

# Healthcare Merger Watch Q1 2023: Nationwide Cross-Market Merger Mania

In this first healthcare merger watch of 2023, we highlight some consolidation activities from the first quarter in the healthcare industry. In a trend that has continued in recent years, healthcare entities in the latest proposed and pending deals are increasingly exploring consolidation in new and innovative ways, across different geographic regions and involving different healthcare players in the industry. Even though federal and state antitrust enforcers often successfully challenge traditional, horizontal mergers and acquisitions, transactions involving cross-market consolidation are typically not challenged due to less straightforward legal and economic theories in proving potential anticompetitive effects. As healthcare entities continue to consolidate in non-horizontal ways by merging across geographic regions and entity types, antitrust enforcers and regulators must quickly adapt and effectively review these deals for potential anticompetitive effects.

## 1. Health System Mergers that Span Multiple Geographic Regions

### ▪ *Sanford Health and Fairview Health*

Antitrust experts and enforcers are paying close attention to the proposed merger of nonprofit systems Sanford Health and Fairview Health Services. First announced in November 2022, this is a mega cross-market merger in the Midwest region that would combine Sanford's 47 hospitals in South Dakota, North Dakota, and Minnesota with Fairview's 11 hospitals in Minnesota. Due to their different geographic regions, the two entities do not have overlapping service areas. Since its initial announcement, the proposed merger

has raised concerns of potential anticompetitive effect, drawing opposition from stakeholders and the scrutiny of both federal and state regulators. The transaction is currently being reviewed by the Minnesota attorney general, who requested more information from the parties after conducting several public meetings. In response to the request, the parties have agreed to postpone closing the deal to May 31, 2023. Additionally, the South Dakota attorney general has also been [urged to review](#) the merger for antitrust concerns.

- *Presbyterian Healthcare and UnityPoint Health*

Another cross-market merger recently announced is the proposed merger of UnityPoint Health and Presbyterian Healthcare Services. Coincidentally, UnityPoint was involved in an attempted cross-market merger deal with Sanford Health in 2019, which was called off in the negotiation stage. Operating in Iowa and the Midwest region, UnityPoint does not have geographic overlap in service areas with Presbyterian's hospitals, which are located in New Mexico. In announcing the deal, [Unity indicated](#) that the proposed merger would help "lower administrative costs, improve affordability and access, and build new capabilities."

- *CommonSpirit Health and Steward Health Care*

Yet another recently proposed deal involves the consolidation of hospitals and health systems across different geographic regions. CommonSpirit Health, one of the top cross-market hospital systems in the country, has announced a deal to purchase five hospitals and 35 clinics in Utah from Steward Health Care. CommonSpirit Health is a non-profit, Catholic hospital system based in Chicago, Illinois, that formed in February 2019 from the merger of Catholic Health Initiatives and Dignity Health. According to a [research study on cross-market systems](#) conducted by

The Source in partnership with economists at the UC Berkeley Petris Center, as of 2019, [this health system](#) owned 120 community hospitals located in 17 states, with the most in the West (53 hospitals), followed by the Midwest (37 hospitals) and South (30 hospitals). This latest deal will further expand its geographic footprint as this large cross-market system continues to grow.

## **2. Cross-market Mergers Between Different Types of Healthcare Entities**

Besides major health systems' continued expansion across the country, other healthcare deals are increasingly seeing the combination of different players in the healthcare industry. Following UnitedHealth's successful acquisition of healthcare data company Change Healthcare, [despite opposition](#) from the Department of Justice (DOJ), the healthcare conglomerate continued to grow by completing the \$5.4 billion acquisition of home health provider [LHC Group](#) in February. Coincidentally, on the very same day, Amazon's [high-profile acquisition](#) of primary care provider One Medical also went through, despite investigation from the Federal Trade Commission (FTC).

### *▪ CVS Health and Oak Street Health/Signify Health*

Similar to these deals, CVS Health is looking to dip its toes in both the home care and primary care business. After the announcement last year that it would acquire home healthcare provider [Signify Health](#) for \$8 billion, CVS is proposing to acquire primary care provider [Oak Street Health](#) for \$10.5 billion. As a company that owns and operates a retail pharmacy chain, a pharmacy benefit manager, and health insurer Aetna, these deals would further CVS Health's goal of becoming an integrated provider of medical services and enhance its presence in the healthcare industry.

Typically, cross-market transactions have flown under the

radar of antitrust enforcers. In particular, the federal agencies have not had much success in challenging such mergers and may also be wary of bringing actions in fear of setting unfavorable legal precedents. Given that the FTC did not try to block the mega [cross-market merger](#) between Atrium Health and Advocate Aurora, which was consummated in December 2022, it is unclear whether the agency would challenge this latest wave of cross-market mergers. Nonetheless, there may be an opportunity for the FTC to join the Minnesota AG, who continues to investigate the proposed merger of Sanford and Fairview. Beginning with the California AG, who successfully challenged and imposed competitive impact conditions on a number of cross-market affiliations, including [Cedars-Sinai and Huntington Memorial](#), other states like Minnesota may be stepping up to explore antitrust enforcement of these new rising forms of healthcare consolidation.

Stay tuned to The Source as we team up with UC Berkeley's Petris Center to further study the impacts and potential options to address these rising forms of healthcare consolidation. In the meantime, be sure to check out the [Market Consolidation](#) and [Cross-Market Systems](#) interactive key issue pages on The Source website for additional resources and the latest developments.

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## **Presbyterian and UnityPoint propose latest cross-market hospital merger**

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## **HM 27**

Parity pay task force. Requesting the legislative finance committee to convene a parity pay task force to study reimbursements to New Mexico personal care service providers and child care providers.

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## **HB 215**

Requiring coverage of screening, brief intervention and referral to treatment services for certain enrollees.

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## **SB 215**

Making an appropriation to increase provider reimbursements in the aging network.

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## **SB 342**

Medicaid Waiver Wage Act. Enacting the Medicaid Waiver Wage Fairness and Workforce Act; requiring provider agencies that provide services through certain Medicaid waiver programs to

increase compensation for certain staff when reimbursement rates increase.

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## **HB 95**

Health – Easy Enrollment Act: House Bill 95 proposes to make an option available to New Mexico taxpayers to allow transfer of their information to the Human Services Department and/or to the New Mexico Health Insurance Exchange if the taxpayer consents and the taxpayer states that he/she/they do not have health insurance. The information transferred in this way would include information relevant to the issuance of health insurance either through Medicaid or the state health insurance exchange and would not be used in other ways. This would then be used to enroll taxpayers and/or their family members into programs that they would qualify for, or to suggest health insurance programs that might be available through the New Mexico Health Insurance Exchange or the Medical Insurance Pool.

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## **SM 26**

Study Long-term Care Insurance: Senate Memorial 26 requests the Office of the Superintendent of Insurance to conduct and complete a comprehensive study on the affordability of long-term care insurance, to include an analysis of premiums benefits, the impact of rate increases imposed on New Mexico consumers, and potential relief for policyholders from unaffordable premium increases.

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## **OptumCare Sheds New Mexico Doctor's Claims in Noncompete Suit**

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## **States Challenge Biden to Lower Drug Prices by Allowing Imports From Canada**