



**California Public Employees' Retirement System**

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September 18, 2023

Lina M. Khan, Chair  
Office of the Chair, Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Merrick B. Garland, Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington DC 20530

Subject: FTC-2023-0043 – Draft Merger Guidelines for Public Comment

Dear Madam Chair and Attorney General Garland,

On behalf of the California Public Employees' Retirement System (CalPERS), thank you for the opportunity to provide comments on the U.S. Department of Justice (DOJ) and the Federal Trade Commission (FTC) Draft Merger Guidelines, which clarify and update the frameworks and tools that may be used when analyzing a merger. These draft guidelines align with our stated health care legislative priorities and ongoing strategies to provide more accessible and affordable quality health care to our members and we applaud your careful and concerted efforts to help mitigate the increasing costs of health care.

CalPERS is the largest public employer health benefits purchaser in California and the second largest employer purchaser in the nation after the federal government. We purchase health benefits for approximately 1.5 million active and retired state, local government and school employees and their family members. We contract with numerous large health insurance companies to provide our members a variety of health plan offerings that include health maintenance, preferred provider, and exclusive provider organization (HMO, PPO, and EPO) plans. CalPERS recognizes the need for affordable health plans and the continuity of health care coverage for our members and their dependents and we believe greater competition promotes lower prices, higher quality, and greater value to our members. We believe consolidated health care markets reduce competition and have been shown to increase health care costs.

The Draft Merger Guidelines establish consistent and unequivocal guidance on the types of transactions that may trigger an investigation by the DOJ and FTC and can help ensure that the likelihood of consumers being forced to pay more for health care as a result of unlawful or monopolistic mergers will be greatly reduced moving forward.

As part of our 2022-2027 Strategic Plan, CalPERS is implementing various measures to achieve exceptional health care, including measures to increase health care competition. CalPERS seeks to improve provider competition to mitigate high costs in low competition areas because our research has shown that price variation for the same services within a geographic area is largely explained by market forces, as consolidations and mergers result in less competition and higher prices. The bargaining strength of a hospital, provider group, or insurer is determined by the amount and type of competition in a region. CalPERS aims to increase competition using a variety of strategies including the utilization of Centers of Excellence for procedures with high variation in cost across regions, encouraging the use of telehealth in areas with fewer providers, and utilizing appropriate site of care for routine services.

In recent years, the CalPERS Board of Administration has consistently supported California state proposed legislation aimed at regulating the consolidation of health care entities, such as requiring written consent of the California Attorney General, among other stipulations. Such legislation is necessary to curtail the downstream impacts of unchecked health care industry consolidations, both vertical and horizontal, which increase costs for our members and employers.

We thank you again for the opportunity to respond to this necessary and important update to the frameworks and tools for addressing anti-competitive practices. As you move through the planning and implementation process, we are happy to be a resource for you, so please do not hesitate to reach out. We look forward to working with the FTC and DOJ to improve rules surrounding mergers and acquisitions that directly impact the quality of and access to health care for our members. Please contact Danny Brown, Chief of our Legislative Affairs Division, at (916) 795-2565, if you have any questions or wish to discuss these issues further.

Sincerely,

*Don Moulds*

Don Moulds  
Chief Health Director