

Health Care Alert!

Bankruptcy Is Not An Option

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Agenda



- Setting the Stage: Health Care Systems in Crisis?
- Understanding Transformation and Transformative Potential
- Transformation and Current Regulatory Frameworks

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Considerations



- Hospital or other provider closure is often economically and politically unpalatable, even when a provider experiences financial distress
- Increasingly, it is the ability to transform how a provider approaches care delivery that should differentiate potential buyers
- Antitrust evaluation of realities for hospitals in the merger review, COPA, and other frameworks can take account of the critical importance of transformation
- How should parties approaching these regulators adjust their advocacy?

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Setting the Stage: Hospitals and Other Providers in Crisis?

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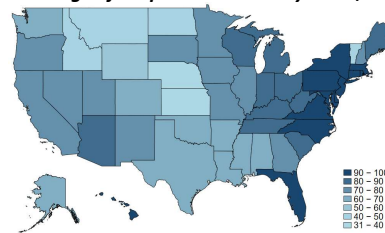
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Health systems are the most common form of healthcare delivery in the United States

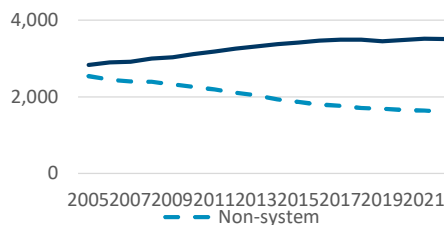


- As of 2023, 76% of the 4,733 US general acute care hospitals were affiliated with one of 639 health systems
- Systems are prevalent across the country – in 44 states, 60% or more of the state's hospitals are affiliated with systems
- The number of community hospitals affiliated with health systems increased by 24% between 2005 and 2022

Percentage of hospitals in health systems, 2023



Count of hospitals in health systems, 2005 - 2022



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Rural and standalone hospitals face growing risk of closure



- Hospital operating margins in the U.S. were 8% lower in 2024 than in 2021.
- To date in 2025, two hospitals and one health system have filed for bankruptcy, following five hospitals in 2024 and 12 in 2023.
- Between 2012 and 2024, 142 rural hospitals closed, and one-third of rural hospitals are currently at risk of closure.
- Over half of the rural hospital closures were independent rural facilities, which often lack access to capital to address aging infrastructure or for investments in new technologies.

Rural hospitals closures, 2012-2024



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Trends in Shortage of Hospital Beds



- February 2025 study in Journal of the American Medical Association projects that *“national hospital occupancy will exceed 85% by 2032, a critical threshold where basic hospital operations can become dysfunctional and even unsafe.”*
- Failure to maintain and grow the number of hospital beds have real consequences, according to JAMA commentary:
 - *“Since the beginning of the COVID-19 pandemic, media reports and epidemiological analyses have documented desperate shortages of available hospital space and the associated excess mortality.”*

• Source: Leuchter RK, Delarmente BA, Vangala S, Tsugawa Y, Sarkisian CA. Health care staffing shortages and potential national hospital bed shortage. *JAMA Netw Open.* 2025;8(2):e2460645. doi:[10.1001/jamanetworkopen.2024.60645](https://doi.org/10.1001/jamanetworkopen.2024.60645)

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Trends in Hospital Bankruptcy Filings



- 2024 saw five hospital bankruptcy filings, down from twelve in 2023
- However, the Steward Health Care System filing affected 31 individual hospitals and was the largest filing in 30 years
- These numbers may under-report hospital closures and failures as they do not include
 - Broader system shifting volume to other facilities
 - Receiverships
 - Decision to close due to simple lack of viability, no opportunity to sell or restructure

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Trends in Other Provider Bankruptcy Filings



- Physician practices and clinics were also subject to increasing bankruptcy trends in 2024
- Filings in that sector are at the highest level since 2018: 10 filings in 2024 up from average of 4 per year over 2019-2023 and only one in 2021
- Filings in the Senior Care sector also remain at a high level, with 11 filings in 2024 and 15 in 2023

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Role of Antitrust Review in Addressing the Crisis?



- Commentary on the issue tends to draw a direct line between M&A activity generally and the shortage of capacity:
 - “Mergers and acquisitions often result in reduced acute hospital capacity because of hospital closures, the conversion of short-term acute care beds into long-term acute care or skilled nursing capacity, and operational economies of scale that eliminate any flexible capacity.”
- Concern about business model, structure of buyers present as well.
- This relationship should concern antitrust regulators reviewing transactions with a goal of avoiding closures— but not all M&A is created equally.
- What if regulators prioritized assessing the transformative potential of M&A?
- Source: February 2025, Commentary, [Alexander T. Janke, MD, MHS, MSc^{1,2}](#); [Arjun K. Venkatesh, MD, MBA, MHS^{3,4}](#) [Understanding and Addressing the US Hospital Bed Shortage—Build, Baby, Build](#) | [Health Policy](#) | [JAMA Network Open](#) | [JAMA Network](#)

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Current Enforcer Perspectives



- Federal Trade Commission comment in Union Hospital, Terre Haute Regional combination
 - Urged Indiana Department of Health to deny application to merge— first in 2024 and again in 2025, focused on fact that parties would have 74% of commercially insured inpatient hospital services, effects on labor
 - Rejected parties’ 2025 claim that Terre Haute was likely to close in absence of the transaction
 - Took opportunity to recount transactions where “failing/flailing firm” arguments were presented— and parties survived despite deals not moving forward
- State regimes (e.g., Oregon) have expedited review where failure is imminent

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Understanding Transformation and Transformative Potential

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Other transforming industries provide lessons for health care transformation



Industry	Key Lessons for Healthcare
Banking	Personalization, 24/7 access, secure digital trust
Airlines	Predictive operations, dynamic resource use, loyalty programs
On-Demand Transport (Uber, Lyft, etc.)	Real-time logistics, decentralized care, transparency
Retail/E-commerce	Customer-first mindset, integration, feedback loops
Education/edTech	Scalable learning, hybrid models, health self-education

Industries such as banking, airlines, and retail have undergone massive transformation through technology deployment, customer-centric strategies, and operational innovation.

