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Critical Condition: How UPMC's Monopoly Power Harms Workers and Patients

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AMERICAN ECONOMIC LIBERTIES PROJECT

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REPORT

INTRODUCTION

In a recent survey, 93 percent of Pittsburgh hospital workers said they think about leaving their jobs at least once a month. 90 percent reported that their units don't have the staff to keep up with their workload. Behind those numbers are seemingly endless stories of hospital staff – real people with families and hopes, dreams, and ambitions – who have been pushed to their limit and unable to care for their patients. All because there simply weren't enough hands available or hours in the day.

“In my seven years of nursing, staffing has never been this bad. The emergency room has become one of the largest in-patient departments in the entire hospital. Patients are spending days on end in ED beds because there are not enough beds due to staff shortages in every single department,” said Jackie Strange, a UPMC RN, at a hearing we held in September to examine the healthcare worker crisis in Western Pennsylvania. “When your staff is overworked like this, they're going to miss something. The stress is detrimental, and my coworkers and I leave feeling completely devastated. Our patients don't deserve this. No one does. We work at one of the biggest and best hospitals in the city — we should have the resources we need to care for our patients.”

Stories like Jackie's and many others don't just happen; they result from hospital systems prioritizing profits over the people they employ and care for. Western Pennsylvania's hospital systems chose to prioritize expansion and profit generation over staffing and patient care, even during a global pandemic. These decisions continue to result in pervasive understaffing and low job satisfaction among employees. With its size and dominance, UPMC drives this trend for the entire market, leaving competitors with little choice but to follow suit. UPMC has abused the privileges afforded to it as a non-profit medical system to build a monopoly over healthcare in Western Pennsylvania.

In the last ten years alone, UPMC used a relentless string of acquisitions and construction of new facilities to grow from a system of 12 hospitals into a network of 40 hospitals with 8,800 licensed beds, an insurance network that covers more than 4 million people and to become the employer of 92,000 workers. It has embedded itself into every nook and cranny of Western Pennsylvania's healthcare system.

The COVID-19 pandemic laid bare the consequences of UPMC's consolidation: Creating a healthcare system with too few workers, misappropriated resources, and ultimately, the inability to provide the standard of care, the community benefits, or the sort of workplace that Pennsylvanians demand and deserve. Like the steel corporations of the last century, UPMC has used its power to depress wages, degrade working conditions, extract money from the public, and, ultimately, create a crisis for the communities in which it operates and in which we live.

“Despite having a Bachelor’s Degree and advanced training for my specialty, my years of experience, and working at a hospital system that saw over a billion dollars in excess revenue, my family’s financial security balances on a knife’s edge,” said Walter Gates, a UPMC MRI Technician. “After we pay our mortgage, daycare for our 7-month-old daughter, utilities, and other expenses, we have about \$150 left for everything else. We would like to have another child, but we can’t afford daycare for two children, so we’re not sure when we’ll be able to grow our family. Knowing how much money UPMC makes on the backs of its workers and patients – and the taxpayers – and the struggle and stress of trying to stay afloat; it makes me angry. It’s a grotesque abuse of power and lack of responsibility.”

We expect more from our non-profit hospitals and largest employers who control not only our health but also a large segment of our economy. Ensuring quality healthcare for everyone in Western Pennsylvania requires us to challenge UPMC’s monopoly power and increase workers’ bargaining power by protecting their right to form unions.

There is no silver bullet for making that happen, but government officials can immediately take several concrete steps.

First, there must be a concerted effort from public officials at all levels of government to support the brave workers who have been pushing for a union at UPMC for years, not just with words but with policy and the imposition of real consequences for union busting. Second, we must reintroduce significant competition into Western Pennsylvania’s healthcare market and break UPMC’s monopoly power. This will require passing new laws designed to promote worker- and consumer-friendly markets, as well as ensuring courts and regulators enforce existing laws. The result will be better jobs for workers and better health outcomes for the more than 1 million people in the region.

We outline a host of measures below for leaders at the state, county, and local levels to consider that will start to address these challenges. It is not an exhaustive list but a starting point. We hope policymakers, workers, and everyday people across Western Pennsylvania, and the rest of the state, join us in this effort. There is simply no more time to waste with the stability of our healthcare system at stake.

Sincerely,

Rep. Sara Innamorato and Congresswoman Summer Lee

Co-conveners of the Pittsburgh Hospital Workers Task Force

THE ROOTS OF UPMC'S POWER

As Western Pennsylvania transitioned away from a regional economy built on manufacturing into one built on education, healthcare, and services industries, one thing hasn't changed: The local economy is still overly dependent on a few large employers that tightly control the job market. The names may be different, but in many ways, Pittsburgh and vast swathes of Allegheny County should still be considered company towns.

