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## States, economists and doctors tell court: Don't allow Hershey Medical Center-PinnacleHealth merger



TIM STUHLREHER | Staff Writer Jun 11, 2016



Penn State Milton S. Hershey Medical Center

The U.S. Federal Trade Commission and the Pennsylvania Attorney General's Office have secured some high-powered allies in their battle to block the planned merger between Penn State Hershey Medical Center and Harrisburg-based PinnacleHealth System.

This week, a coalition of 12 states, a group of 37 top health care economists and the Association of Independent Doctors, an organization that represents almost 1,000 physicians in 14 states, filed three separate "friend of the court" briefs urging the U.S. Third Circuit to overturn a lower court decision allowing the deal to proceed.

Judge John E. Jones III **issued that initial ruling in May** in federal district court in Harrisburg, but **the FTC and the attorney general's office appealed.**



If Jones' ruling stands and the merger takes place, it will “effectively eliminate the competition in the four county, direct acute care service area,” asserts the doctor’s association, known as AID.

Evidence from other mergers indicates that if that happens, the Hershey-Pinnacle conglomerate will assert its market power and raise prices, AID said.

“Put simply, large hospital systems provide the costliest care possible,” the organization wrote.

The states’ brief says health system mergers “hinder” them “from preserving the competitive environment necessary to control the escalating cost of medical care.”

The economists, who hold faculty positions at Harvard, Yale, the University of Pennsylvania and other research universities, said Jones based his ruling “on faulty economic reasoning and “outdated methodologies that have been thoroughly studied and discredited.”

Broadly speaking, the briefs make three criticisms of Jones’ analysis:

- That his analysis of the market affected by the merger doesn’t reflect current thinking regarding the importance of nearby alternatives for patients and the primacy of hospital-insurer negotiations in price-setting;
- That Jones wrongly allowed Hershey and Pinnacle to use short-term (5- and 10-year) rate contracts with their insurers to get around legitimate concerns regarding the merger’s long-run anti-competitive potential.
- That he erroneously accepted Hershey and Pinnacle’s claims of increased efficiency as justification for the merger.

A Third Circuit hearing in the case is scheduled for late July.

According to health industry media, it has been at least 20 years since the FTC continued legal action against a hospital merger after losing in district court.



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