Bold/blue items illustrate areas where transforming industries require influx of capital to build, support and scale the next business models

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Emerging healthcare technologies are reshaping how care is delivered, accessed and financed



Technology	Benefit	Est. U.S. Annual Investment
Hospital at Home	Lower inpatient cost, higher patient satisfaction	\$1.5–2B
Virtual ICU	Mortality reduction, extend intensivist reach	\$1B
Remote Monitoring	Reduce chronic disease costs, early alerts	\$3–5B
AI Consumer Advisor	Self-triage, ED avoidance, navigation	\$1–2B
AI for Physicians	Reduce burnout, automate tasks	\$3–6B
Clinical Decision Support	Avoid adverse events, optimize care	\$2–3B
Virtual Mental Health	Access to behavioral health, cost control	\$5–6B
Data Platforms / HIE	Seamless care, research support	\$3–4B
AI Radiology / Imaging	Speed + accuracy, workforce support	\$2–3B
SDOH + Coordination	Address root causes to health issues	\$800M–1.2B

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Better regulatory frameworks can promote goals of healthcare transformation and stability



Logic for change

- Current evaluation criteria discourage strategic, long-term investments
- Financially distressed systems need ability to modernize
- Transformation is essential to address health disparities, digital care, and resilience
- Regulators and rating agencies should reward future-forward investments

Example modernizing criteria

- Emphasize community health, access, and equity—not just price effects
- Credit investments in hospital-at-home, virtual care, and social drivers of health
- Expedite review for distressed rural/safety-net hospitals
- Require post-merger community benefit plans
- Include impact on underserved populations and place-based outcomes

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Traditional vs. Transformative

A shift in priorities could enable more market stability and benefit to consumers/patients



Boards Evaluators Rating Agencies

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Transformation and Current Regulatory Frameworks

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Importance of Antitrust Enforcement in Healthcare



- Why so much focus on healthcare consolidation (above all)?
 - Healthcare is an essential service that is not optional.
 - Consolidation may result in highly concentrated markets with dominant providers.
 - Dominant providers can demand higher prices for services, reduce accessibility of services to consumers.
 - Dominant hospital providers can restrict privileges or OR time for independent physicians in favor of their own employed physicians.
 - Dominant vertically integrated health systems with their own health plans can refuse to contract with other health plans.

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Importance of Antitrust Enforcement in Healthcare



- Why so much focus on healthcare transaction activity?
 - Dominant providers can also take steps to maintain their dominance and disadvantage their competitors through anticompetitive contracting practices with health plans.
 - Require prohibitions on tiering and steering to lower cost providers
 - Require MFNs where no other provider can get a better price than the dominant provider
 - Require all or nothing contracting where a health plan must contract with all of a health systems providers in order to get access to any of the providers.
 - Require gag clauses that prevent health plans from providing price transparency from members
 - Require exclusivity in contracts

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Multiple Agencies Review Healthcare Transactions



- Federal enforcers:
 - Federal Trade Commission (FTC)
 - U.S. Department of Justice (DOJ)
- Other federal partners:
 - U.S. Department of Health and Human Services (HHS) also “in the mix” via memoranda of understanding and liaisons to federal antitrust enforcers
 - White House has urged and supported greater enforcement in health care transactions space, and in 2025 required a direct liaison from the FTC to the White House

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Multiple Agencies Review Healthcare Transactions



- State enforcers/regulators:
 - State Attorneys General
 - Antitrust/Consumer Protection
 - Charities
 - Healthcare
 - State Insurance Departments
 - State Health Departments
 - State Specialty Agencies (e.g., Massachusetts Health Policy Comm.)

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- State may shield potentially anticompetitive activity from federal antitrust laws
 - State and municipal authorities are immune from federal antitrust lawsuits for actions taken pursuant to a clearly expressed state policy that, when legislated, had foreseeable anticompetitive effects
 - When a state approves and regulates certain conduct, the state is immune from investigation and possible prosecution by the FTC/DOJ
- Requirement that:
 - State must clearly articulate an intention to displace competition and the operation of the antitrust laws
 - State must actively supervise the policy or activity
- Key cases:
 - *Parker v. Brown*, 317 U.S. 341 (1943)
 - *North Carolina State Board of Dental Examiners v. FTC*, 574 U.S. ____; 135 S. Ct. 1101 (2015)

State Action In Action – COPA's



- Certificates of Public Advantage (COPAs) are regulatory regimes adopted by state governments intended to displace competition among healthcare providers, and immunize mergers and collaborations from antitrust scrutiny by federal enforcers
- Basis for states granting a COPA typically that public benefits outweigh potential competitive harm
- FTC is philosophically opposed to COPAs
FTC focus: Effects of COPAs in terms of price, cost, and quality of healthcare services; access to healthcare services; innovations in healthcare delivery models

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Alternatives Transaction Paths



- Is transformation (including economic) possible through alternative structures with less antitrust risk?
 - Joint Operating Agreements
 - Joint Ventures (technology, specialty care)
 - Clinical affiliations
 - Value based care arrangements

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Questions?



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