At the heart of this “eds and meds” economy are the many hospitals in the region. 45,000 people work in hospitals in Allegheny County, nearly all employed by the University of Pittsburgh Medical Center (UPMC) or Allegheny Health Network. However, UPMC controls nearly three out of every four hospital jobs.

In just the last ten years, UPMC has grown from a system of 12 hospitals into a network of 40 hospitals with 8,800 licensed beds, an insurance network that covers more than 4 million people, and that employs some 92,000 workers. UPMC is now the largest non-governmental employer in the state.¹

Like the company towns of the past, UPMC's corporate power manifests in a range of harms to workers and local residents. According to many studies, widespread hospital consolidation leads to negative outcomes for patients, healthcare workers, and broader communities. These include: higher costs, lower quality of care, less price transparency for patients, and lower wages and worse working conditions for hospital employees.²

For example, the Federal Trade Commission's Bureau of Economic Analysis has said consolidated hospitals charge 40-50 percent higher prices than those in more competitive markets. Another study showed that four years after a merger, wages were 6.8 percent lower for nurses and pharmacy workers at a hospital and 4 percent lower for non-medical hospital workers than they would have been if the merger had never occurred.

Conversely, more hospital competition is positively associated with better outcomes, including lower patient mortality, without raising costs.³ One study found that a 10 point drop in hospital concentration led to a nearly 3 percent drop in the 30-day mortality rate at those hospitals, translating to about 1,000 fewer deaths per year across the 133 hospitals studied.⁴

1 “The largest (non-government) employers in Pa. and elsewhere: From medical centers to Walmart,” Penn Live, Mar. 15, 2019 <https://www.pennlive.com/life/2019/03/from-medical-systems-to-universities-and-walmart-the-largest-non-government-employer-in-pa-and-every-other-state.html>

2 Gale, Arthur H., MD., “Bigger But Not Better: Hospital Mergers Increase Costs and Do Not Improve Quality,” *Mo Med*. 2015 Jan-Feb; 112(1): 4-5. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6170097/>

3 Gaynor, Martin, Rodrigo Moreno-Serra, Carol Propper, “Death by Market Power: Reform, Competition, and Patient Outcomes in the National Health Service,” *American Economic Journal: Economic Policy*, 5 (4): 134-66. <https://www.aeaweb.org/articles?id=10.1257/pol.5.4.134>

4 *Ibid.*

But those outcomes have not stopped a healthcare merger and acquisition spree across the country. Between 2010 and 2017, there were 778 hospital mergers across the U.S. Healthcare-related merger and acquisition revenue hit a record high in the second quarter of 2022.⁵ Almost half of all U.S. physicians currently work for a hospital or larger health system.⁶

UPMC embodies and exemplifies many of these trends, following merger after merger with a deterioration in care and working conditions, going back to the mid-1980s.⁷ In 2016 and 2017 alone, UPMC acquired 15 hospitals in Pennsylvania.

| | | |
|--|--|------|
| UPMC Williamsport | Williamsport Regional Memorial Hospital | 2016 |
| UPMC Jameson | Jameson Memorial Hospital | 2016 |
| UPMC Wellsboro | Soldiers & Sailors Memorial Hospital | 2016 |
| UPMC Cole | Charles Cole Memorial Hospital | 2016 |
| UPMC Williamsport Divine Providence Campus | Divine Providence Hospital | 2016 |
| UPMC Lock Haven | Lock Haven Hospital | 2016 |
| UPMC Muncy | Muncy Valley Hospital | 2016 |
| UPMC Kane | Kane Community Hospital | 2017 |
| UPMC Carlisle | Carlisle Regional Medical Center | 2017 |
| UPMC Harrisburg | Pinnacle Health Hospitals | 2017 |
| UPMC Hanover | Hanover Hospital | 2017 |
| UPMC Memorial | Memorial Hospital - York | 2017 |
| UPMC Lititz | Heart of Lancaster Regional Medical Center | 2017 |
| UPMC Pinnacle Lancaster | Lancaster Regional Medical Center | 2017 |
| UPMC Sunbury | Sunbury Community Hospital | 2017 |
| UPMC Somerset | Somerset Hospital | 2019 |

This stream of acquisitions has given UPMC significant market power. In Allegheny County, UPMC currently employs 67 percent of all hospital employees and controls 60 percent of all licensed hospital beds.⁸ In Pittsburgh, the numbers are even higher: UPMC employs 76 percent of all hospital employees and controls 71 percent of all licensed hospital beds.

