



Health Care

New critics of Hershey-Pinnacle merger cite higher costs, less competition

By **Lenay Ruhl**, June 14, 2016 at 7:35 AM



(Photo / File)

Government agencies are continuing to build an argument against the merger between Penn State Health Milton S. Hershey Medical Center and PinnacleHealth System as a legal battle over the union continues.

The Federal Trade Commission and the Pennsylvania Attorney General's Office rallied a group of allies to research and file briefings against the merger, based on their expertise.

The three "friends of the court" briefings were filed by a group of economists, 12 other states and the Association of Independent Doctors.

Each group had its own reasons to oppose a merger between the Dauphin County health systems.

Whether the briefings will carry any weight in the U.S. Third Circuit in Philadelphia in **late July** depends on whether the Circuit Court finds the arguments persuasive, according to Michael Greer, a health care lawyer in the Indianapolis office of law firm Hall Render Killian Heath & Lyman.

The case was first heard in the U.S. District Court for the Middle District of Pennsylvania this spring. Judge John E. Jones III struck down the FTC's attempt to block the merger.

The FTC decided to fight that court ruling, and now there is an injunction **preventing the two health systems from merging** until the case is heard by the Circuit Court.

A hearing is scheduled for the week of July 25.

If the three new briefings simply rehash what the FTC and the Attorney General have already said, it will likely not be very persuasive. If the entities present new arguments, then the briefs will be given more weight, Greer said.

District Court decision is outdated

In their brief, the economists claimed that the reasoning used by Jones in his decision was outdated.

They focused specifically on how Jones assessed the geographic market in which the health systems would be competing against others.

Jones said FTC used an overly narrow market of Dauphin, Cumberland, Perry and Lebanon counties.

The FTC claimed that people in the Harrisburg area mostly seek health care close to home. The court disagreed, noting that the health systems draw patients from outside those counties, and that people from as far away as Lancaster County travel to these health systems, particularly Hershey Medical Center.

As a result, the court found that the merged system would face adequate competition.

Economists counter that Judge Jones' reasoning was incomplete. He looked only at patients coming into the market, not patients leaving it for other competitors.

Less independent doctors reduces competition

A physicians group also brought a new point to the table.

The group focused on the merger's impact on independent physicians.

Independent physicians are declining as more doctors join growing hospital and health system groups.

As a result, health systems face less competition, according to the Association of Independent Doctors, or AID.

AID was established in 2013 to give independent doctors a voice against hospital-physician mergers.

It said the share of independent doctors fell from 57 percent in 2000 to 36 percent in 2013.

Reduced competition could increase prices, diminish health care quality in the region and ultimately leave patients little choice when it comes to where to go for care, AID said.

Higher health care costs could have nationwide impact

The states examined the merger by looking at it from the outside.

After they merge, Hershey Medical Center and PinnacleHealth could weaken efforts by health insurers to keep costs affordable. Insurers can leverage competition between hospitals to control costs for treatment.

Judge Jones' decision failed to examine the impact of this dynamic, according to the states.

"This is a key aspect of the merger that affects the pricing of the provider networks marketed to self-insured and fully-insured employers," the states said. The 12 states are Idaho, Washington, California, Connecticut, Iowa, Illinois, Massachusetts, Maine, Minnesota, Mississippi, Montana and Oregon.

A recent study in California examined how health care costs increased after the merger of two hospitals. The states referenced this study and others to show that a merger between Hershey Medical Center and PinnacleHealth would impact health care prices not just in Pennsylvania, but across the U.S.

From the beginning, the case has drawn national attention because its **outcome could set a precedent** for cases involving health system mergers going forward.

Observers fear that if a lower court's ruling in favor of the merger is left to stand, it will empower more health systems to join forces, jeopardizing competition in markets across the country.

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