



Legal Update: What Employers Need to Know

Chris Deacon, J.D.

Principal/Founder VerSan Consulting

cdeacon@versanconsulting.com

Key Legislation Impacting Employers

CAA Section 201

"A group health plan... may not enter into an agreement with a ... [TPA].. that would directly or indirectly restrict a group health plan... from - (B) electronically accessing de-identified claims and encounter information... on a per claim basis [including] ...financial information... or any other claim-related financial obligations included in the provider contract... service codes... or any other data element included in claim or encounter transactions...

CAA Section 202

Requires brokers, agents, and consultants to disclose any direct or indirect compensation related to brokerage services or consulting to group health plan sponsors. Health plans are required to disclose compensation information to enrollees and the Department of Health and Human Services (HHS) for individual health coverage and short-term or limited-duration coverage.

Transparency in Coverage

Require group plans to disclose their rates and other price information for all covered billable services. (If fully-insured, the carrier is responsible for posting. If self-funded, the employer is responsible for posting.)

Insurance carriers and/or employers must post information about the cost to participants, beneficiaries, and enrollees for in-network and out-of-network healthcare services through machine-readable files (MRF) on a public website.

Hospital Price Transparency Rule

The Hospital Price Transparency regulations require hospitals to make public a list of the standard charges the hospital has established for the items and services it provides and to make these data elements available in a single machine-readable file as applicable.

Updates to Key Legislation Impacting Employers

CAA Section 201

- Employers struggling to access data and comply with attestation requirement
- TPAs and Carriers' are able to submit attestation on Employers' behalf
- Conflict over what data is required, who owns data and with whom it can be shared with.
- Recently Released House Bill would clarify what is a "reasonable restriction" on use and gives HHS Secretary Power to Determine ownership of Data

Transparency in Coverage

- Carriers and Plans largely compliant, but size of files has rendered them unreadable and difficult to use
- TiC File and Hospital Price Files do Not Match
- Legislation Released by House would significantly change TiC data elements, require \$\$\$ figures, limit size of files and attempt to make them more useable

Hospital Price Transparency Rule

- Limited and lack of uniform compliance has rendered the information difficult to use
- Enforcement has been sparse with the largest and most out of compliance systems not being forced to disclose
- Legislation Released by House would codify Hospital Price Transparency Rule AND Require Disclosure of PE Ownership, apply rule to ACS, Site Neutral Payments, and Data Specification Updates

Aetna wrongly retained millions in undisclosed fees and paid provider claims "that should have never been paid," according to the lawsuit filed in a Texas federal court.

Published July 13, 2023



Ryan Golden
Senior Reporter



UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

OWENS & MINOR, INC. and
OWENS & MINOR FLEXIBLE
BENEFITS PLAN

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Case No. 3:23-cv-00115

V.

## COMPLAINT

ANTHEM HEALTH PLANS OF  
VIRGINIA, INC. D/B/A ANTHEM  
BLUE CROSS AND BLUE SHIELD

[Jury Trial Demanded]

**PLAINTIFFS' ORIGINAL COMPLAINT**

A study from KFF finds that hospital price transparency data shared with the public varies widely and crucial information for patients and researchers is missing.



# Key Litigation Impacting Employers

2021

Mass Labors vs.  
BCBS Mass - Ruling

Dec 2022

O&M vs. Anthem -  
Settled

Dec 2022

Bricklayers et al.  
vs. Elevance,  
Anthem and Empire -  
in process

July 2023

Kraft Heinz Co. vs.  
Aetna - no answer  
yet filed



# Consolidation and Anticompetitive Concerns

Ongoing consolidations will contribute to **emerging market power** and will be nearly impossible to unwind once they occur.

➡ Stronger **antitrust vigilance** is needed to prevent consolidations that are likely to be anti-competitive.

Hospital systems that have already gained **existing market power** have incentives and opportunities to engage in behavior to retain market dominance.

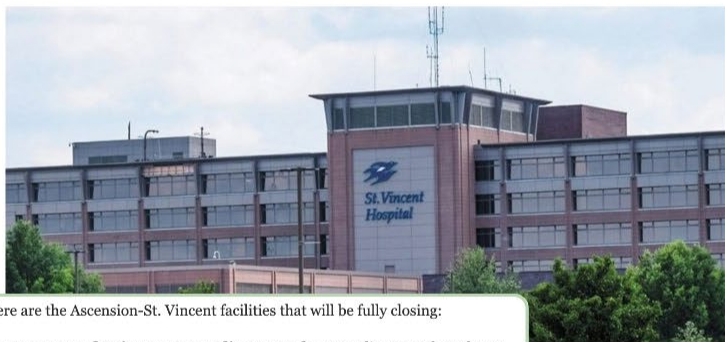
➡ In addition to policing anti-competitive behavior through antitrust enforcement, other approaches are needed to **improve competition** and **constrain pricing power** of dominant systems.



