

Post-Convening FACT SHEET

Milbank Memorial Fund

STATE LEADERSHIP NETWORK

State Opportunities for Health Care Market Oversight – Virtual Convening of Milbank State Leadership Network

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Introduction

State policymakers are seeking tools to address increasing health care market consolidation, which can increase health care costs and weaken health care access and quality for patients.

PANELISTS

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The Source of Healthcare Price and Competition

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Traditional antitrust tools that fall under the purview of the states' attorneys general (AG) were not designed to address novel forms of health care consolidation, including vertical and cross-sector consolidation of health systems and physician practices, market transactions across state lines, and the rapid entry of private equity, retail giants, and health insurers into health care provider markets. In response, some states have strengthened their regulatory approach to protect consumers and purchasers.

Presentation of Key Findings

Dr. Katie Gudiksen and Erin Fuse Brown discussed their Milbank Memorial Fund report, [Models for Enhanced Health Care Market Oversight – State Attorneys General, Health Departments, and Independent Oversight Entities](#), which outlines how some states have expanded oversight over health care transactions using one of two pathways:

- (1) Expanding the Review Authority of the AG or Other State Agency: by requiring prior notice of a broader scope of transactions and/or establishing the ability to block or impose conditions upon the transaction without a court order;
- (2) Giving Authority to Review Transactions to Additional Oversight Entities: by vesting another state entity (other than the state attorney general) with the authority to review and report on a proposed transaction's broader health care market impact.

State Health Care Market Oversight Authority

The table below shows which offices or entities states have granted new oversight authorities to and whether oversight includes the for-profit market.

		Attorney General	plus Department of Health	plus Health Care Market Oversight Entity
Notice and review (must go to court to challenge transaction under existing authority)	Nonprofit only	AZ, GA, ID, MI, ND, NH, NJ, PA, TN, VA	AZ, NJ	
	Nonprofit and for-profit	CO, HI, IL*, MA, WA*, IN*	HI, MN, NY*	MA*, CA*
Approve, approve with conditions, or disapprove (includes notice and review authority)	Nonprofit only	CA, LA, MD, NE, OH, OR, VT, WI	MA, NE, VT	
	Nonprofit and for-profit	CT, NY*, RI	CT, RI, WA, WI, NM**	OR*

* Authority includes some nonhospital transactions, including provider groups and/or private equity transactions. The authority in states without the asterisk is specific to hospitals or health facilities.

** Legislative authority given to the Department of Insurance, rather than the Department of Health, though the authority is essentially the same.

The presenters offered the following recommendations based on interviews conducted with officials and staffers in eight states that have expanded oversight authority.

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Recommendations

1. Require prior notice to state officials of proposed health care transactions.
2. Require concurrent notification and review by the AG and the health department or other health oversight body.
3. Authorize the AG or state agency to block or impose conditions upon harmful transactions without a court order.
4. Establish health care transaction review criteria to assess whether the transaction is in the public interest.
5. Have robust mechanisms for monitoring compliance with conditions, including significant penalties for noncompliance.
6. Allocate sufficient time, staffing and resources for implementation of health care market oversight programs.
7. Authorize the health department or health care market oversight entity to review and approve or place conditions upon significant health facility or service line closures.

State Experiences with Health Care Market Oversight — Working with Legislators

South Moore of North Carolina and Tracy Wertz of the Pennsylvania AG offices shared their strategies to address health care market consolidation effectively. Within the Pennsylvania AG office, for instance, antitrust, charitable trust, and health care sections all review health care transactions and consolidation in the marketplace. However, legislation will need to determine how new market oversight responsibilities will fit within the existing structure of the office or if new structures will be required. When working with legislators, they suggested that finding common ground on

issues such as the threshold for regulatory intervention and the initial reporting requirements should facilitate bipartisan support. This, in turn, could expedite the legislative process and make for the most effective legislation. They noted that the government affairs offices of the AG can play critical roles in drafting model legislation.

They also highlighted the benefit of statutes that explicitly empower AGs to pursue divestiture or other measures to mitigate adverse effects on consumers, pricing, and access to health care services.

Working with Other State Agencies

Panelists also underscored the benefit of a collaborative relationship between state AGs and relevant state agencies, such as the Departments of Health (DOH), in ensuring effective oversight of health care transactions.

The discussion highlighted the role that agencies can play in supporting AG work. Unlike AGs, oversight entities can be more transparent with the public since they are less involved with investigations or litigation. If agencies collaborate with the AG to provide relevant public reports and notice of health care transactions, they can improve public accountability and trust in the regulatory process.

Panelists emphasized that while AG review primarily focuses on legal factors and antitrust concerns, agencies can provide valuable insights into the broader impacts of health care transactions on quality and equity. By working together, state AGs and agencies can ensure a more comprehensive assessment of transaction impacts that includes factors that go beyond traditional antitrust considerations.

Gaining Support for Market Oversight through Communications

Panelists stressed the importance of identifying communities and legislators most impacted by health care transactions and engaging with them to create support for market oversight initiatives. Understanding the geographical and historical context of past transactions and community reactions was deemed crucial for tailoring outreach efforts and crafting effective policy solutions. Panelists also recommended leveraging media coverage of high-profile hospital transactions to gain support for market oversight and counter hospital pushback.

“I’m hearing partnership and communication all the way around. Communication with the federal government is needed for relationship building and notification. Communication across states is needed to understand what other states are doing on cross state entities and to build a better system within your own states. Communication between your own office and the state legislature through whatever public affairs or government relations or protocol you might have in place is necessary for good legislation, and then we have all to have a means of responsiveness to communities and to complaints that may have been put in.” — Morgan McDonald, MD, National Director of Population Health and Health Equity, Milbank Memorial Fund

The Views expressed on the panel are the views of the panelists and are not those of the Attorney General Michelle Henry, the Pennsylvania Attorney General's Office, Attorney General Josh Stein or the North Carolina Department of Justice.