Do When Federal Antitrust Enforcement Fails to Prevent Healthcare Consolidation?***, Claire O’Hanlon

Thank you!

- To Our Speakers, Sabrina Corlette and Claire O’Hanlon
- Robert Wood Johnson Foundation

December webinar:

- **High Healthcare Costs and the Sale of Medical Debt – Is there a Connection?** Date to be announced!

Also, LET'S GO NATS!