THE INDIANA LAWYER

Proposed legislation could impact Indiana health care mergers

March 20, 2025 | Daniel Carson

KEYWORDS **HEALTH CARE** / **M&A MONTHLY** / **MERGERS & ACQUISITIONS**

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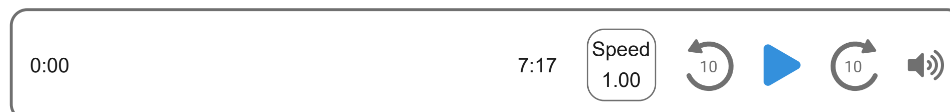

Indiana Statehouse (IL file photo)

Health care mergers and acquisitions continue to be a hot topic in Indiana, with the Legislature considering a bill this year geared toward creating more transparency and state oversight toward those deals.

House Bill 1666 passed the House in February and is still under consideration in the Indiana Senate, with lawmakers discussing and passing an amendment to the bill Wednesday at a Committee on Health and Provider Services hearing.

It remains to be seen whether that bill, as well as Senate Bill 119 — a piece of legislation that would prohibit certificates of public advantage for health care mergers opposed by federal regulators — will pass and what impact those bills might have overall on consolidation in the state's health care industry.

The Senate amendment to HB 1666 stripped much of the bill's merger and acquisitions-related language, including a section that would have created a merger approval board consisting of five people that would approve health-care deals based on certain criteria.

The version of the bill that passed the House would have required almost all health care mergers and acquisitions to be approved by a state board.

Brian Heaton, a partner in Krieg DeVault's Carmel office, testified on behalf of the Indiana Hospital Association at the Senate committee hearing.

Heaton said the association was opposed to the bill's original language and the breadth of requirements it imposed for approval of health care entity mergers.

"Without revision to House Bill 1666, or if the language was put back in in the future, Indiana would have one of the most aggressive health care approval requirements in the entire country," Heaton told the committee.

He said the hospital group believed that approval of health care transactions should be limited to a certain size and noted that a measure signed into law last year, already requires that the state Attorney General's office be notified of potential mergers.

Under that law, an Indiana health care entity that is involved in a merger or acquisition with another health care entity with total assets, including combined entities and holdings, of at least $10 million must provide written notice of the deal to the Indiana Attorney General's office at least 90 days prior to the date of the merger.

Indiana Hospital Association President Scott Tittle told The Indiana Lawyer his association was concerned with the approval process outlined in HB 1666, as it could have hampered mergers or acquisitions in a distressed situation when a merger or acquisition is necessary to maintain hospital services in a community.

"The alternative of closure has devastating impacts on patients' continuity of care and retaining our health care workforce. IHA appreciates the Senate Committee on Health and Provider Services removing those provisions from HB 1666," Tittle said.

In announcing the amendment, Sen. Tyler Johnson, R-Leo. said he struggled with the mergers and acquisitions piece of the bill.

"We're not ready to understand all the dynamics of what we want to stop in the mergers and acquisitions space versus what's already out there," Johnson said.

Johnson added that there were things in the bill that Attorney General Todd Rokita may need in his current role to help find information related to antitrust investigations.

After the hearing, Heaton told Indiana Lawyer there are already notification requirements in place on a state and federal level for transactions of certain sizes and dollar amounts.

"As a health care transactional attorney, any government step into the private sector, I don't love," Heaton said.

Eliminate COPAs?

SB 119 also remains under consideration, with Union Health and Terre Haute Regional Hospital, which is owned by Tennessee-based HCA Healthcare, awaiting approval of their proposed merger after the health care entities submitted a second certificate of public advantage application in February 2025.

Sen. Ed Charbonneau, a key architect of a 2021 law that allowed certificates of public advantage, now wants to undo that law as the proposed Terre Haute merger hangs in the balance.

He authored SB 119 with Johnson this legislative session. It passed in the Senate and was referred to the House Committee on Public Health.

Inside Indiana Business reported Indiana is one of 19 states that have COPA laws, which allow hospital mergers that the Federal Trade Commission otherwise considers illegal because they reduce competition and often create monopolies.

The publication reported that in 2021, Union Health leaders were instrumental in the passage of Indiana's COPA law. They supplied draft language for the bill, according to legislative testimony, and Union Health CEO Steve Holman testified before lawmakers that the merger would improve Vigo County's poor public health rankings.

But Charbonneau's bill would prevent such deals and make Indiana the sixth state to repeal its COPA law.

Tittle said Indiana's COPA agreements are structured to ensure continued access to high-quality, affordable care for the communities the state's hospitals serve.

"We have every confidence in the process that is now in place to safeguard these essential benefits for communities, allow hospitals to remain economically sustainable, and ultimately, do what's best for local patients in the region," Tittle said.

State lawmakers passed the COPA law in 2021 and with subsequent amendments provided the statutory authority for the state health department to issue a COPA for certain hospital mergers. A certificate would require the regulation of a merged hospital system by the health department in place of regulation by the FTC through antitrust laws.

To be eligible to submit a COPA application under the current law, hospitals have to be located in a county that meets the following criteria:

- Has a population that is less than one hundred forty thousand (140,000) and is not contiguous to a county with a population of more than two hundred fifty thousand (250,000).
- Has only two hospitals that are both in the statewide comprehensive trauma care system and one of the hospitals is a teaching hospital with a medical residency program.
- Is a predominately rural county.

Vigo County is the only county in the state that meets those criteria, the state health department said.

Union Health first announced plans to acquire Terre Haute Regional Hospital in September 2023.

On March 17, Federal Trade Commission staff again urged the Indiana Department of Health to deny Union and Terre Haute Regional Hospital's merger application.

FTC staff said two hospitals' second attempt to merge under a proposed COPA, presents the same anticompetitive harms as their original application did and would shield the proposed merger from antitrust scrutiny.

The FTC warned that the merger poses substantial anticompetitive risks such as higher healthcare costs for patients and lower wages for hospital workers.

"This repackaged COPA application presents the same problems as before. Competition consistently results in better outcomes for patients and workers than consolidation subject to COPAs," said Clarke Edwards, Acting Director of the FTC's Office of Policy Planning, in a news release.. "The Indiana Department of Health should deny this attempt by Vigo County's only two hospitals to eliminate competition and avoid antitrust review."

The FTC's latest comment letter follows a similar letter issued in September 2024 that opposed the proposed COPA.