

# FTC objection to proposed Terre Haute hospital merger centers on controversial state law

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KEYWORDS **ANTITRUST** / **HOSPITALS** / **MERGERS & ACQUISITIONS**

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*Union Health in Terre Haute has proposed a merger with Terre Haute Regional Hospital. (Photo courtesy of Union Health)*

Certificates of public advantage, or COPAs, are a relatively new feature of Indiana law with specific language on when and where the Indiana Department of Health can grant them for a hospital merger.

Vigo County is currently the only Indiana county where hospitals are eligible to apply for a COPA under state law.

The proposed acquisition of Terre Haute Regional Hospital by Terre Haute-based Union Health has drawn strong opposition from the Federal Trade Commission, as the state health department continues its lengthy review of a COPA submitted by the hospitals.

Whether the FTC's opposition ultimately derails the Vigo County hospital merger remains to be seen.

But the federal agency's distaste for COPAs has been well established, with the FTC releasing a policy paper in 2022 that argued research showed that these certificates are "often detrimental for patient costs, patient care, and healthcare worker wages."

Vicky Graham, a FTC public affairs specialist, told Indiana Lawyer the agency wouldn't be commenting on the proposed hospital merger beyond the letter it submitted to state health department during the public comment period and a release it issued announcing its opposition.

"The COPA could shield the proposed merger from antitrust scrutiny, leading to a deal that would likely impose higher costs and could lead to worse healthcare outcomes for Indiana patients, as well as lower wage growth for hospital workers", the comment states. "In Vigo County, Ind., where the effects of the proposed merger would likely be felt most acutely by area patients and hospital workers, the merged entity would have a combined share of nearly 74% of all commercially insured inpatient hospital services," the FTC said in its release opposing the proposed merger.

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



Robert Greising

Robert Greising, a partner at Krieg DeVault LLP who does not represent either hospital, told Indiana Lawyer the FTC's action is consistent with some of the commission's and the Department of Justice's recent antitrust activities.

Greising said the FTC had released revamped guidance on healthcare anti-competitive activities.

He said the Biden Administration has encouraged active involvement of its oversight agencies, with the FTC making it clear in 2023 it would be active in healthcare and consumer protection as it related to availability of services and pricing.

Greising said FTC opposition to any merger is influential.

"It makes the hill steeper to climb for companies," Greising said.

## **COPA requirements**

State lawmakers passed Senate Enrolled Act 246 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 department in place of regulation by the FTC through antitrust laws.

According to state health department, to be eligible to submit a COPA application, hospitals have to be located in a county that meets the following criteria:

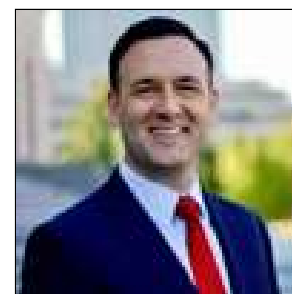
-Has a population that is less than one hundred forty thousand (140,000) and is not contiguous to a county with a population of more than two hundred fifty thousand (250,000).

– 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.

Steve Cooke, an Indiana Hospital Association spokesperson, told Indiana Lawyer in an email, “Thanks to the work of the Indiana legislature, these COPA agreements are structured to ensure continued access to high-quality, affordable care for the communities our 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.”



Steve Cooke

Inside INdiana Business reported that Union Health originally said if the deal was approved, the 278-bed Terre Haute Regional hospital at 3901 South 7th Street “will continue operations with no intention of interruptions throughout the transition.” CEO Steve Holman said in an email obtained by our partners at WTWO-TV that there is “no intent” to lay off any employees or close the hospital.

Union Health is licensed for 341 beds (and staffs and operates 257 acute care beds) and operates a full-service acute care hospital, according to the COPA application. Through its family medicine residency program, Union trains physicians with an emphasis on primary care.

The residency program has graduated 238 family medicine physicians, many of whom practice in underserved areas, including throughout the Wabash Valley Community.

In 2023, Union had a daily average inpatient census of 210 patients, while Terre Haute regional had 64.

### **FTC’s opposition**

In its 2022 policy paper on COPAs, , the FTC noted that it began a project in 2017 to assess the impact of COPAs on prices, quality, access, and innovation for health care services.

The project has included research of past COPAs, a public workshop highlighting practical experiences with COPAs and related policy considerations, and an ongoing study of recently approved COPAs.

The FTC reported that studies of past COPAs have revealed significant increases in commercial inpatient prices, as well as declines in quality of care.

“Despite hospital claims that COPAs will result in lower costs and improved population health outcomes, we are not aware of any proven benefits of COPAs,” said FTC Director of Policy Planning Elizabeth Wilkins. “We urge state lawmakers to consult local health insurers, employers, and workers regarding the potential impact of COPA legislation.”

The agency has claimed hospitals only seek COPAs for specific mergers that would otherwise violate antitrust laws and often result in monopolies.

### **Hospitals defend proposed merger**

A Terre Haute Regional Hospital spokesperson did not respond to an Indiana Lawyer request for comment.

In September, a hospital spokesperson said in an email to Inside Indiana Business that Terre Haute Regional had worked extensively with the state’s health department since the initial COPA application was submitted to make sure they had the information needed to make an informed decision regarding the healthcare needs of Vigo County.

Union Health also did not immediately respond to a request for comment. But it earlier issued a public statement in response to the FTC’s comment, citing state health department data that Vigo County ranks poorly among Indiana’s 92 counties in several key health performance indicators, including 68th in life expectancy, 60th in suicide rate, and 54th in adult obesity.

The hospital stated that despite the presence of hospital competition in the community, these rankings indicated that existing healthcare structures have not adequately benefited the area’s residents.

It called the proposed merger between Union Health and Regional Hospital a “bold, innovative approach” to addressing these persistent health disparities.

“Union Health has worked diligently to provide comprehensive data and documentation to IDOH, illustrating the potential positive impacts of this merger. This is not merely a business transaction; it is a strategic effort to improve healthcare delivery in our community. merger between Union Health and Regional Hospital holds the promise of a healthier future for the Wabash Valley. It is grounded in data, collaboration, and a deep commitment to the well-being of our residents,” part of the Union Health statement read.

The state health department is conducting a 120-day COPA review, with a decision expected in December.

Greising said the debate over COPAs focuses on whether the state or federal government should play the primary role in monitoring hospital mergers.

He said the FTC, as opposed to the DOJ, only has a civil scope of authority.

Greising said the Vigo County hospitals could argue, if IDOH approves the COPA application, that the FTC's authority does not extend to a transaction that's been approved by a state regulatory authority. •