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The Hospital Industry's No Good, Very Bad Day

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Senators Josh Hawley and Richard Blumenthal rarely agree on anything. But at a hearing Wednesday of the Senate Antitrust Subcommittee, the Missouri Republican and the Connecticut Democrat were practically finishing each other's sentences on an issue that has often been ignored inside the halls of Congress: the deleterious effects of hospital consolidation throughout the United States.

Hawley, who in January helped incite a violent insurrection on the U.S. Capitol, sounded the alarm over Wall Street financing hospital mergers, especially in small towns. "I'm concerned about the possibility that private equity and their intervention here is actually helping drive consolidation in a way that is unhealthy in this industry and can be particularly harmful for rural communities, like many that make up my state," he said. Blumenthal, a former prosecutor who has pushed for a criminal investigation of Donald Trump's misconduct, expressed the same concerns. "Large hospital chains under private equity management have been forced to sell off and close hospitals to meet their debt burden," he declared. "The incentives and self-interest of the private equity funds drive the finances rather than respect and care for the patients who are there or the professional staff who ensure quality care."

The takeaway from the hearing was clear: While just a few years ago, hardly anyone identified consolidation in the health care "provider market" (hospitals, doctor groups, etc.) as a driver of the rising costs of health care and other ills plaguing the industry, something of a bipartisan consensus has emerged that recognizes the trend as alarming.

There were even unlikely bedfellows among the witnesses. Michael Cannon, the director of health policy studies at the libertarian, Koch-funded Cato Institute, noted that "provider consolidation" was an "important contributor" to exorbitant costs and low-quality care. At the same time, Ahmer Qadeer, director of strategic initiatives at the Service Employees International Union (SEIU), castigated hospital consolidation for its exploitative impact on workers. "There is substantial empirical evidence that when employment is concentrated among fewer firms and workers have fewer employment options, it leads to lower wages," he told the senators.

In fact, only one speaker was willing to argue in favor of hospital mergers: Rod Hochman, chair of the American Hospital Association (AHA), the industry's main trade group. "Integration is necessary to assure that both the human and financial capital is available to stand up, reconfigure, or even reimagine the services needed and how best to deliver them in a field facing increasing competition," he said.

The lawmakers didn't seem to buy it. Democratic Senator Amy Klobuchar, who chairs the subcommittee, cited a 2018 study that found that hospital prices are 12 percent higher in monopoly markets compared to those with four or more competing hospitals. She added that hospital mergers "can also reduce incentives to innovate in the way they deliver care." Hawley, too, scoffed at Hochman's argument. "Hospital mergers lead to or can enhance monopsony power in labor markets … this can depress wages below the efficient level, distort hiring decisions, and in the long run, harm incentives for investments in human capital," he said.

The Senate's bipartisan recognition of the problems caused by hospital consolidation is overdue. For years, mergers in the hospital sector, which makes up a third of all health care spending, have been a catalyst behind the nation's rising health care costs. Average premiums have increased more than twice as fast as wages since 2009 and deductibles have nearly doubled. Health care spending per person in the U.S. is roughly twice that of other wealthy nations, with no appreciable differences in outcomes.

Yet while Hochman, the AHA chair, seemed to be outgunned at the hearing, his organization remains as powerful, or more so, than many better-known lobbying groups like the NRA and AIPAC. AHA is a substantial donor to both Democrats and Republicans in Washington, including Joe Biden, both the Democratic and Republican senatorial and congressional campaign committees; and to party leaders like Nancy Pelosi, Chuck Schumer, Kevin McCarthy, and Mitch McConnell, and scores of other members of Congress, according to data from the Center for Responsive Politics. In 2017, APCO Worldwide's annual TradeMarks survey labeled AHA the number one trade association for advocacy effectiveness.

The group's power was on display as recently as last year, when Congress, in a similar moment of bipartisan reform zeal, tried to take on an especially scandalous aspect of the hospital cost problem: "surprise billing." This typically happens when a patient checks in to a hospital covered by their insurance but gets treated by doctors (often working for outside physician groups financed by private equity) who don't accept that insurance, and then wind up with whopper bills they have to pay out of pocket. As Daniel Block has reported in the *Monthly*, AHA was among a handful of organizations that managed to temporarily derail legislation to eliminate surprise billing, before ultimately making sure that the reforms that did pass were weak.

Hospitals are also currently enjoying extra clout from the public's admiration for the role they—or at least their doctors and nurses—played in fighting the Covid-19 pandemic. Lawmakers funneled more than $275 billion to hospitals last year.

But the heroism of the hospital staff aside, elected officials and thought leaders on the right and left have caught on to the pernicious consequences of hospital mergers—and now are pursuing remedies. Just last week, the antitrust subcommittee unanimously advanced a bill, introduced by Klobuchar and Iowa Republican Chuck Grassley, that would update filing fees for all mergers for the first time since 2001. Meanwhile, the committee is considering other bills that Klobuchar has introduced to more tightly restrict mergers and acquisitions. In other words, momentum is swinging against concentration more broadly, which could, as a consequence, have considerable impacts on the hospital sector in particular.

While the legislation Klobuchar and others are championing may well slow the pace of future merger activity, it won't do much to unwind the already deep and damaging level of concentration in the health care sector. Indeed, nearly 75 percent of all American hospital markets are "highly concentrated," according to a 2019 study by the Health Care Cost Institute. Breaking up hospital monopolies will require, among other things, stronger antitrust actions from agencies like the Federal Trade Commission. One of the witnesses Wednesday, Brian Miller, a former FTC official, said that agency employees work 14-hour days and "regularly pass on transactions due to lack of staffing." For that reason, one of Klobuchar's bills would beef up federal antitrust enforcement at the FTC and the Department of Justice antitrust division, so that they could take on more cases.

If Wednesday's hearing is any indication, lawmakers are eager to crack down on hospital monopolies. But if they want to bring about reform, they should know what they are up against—and better get ready for a hell of a fight.