# The Case of Ascension in Indiana....

## Ascension closing 11 more health care facilities in central Indiana

Saturday, January 28, 2023 11:35 AM EDT  
By IBJ Staff



Here are the Ascension-St. Vincent facilities that will be fully closing:

- **Greenwood Primary Care Olive Branch**, 1579 Olive Branch Parke Ln., Suite 180, Greenwood
- **Crawfordsville Primary Care**, 1684 Bush Ln., Crawfordsville
- **Frankfort Primary Care**, 2485 E. Wabash St., Frankfort
- **Frankfort Heart Care**, 2485 E. Wabash St., Frankfort
- **Brazil Primary Care**, 1214 E. National Avenue, Suite 100, Brazil
- **Lafayette Cardiovascular, Thoracic & Vascular Surgery**, 3900 St. Francis Way, Suite 201, Lafayette
- **Hoosier Dermatology**, 13450 N. Meridian St., Suite 363, Carmel
- **Avon Primary Care**, 9723 E. US Highway 36, Avon
- **Plainfield Primary Care**, 2155 E. Main St., Plainfield
- **Alexandria Primary Care**, 2012 S. Park Avenue, Alexandria
- **Haubstadt Primary Care**, 835 S. 9th Avenue, Haubstadt

once in Carmel.

"The global COVID-19 pandemic has taken a significant operational toll on health systems across the country, and as we continue to evolve how we deliver care in this challenging environment, we will be partially or fully discontinuing operations at several Ascension Medical Group St. Vincent locations," an emailed statement from Ascension St. Vincent stated.

The statement said that most of the impacted locations would close within 90 days, and that notifications to patients would begin shortly.

nonprofit hospital system in  
se [11 immediate care centers](#)

## Ascension posts \$2.7B net loss in fiscal year 2023, driven by rising expenses

Like other nonprofit operators, Ascension continued to feel the strain of inflationary pressures in 2023, as rising expenses outpaced modest gains in revenue.

Published Sept. 18, 2023

By [Susanna Vogel](#)  
Associate Editor



But....

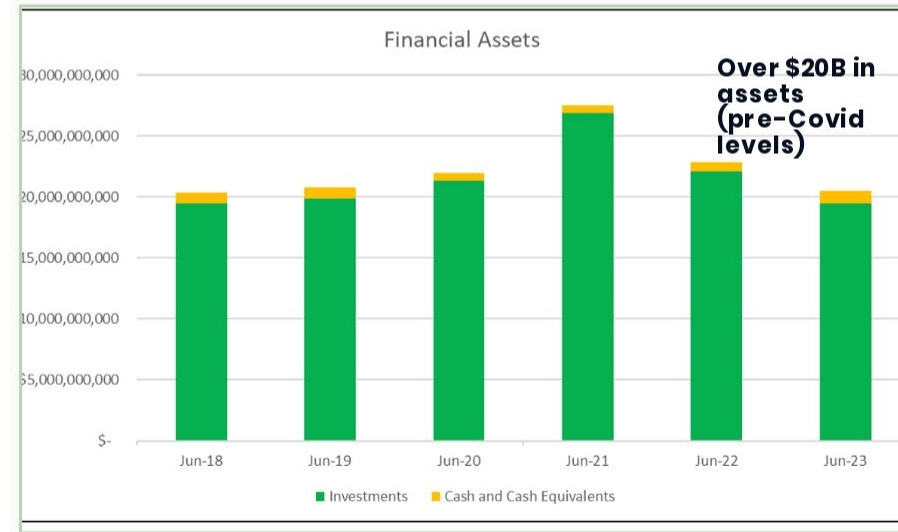
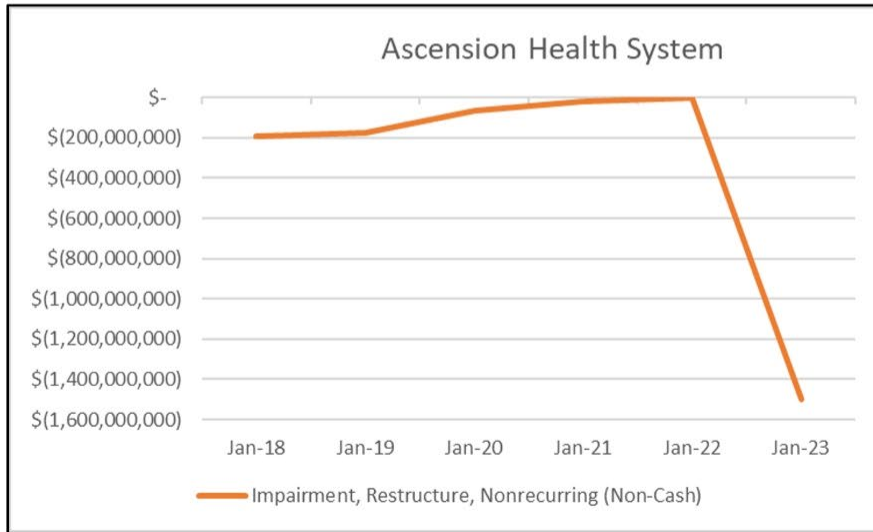
## *2023 Financial Statement 9.17.23*

