

April 21, 2022

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

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

Dear Chair Khan and Assistant Attorney General Kanter:

Thank you for the opportunity to provide comments on the Federal Trade Commission's (FTC) and the Department of Justice's (DOJ) Request for Information (RFI) on Merger Enforcement. We greatly appreciate your interest in addressing the problem of high health care prices driven by industry consolidation and anticompetitive practices.

The Purchaser Business Group on Health (PBGH) is a nonprofit coalition representing nearly 40 private employers and public entities across the U.S. that collectively spend \$100 billion annually purchasing health care services for more than 15 million Americans and their families. Our members work with us to identify needed system reforms to achieve optimal quality outcomes and affordable care.

The problem of high health care costs is widely recognized and well-documented. Employers and employees have continued to suffer under the burden of [high and ever-increasing health insurance premiums](#), which crowd out business investment, job growth and wages. Many experts have pointed to [anticompetitive conduct and industry consolidation as a driver of high health care costs](#). Over the past 10 years, PBGH and its members have directly observed the impact of anti-competitive practices, increased market power and high prices in California and other markets, as evidenced by the recent [settlement with the Sutter Health System](#). Many PBGH members based in California are members of the class action lawsuit against Sutter.

PBGH strongly believes that healthy competition among hospitals, integrated health systems and provider groups is essential to providing lower costs, improved quality and better value. Unfortunately, there is inadequate competition in many markets, and government must step in to ensure that health care markets function appropriately in the public interest. Furthermore, employer purchasers and consumers seldom have

the information they need to make informed choices, which is essential for a functioning market.

We would like to offer the following recommendations, which are based on PBGH members' experience with the Sutter Health System and other dominant hospitals and providers across the country. In addition, our recommendations are informed by our ongoing collaboration with policymakers, academic researchers, other business organizations and consumer groups that share our interests and concerns. We understand that some of these recommendations would require legislative action, but we believe they are an essential component of a comprehensive strategy to address the problem of high prices resulting from industry consolidation and anti-competitive practices. We are sharing those recommendations with the FTC and DOJ in the hope that you will suggest these changes to Congress.

- **Update and revise the Statements of Antitrust Enforcement in Health Care.** The existing Statements were published in 1996, and the health care market has evolved dramatically since then. Specifically:
 - The revised Statements should address the problems of cross-market mergers, vertical acquisitions and serial acquisitions that have been used to gain market power and raise prices for employer purchasers and consumers.
 - Furthermore, the scope of antitrust oversight should be expanded to include acquisitions of health providers by health insurance plans and private equity firms.
 - In addition, the revised Statements should address the problem of anti-competitive contracting practices by hospitals and providers, including “anti-tiering” and “all-or-nothing” clauses.
- **Expand the reporting of proposed health care transactions by lowering the asset value and revenue thresholds.** The existing reporting requirements under the Hart-Scott-Rodino Act have been insufficient to monitor small and mid-sized transactions, such as those involving ambulatory surgery centers and serial acquisitions which cumulatively can result in significant industry consolidation and market power.
- **Strengthen antitrust enforcement** by changing in the “burden of proof” for demonstrating public benefit. Under this guideline, entities that are proposing to merge or acquire other entities would need to demonstrate – not just promise – that the transaction would not result in higher costs, impaired quality, increased inequities or reduced access to services.
- **Increase the budget for the FTC and DOJ to monitor, investigate and enforce antitrust provisions.** According to many experts, the current resources among the enforcement agencies is woefully inadequate to monitor the increasing volume and complexity of problematic health care market transactions. This has

enabled many transactions to move forward without sufficient review, which has resulted in accelerated industry consolidation. We applaud the Administration's budget proposal for FY 2023, which includes substantial increases in staffing for the FTC and DOJ.

- **Establish a database of health care industry transactions and ownership.** This would be of enormous value to enforcement agencies at the federal and state levels, as well as for policymakers, academic researchers, employer purchasers and the general public.
- **Require full transparency on prices, quality and equity,** including standardized measures of quality (especially patient-reported outcomes), patient experience, appropriateness, total cost of care and equity for all providers. This is needed to assess the potential impact of proposed transactions.

Sincerely,

A handwritten signature in black ink that reads "William E. Kramer". The signature is written in a cursive, flowing style.

William E. Kramer
Executive Director for Health Policy