

Kentucky Strategies to **Address Consolidation and Promote Competition**

Consolidation Oversight

Consolidation oversight refers to the processes by which state regulators review mergers and acquisitions of health care entities to ensure they do not harm competition or increase consumer costs. This section examines whether state law or statutes require increased oversight of hospital consolidation transactions that exceed federal notification requirements, such as whether the state has the authority to approve, reject, or impose conditions on health care transactions to protect affordability and competition or if the state review standards require regulators to assess the impact of a consolidation on health care prices and affordability, not just market concentration. Specific strategies examined include:

- Transaction Notification Requirements

- Authority to Modify or Reject Consolidation Transactions

- Affordability Criteria Included in Transaction Review

Facility Fee Limits

Facility fees are charges for services provided in outpatient and physician office settings that hospitals own. These fees are becoming increasingly more common as the rate of health system consolidation has accelerated. As hospitals acquire more outpatient practices, these fees are increasingly applied, raising patient costs and disproportionately affecting communities already facing financial challenges, such as rural and minority populations. States may prohibit facility fees outright, or impose other regulatory mechanisms such as facility transparency laws, requiring hospitals to disclose facility fees separately from professional service charges, or establishing limits on patient cost-sharing for facility fees. The strategies examined in this section include:

- Prohibitions on Facility Fees

- Facility Fee Transparency Laws

- Limits on Facility Fee Cost-Sharing



Anti-Competitive Contract Provisions

Anti-competitive contracting is a pattern of contracting between health care providers and insurers where one party gains unfair advantages over potential competitors. States can enact regulations that limit dominant health systems from abusing their market power in ways that increase prices. This section evaluates whether states prohibit four types of anti-competitive contracting practices in the health system, including:

Restrictions on All-or-Nothing Contract Provisions: These clauses require plans to contract with all providers in a health system or none of them, even if those providers are low-value or high-cost.

Restrictions on Anti-Tiering and Anti-Steering Contract Provisions: These clauses require insurers to place favored providers in higher tiers regardless of cost or quality (anti-tiering) and restrict directing patients to higher value care from competitors (anti-steering).

Restrictions on Most Favored Nation Clauses: These clauses require health systems to agree to not to offer lower prices to competing insurers, preventing them from providing services at a lower price. These provisions may allow insurers and providers to collude to raise prices.

Restrictions on Physician Non-Competes: Physicians noncompete clauses restrict providers ability to work at other health systems in an area, minimizing providers ability to practice medicine.



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Consolidation Oversight

Policy	Status as of June 2025	Summary
Transaction Notification Required	 Requires health systems or providers to notify the state of consolidation transactions	Kentucky law requires participating entities notify the Cabinet for Health and Family Services prior to the acquisition of any licensed health facility.
Authority to Modify or Reject Consolidation Transactions	 Has authority to approve, set conditions, or disapprove consolidation transactions	The Certificate of Need program has authority to approve or disapprove acquisitions if the arrangement will require a significant capital expenditure or if clinical services or bed capacity will be substantially changed as a result of the acquisition. Acquisitions of certain university-affiliated acute care hospitals must also receive approval from the General Assembly by means of an act or joint resolution explicitly identifying and authorizing the acquisition.
Affordability Criteria included in Transaction Review	 Does not include consumer affordability or price growth in review criteria, approval conditions, or both	



State Has Active Policy or Program



Policy or Program Partially Implemented



State Does Not Have an Active Policy or Program



No Source, or Limited Information Found

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Facility Fees

Policy	Status as of June 2025	Summary
Prohibits Facility Fees	 State does not prohibit providers from charging any facility fees	If more than one procedure is performed during a surgical session, an Ambulatory Surgical Center may charge a facility fee for each procedure performed not to exceed 150% of the facility fee charged for the primary procedure.
Facility Fee Transparency Laws	 State does not require providers to disclose facility fees to consumers, requires off-campus outpatient departments to identify the physical location where care was provided on claims forms, or both	
Limits Cost-Sharing for Facility Fees	 The state has no laws that limit the amount a patient may be billed out-of-pocket for facility fees	



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Policy or Program Partially Implemented



State Does Not Have an Active Policy or Program



No Source, or Limited Information Found

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Anti-Competitive Contract Provisions

Policy	Status as of June 2025	Summary
Restricts All-or-Nothing Contract Provisions	 No law restricting All-or-Nothing contract provisions	
Restricts Anti-Tiering and Anti-Steering Contract Provisions	 No law restricting Anti-Tiering or Anti-Steering contract provisions	
Restricts Physician Noncompete Clauses	 No statutes limiting physician non-competes	Kentucky law prohibits healthcare staffing agencies from using noncompetes for their temporary direct care staff, with this restriction clarified in a 2023 amendment to apply specifically to contracted or employed direct care staff.
Restricts Most-Favored Nation Contract Provisions	 Law restricts Most Favored Nation contract provisions	Kentucky bans Most Favored Nation clauses in healthcare contracts, which prohibit guaranteeing an insurer the best rates. However, exceptions may be granted if the parties involved are able to challenge the presumption that an MFN is anti-competitive and if the Commissioner determines that the insurer's market share is nominal.



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No Source, or Limited Information Found

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