- **\$1.5 billion NON-CASH expense as Ascension “wrote down” the value of assets**
- 2023 Cash flow statement shows **unrealized losses of (\$2.6 million)** and realized gains of \$3.1 billion, for a net investment gain of \$423 million (which ties to the income statement)
- \$7.6B Net Asset Value (NAV) 6/30/2023 compared to \$8.5 billion at 2022. Assets held with Alpha Fund - which invests in hedge funds, private equity, private credit and energy, and real estate; often require capital contributions.
- **Removing NON-CASH unrealized losses on investments (\$2.6 billion) AND the unrealized loss on Impairment, Restructure, Nonrecurring of (\$1.5 billion), the net income is \$1.6 billion positive.**



## Ascension Financials Cont.

|                                          | Jun-23           | Jun-22           | Variance         |
|------------------------------------------|------------------|------------------|------------------|
| Equities (NAV)                           | \$ 1,411,485,000 | \$ 1,788,111,000 | \$ (376,626,000) |
| Private Equity & Real Estate Funds (NAV) | \$ 4,115,779,000 | \$ 4,236,200,000 | \$ (120,421,000) |
| Private Credit and Energy Funds (NAV)    | \$ 1,489,455,000 | \$ 1,600,318,000 | \$ (110,863,000) |
| Hedge Funds (NAV)                        | \$ 623,242,000   | \$ 835,556,000   | \$ (212,314,000) |
| Other                                    | \$ 6,205,000     | \$ 5,811,000     | \$ 394,000       |



# U.S. Healthcare: A Conglomerate Of Monopolies

Robert Pearl, M.D. Contributor

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Jan 16, 2023, 08:05am



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In any industry, market consolidation limits competition, choice and access to goods and services, ... [+] GETTY

OCTOBER 20, 2023

## National experts say hospital mergers contribute to Indiana's high health care costs



ABIGAIL RUHMAN



Article origination IPB News

Hospital mergers and consolidations that limit competition are driving Indiana's high health care costs. That's according to national experts who spoke at the [Health Care Cost Oversight Task Force's](#) meeting. They recommend lawmakers consider legislation focused on reviewing potential mergers and addressing the impacts of mergers that have already happened.

Hospitals in Indiana that merged had inpatient prices about 13 percent higher than hospitals that did not merge.



In a 2022 study, researchers found Indiana's health care markets were dominated by national insurers and major hospital systems. A large portion of the health care market in the state is dominated by just six systems — two national and four state systems, like IU Health.

## Policy options to address market concentration – each option has advantages and disadvantages

- Pre-Merger Policy Options
  - Increase antitrust enforcement at the federal level
  - Enhance state merger review authority in Indiana
- Post-Merger Policy Options
  - Restrict anti-competitive contracting
  - Increase price transparency
  - Institute hospital rate regulation
  - Also listed as a policy option, but not covered in this presentation
    - Establish a state commission on healthcare affordability
    - Institute site-neutral payments
    - Re-evaluate tax exempt status of nonprofit firms
  - Additional options focus on removing barriers to entry such as certificate of need laws
- Note, the policy options above did not focus on insurance because of federal and state laws that are in place regarding:
  - Health insurance rate review
  - Medical loss ratio
  - Ban the use of most-favored-nation clauses

*Source: Report #2*



From Mtg. Minutes September 19, 2023 Health Care Cost Oversight Task Force

# Employers must....

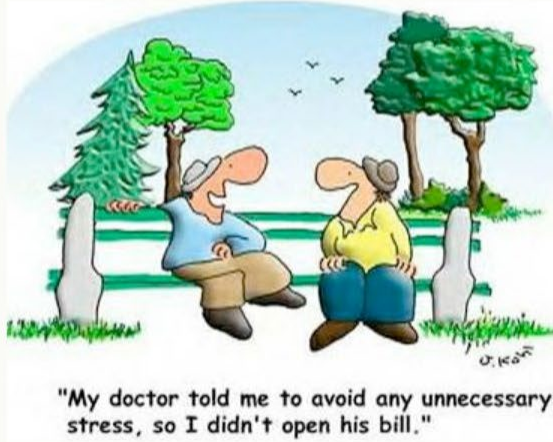


“The riskiest thing we can do is just maintain the status quo.”

BOB IGER



# Questions and Discussion....



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