



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of Policy Planning

February 11, 2025

Senator Ed Charbonneau
Chair, Health & Provider Services Committee
Indiana State Senate
200 W. Washington St.
Indianapolis, IN 46204

Re: Senate Bill 119

Dear Senator Charbonneau,

I am the Acting Director of the Federal Trade Commission's ("FTC") Office of Policy Planning. My office is charged with engaging with state legislatures, regulatory boards, and officials on competition and consumer protection principles to champion the interests of the American people. Promoting competition, spurring innovation, and lowering prices in the healthcare sector are among Chairman Andrew Ferguson's highest priorities for the FTC. I write this letter to advance those objectives.

I understand that the Indiana legislature is considering Senate Bill 119 ("SB119" or "Bill"), which would repeal the certificate of public advantage ("COPA") statute concerning hospital mergers.¹ This letter responds to your February 6, 2025, inquiry regarding the competition and consumer protection implications of SB119. I write to highlight the FTC's prior work in this area that you may find informative as you consider this Bill.

Vigorous competition among hospitals in an open marketplace provides patients with the benefits of lower prices, higher quality of care, greater access, and increased innovation; it also supports improved wages and benefits for hospital employees.² With the FTC Act and Section 7 of the Clayton Act, "Congress empowered the FTC to weed out those mergers whose effect 'may be substantially to lessen competition' from those that enhance competition."³ The FTC has considerable experience in evaluating proposed hospital, outpatient facility, and physician group

¹ Indiana General Assembly 2025 Session, Senate Bill 119 (introduced Jan. 8, 2025), <https://iga.in.gov/pdf-documents/124/2025/senate/bills/SB0119/SB0119.01.INTR.pdf>.

² See e.g., *Nat'l Soc. Of Prof. Eng'rs v. United States*, 435 U.S. 679, 695 (1978) (The antitrust laws "reflect a legislative judgment that ultimately competition will produce not only lower prices, but also better goods and services. The heart of our national economic policy long has been faith in the value of competition." (cleaned up)); FTC POLICY PERSPECTIVES ON CERTIFICATES OF PUBLIC ADVANTAGE 3-4 (Aug. 15, 2022) (hereinafter "2022 FTC Staff COPA Paper"), https://www.ftc.gov/system/files/ftc_gov/pdf/COPA_Policy_Paper.pdf.

³ *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 713 (D.C. Cir. 2001) (cleaned up).

mergers to determine whether they may substantially lessen competition and harm Americans.⁴ When warranted, the FTC has challenged these mergers in court.⁵

COPA statutes attempt to immunize hospital mergers from antitrust scrutiny, often leaving the FTC unable to challenge even mergers to a monopoly.⁶ In effect, COPA statutes protect anticompetitive mergers, and they instead impose governmental oversight and regulation in an attempt to mitigate the competitive harm. Unfortunately, the consequences of COPAs are still often harmful to consumers. As a recent FTC policy paper reports, empirical evidence on COPAs indicates that, in the long run, hospital mergers shielded with COPAs often lead to higher prices and reduced quality of care for Americans seeking healthcare.⁷ Such outcomes occur because providers shielded by COPAs often ultimately enjoy unconstrained market power.⁸ The existing research also shows that COPAs' purported benefits are flawed and unsubstantiated.⁹ For these reasons, the FTC has previously asked states with existing COPA laws to consider repealing those laws if they do not have an active COPA in place.¹⁰ And FTC staff has commended states that have repealed their COPA laws.¹¹

Currently, there is no active COPA in place in Indiana. On September 5, 2024, the FTC Commissioners unanimously voted to authorize staff to submit a public comment urging the Indiana Department of Health to deny the then-pending COPA application filed by Union Health and Terre Haute Regional Hospital in connection with their proposed merger.¹² After conducting a thorough investigation of the proposed transaction, FTC staff concluded that it “was likely to lead to higher costs and worse healthcare outcomes for Indiana consumers, as well as lower wage growth for hospital workers.”¹³ The hospitals voluntarily withdrew their COPA application in

⁴ See FTC, OVERVIEW OF FTC ACTIONS IN HEALTH CARE SERVICES AND PRODUCTS 51–91 (Jan. 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/Overview-Healthcare.pdf.

⁵ See *id.*

⁶ See FTC, *Certificates of Public Advantage (COPAs)*, FTC.GOV (noting that “COPAs immunize mergers and collaborations from antitrust scrutiny under the state action doctrine” and describing the FTC’s state-focused actions), <https://www.ftc.gov/copa>.

⁷ 2022 FTC Staff COPA Paper at 7–12.

⁸ *Ibid.*

⁹ *Id.* at 4–6.

¹⁰ *Id.* at 1. After states have COPAs in place, it may become more difficult to remove a COPA statute because doing so could also eliminate oversight of any existing COPAs. *Id.* at 8. The FTC has also consistently advocated that states not enact COPA legislation. See e.g., FTC Staff Comment to Hon. Mike Pushkin, West Virginia State Senate, Concerning S.B. 597, Intended to Exempt Health Care Providers Subject to Cooperative Agreements from the Antitrust Laws (Mar. 9, 2016), https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-west-virginia-house-delegates-regarding-sb-597-competitive-implications-provisions/160310westvirginia.pdf; FTC Staff Comment to New York State Department of Health, Concerning Certificate of Public Advantage Applications, Intended to Exempt Performing Provider Systems from the Antitrust Laws (Apr. 22, 2015), https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-center-health-care-policy-resource-development-office-primary-care-health-systems/150422newyorkhealth.pdf.

¹¹ See FTC Press Release, *FTC Policy Director Issues Statement Commending Maine’s Repeal of Certificate of Public Advantage Law* (Jun. 13, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-policy-director-issues-statement-commending-maines-repeal-certificate-public-advantage-law>.

¹² FTC Staff Submission to Indiana Health Department Regarding the COPA Application of Union Health and Terre Haute Regional Hospital (Sept. 5, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/in_copa_comment_9-5-24_public_redacted.pdf.

¹³ *Id.* at 1, 4.

November 2024—days before the decision deadline—stating an intent to file a new application at a later time.¹⁴ We understand that the same two hospitals have, just recently, reapplied for a COPA.

I attach for your and your colleagues’ review the above-referenced policy paper ([FTC Policy Perspectives on Certificates of Public Advantage](#)), [Key COPA Facts](#), and the [September 2024 FTC Staff Submission to the Indiana Health Department Regarding the COPA Application of Union Health and Terre Haute Regional Hospital](#). I hope that the FTC’s research, analyses, and findings to date concerning COPAs are valuable as you consider SB119. Please do not hesitate to contact the FTC’s Office of Policy Planning if we can be of further assistance.

Sincerely,

/s/Clarke Edwards

Clarke Edwards
Acting Director
Office of Policy Planning

Attachments

¹⁴ See Union Health, *Union Health COPA Application Update* (Nov. 25, 2024), <https://www.union.health/news/unionhealthcopaapplicationupdate>. See also FTC Press Release, *Statement Regarding Union Health’s COPA Application Withdrawal* (Nov. 26, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/11/statement-regarding-union-healths-copa-application-withdrawal>.