

# North Carolina Attorney General Files Suit Against HCA Subsequent to 2018 Hospital Purchase

On December 14, 2023, the North Carolina Attorney General (AG) [filed suit against HCA Healthcare](#), Inc. alleging that HCA violated the Asset Purchase Agreement (APA) it signed when it acquired Mission Health System. HCA is the largest for-profit hospital chain in the United States and in 2018, it acquired Mission Health System, which serves western North Carolina. At the time of the merger, the North Carolina AG [required the signing of an APA](#) that included assurances that HCA was committed to continuing certain critical services (including emergency, trauma care, and oncology services) at the same level as before the acquisition for a 10-year period from 2019 to 2029.

## Details of the AG's claim against HCA

[The complaint](#) filed by the AG in December 2023 alleges two counts of breach of contract of the APA, one based on the emergency and trauma services at Mission Hospital and one for oncology services. The lawsuit cites extremely long wait times for emergency care, extreme staffing shortages, and treating of patients in bays that were not private and frequently not sterile. The lawsuit also claims that Mission Hospital has significantly reduced cancer care by discontinuing certain oncology services, reducing the number of oncology beds, no longer employs any medical oncologists, and has drastically reduced the number of oncology nurses and pharmacists specializing in cancer medications.

The AG is asking for the court to rule that HCA has violated the APA, and to require HCA to upgrade oncology and emergency services back to the level that existed before the merger. The AG is also requesting any additional remedies that the court deems proper.

## **HCA's Response**

[In a November letter to North Carolina regulators](#), HCA denied any wrongdoing. In the letter, HCA stated that its capital investments of \$12.4 million allocated to the Mission Cancer Center since 2019 proves its dedication to oncology services and that the problems with emergency services were due to a "concerted campaign" that the Attorney General recently undertook "to prevent Mission from obtaining much needed acute care inpatient beds." Additionally, the letter notes that an Independent Monitor required under the terms of the APA has confirmed that Mission is operating in compliance with the terms of the APA for every year since the acquisition.

## **What's Next for Mission Health**

The lawsuit filed in the General Court of Justice's Superior Court Division in Buncombe County will require the AG to prove that HCA's operation of oncology, emergency, and trauma services have deteriorated sufficiently to amount to a violation of the agreement to buy the Mission Health system. The AG was not willing to estimate how long it would take for the litigation to reach a resolution.

On December 19, just after the AG filed suit, the Centers for Medicare & Medicaid Services [sent an immediate jeopardy warning](#) (its most serious citation for a hospital) to Mission, noting nine areas of deficiencies threatening patient health and safety that were identified in a recent inspection. This puts Mission at risk of losing CMS funding if the hospital does not address

the issues.

## **Mission Health's Road to Market Power**

Mission Health was created in 1995 when Mission Hospital merged with St. Joseph's Hospital, the only hospitals in the Asheville, North Carolina area. This merger avoided federal antitrust scrutiny due to a Certificate of Public Advantage (COPA) law (N.C. Gen. Stat. § 131E-192.5 (2013) (repealed 2015)) that protected the merger from any antitrust enforcement, in exchange for oversight of the new entity. [An economic analysis of the merged entity](#) was inconclusive about whether the COPA effectively constrained the market power of Mission Health to raise prices during the period of state oversight; after 20 years of state oversight under the COPA, however, the state of [North Carolina repealed its COPA law](#) and allowed Mission Health to maintain its dominant market position in the area without ongoing state oversight over its rates, physician employment, maintenance of services, or health plan contracting practices. Additionally, in 2018, Mission Health was acquired by HCA under the APA discussed above, further expanding the market power of Mission Health.

Mission Health [has faced a number of antitrust challenges](#) in the past two years. In 2021, a group of patients sued HCA Healthcare and Mission Health alleging HCA used market power garnered from the cross-market merger to demand anticompetitive terms in contracts with insurers (including tying, all-or-nothing, anti-steering, and gag clauses) driving up prices and insurance premiums. In 2022, two municipalities and two counties in North Carolina [filed suit on antitrust grounds](#). Those lawsuits claim that the significant market power of HCA/Mission was used to inflate prices and force insurers to accept harmful contract terms. The suits also allege that HCA refused to comply with federal hospital transparency rule that

requires disclosure of the prices it charges for general acute care and outpatient services, which would reveal its prices to be the highest in North Carolina. While the terms of the APA signed during the merger included assurances about quality of care, the APA did not include competitive impact conditions.

## **Conclusion**

The allegations in the suit, if true, show that fears about health systems gaining a dominant market position go beyond price concerns, as the lack of competition can harm access and quality when patients do not have a reasonable alternative to seek necessary care. The AG's suit appears to indicate that the concerns surrounding the initial merger were valid. The story of Mission Hospital highlights the need to scrutinize mergers, and the need for oversight of care when entities gain significant market share.

The Source will continue to monitor the lawsuits against HCA and Mission Health.