This concentration across the healthcare market gives UPMC considerable power over workers, which it wields to keep wages low, conditions unsatisfactory, and prevent union organizing. Indeed, other research has shown the negative effect of consolidation on healthcare workers. A 2019 study published by the Washington Center for Equitable Growth, for example, found that mergers directly caused real wage growth for skilled hospital workers to slow down by 1.1 to 1.7 percent.⁹

5 Schwartz, Karyn, Eric Lopez, Matthew Rae, and Tricia Neuman, "What We Know About Provider Consolidation," Kaiser Family Foundation, Sept. 2, 2020. <https://www.kff.org/health-costs/issue-brief/what-we-know-about-provider-consolidation/>; and Bailey, Victoria, "Healthcare Merger and Acquisition Activity Generates \$19B in Q2 2022," RevCycle Intelligence, July 14, 2022. <https://revcycleintelligence.com/news/healthcare-merger-and-acquisition-activity-generates-19b-in-q2-2022>

6 Pearson, Elsa, "Hospital mergers and acquisitions are a bad deal for patients. Why aren't they being stopped?" Stat News, Sept. 2, 2021. <https://www.statnews.com/2021/09/02/hospital-mergers-more-oversight-federal-state-officials/>

7 Winant, Gabriel (2021). *The Next Shift: The Fall of Industry and the Rise of Healthcare in Rust Belt America*, Harvard University Press, pp. 242-252.

8 Calculated based on data from the 2021 Pennsylvania Department of Health Hospital Reports, available at <https://www.health.pa.gov/topics/HealthStatistics/HealthFacilities/HospitalReports/Pages/hospital-reports.aspx>.

9 Koppam, Raksha, "Evidence indicates that mergers directly suppress wage growth for hospital workers in the United States," Washington Center for Equitable Growth, Feb. 26, 2019 <https://equitablegrowth.org/evidence-indicates-that-mergers-directly-suppress-wage-growth-for-hospital-workers-in-the-united-states>

This is known as “monopsony” power, or the power of buyers – whether they be buyers of products or labor – to drive down the prices suppliers and workers receive. Buyers may even be able to dictate prices directly when they are the only purchasers in a given market, leaving suppliers and workers with little bargaining power. In a 2022 report, the U.S. Treasury Department, found that employer monopsony power is lowering wages by about 20 percent across the economy and by more in select industries.¹⁰

The Federal Trade Commission found in 1996, and federal courts later confirmed, that buyers with as little as 30 percent of a relevant market can put downward pressure on prices.¹¹ More recently, the Department of Justice blocked a merger of two of the five largest U.S. book publishers on the grounds that the merger would give the new corporation disproportionate power to lower prices paid to authors.

Those two examples above are industries where the offending corporations had significantly less consolidated power than UPMC.

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Despite the essential role care techs like myself play, many of us are barely making enough to make ends meet. Right now, I am making about \$1800 a month. Rent is \$1175, I have a car payment and utilities, and a family. Often, I will drive for Uber to make sure I can meet all my essential expenses.

I am delivering a vital service to my community, I shouldn't have to take another job to pay my rent. Even with a second job, I can honestly say that if it weren't for the landlord I have who works with me through this, I would probably be homeless.

What's worse is I can't even afford UPMC's employee health insurance plan — I work for an incredibly wealthy healthcare company, and I can't afford their insurance. Why would anyone stay at this job when it puts their ability to care for their family in jeopardy?”

Kya Humphries
UPMC Patient Care Technician

¹⁰ The State of Labor Market Competition,” U.S. Treasury Department, March 7, 2022 <https://home.treasury.gov/system/files/136/State-of-Labor-Market-Competition-2022.pdf>

¹¹ Federal Trade Commission, Plaintiff v. Toys R Us, Inc., Defendant, <https://www.ftc.gov/legal-library/browse/cases-proceedings/091-0082-toys-r-us-inc>

To maintain its dominance over the labor market for Western Pennsylvania healthcare workers, UPMC's leadership combined its merger spree with a consistent effort to prevent workers from forming unions. Any worker who attempts to organize is surveilled, harassed, intimidated, and ultimately fired. UPMC has been party to more than 150 unfair labor practice filings at the National Labor Relations Board since Pittsburgh hospital workers started organizing a decade ago, and the NLRB ruled in 2014 and again in 2018 that UPMC broke federal labor law by attempting to prevent workers from forming a union.¹²

UPMC's union-busting campaign has had an impact. In Allegheny County, only 2 percent of UPMC hospital workers are in unions, while 34 percent of Allegheny Health Network hospital workers are. As one anonymous worker testified, "Any thoughts or questions about safety and you're 'flagged' or written up. They try to fire anyone that voices concern or questions anything!" Another said, "Employees feel threatened and concerned for their job if they try to raise issues. If managers do not like your suggestions, they sometimes use it against you."

A crisis for healthcare workers is a crisis for patients. The COVID pandemic laid bare that UPMC is understaffed, unable to keep workers safe, and unwilling to ensure the workplace conditions necessary to prevent talented workers from leaving. This undermines the ability of those workers who stay to provide the quality of care they feel their patients deserve, as too few workers caring for too many patients inevitably means someone or something slipping through the cracks.

In fact, in a survey released earlier this year, inadequate staffing was the number one reason former hospital workers gave for leaving their jobs. 52 percent of former workers, in the same survey, report being unable to provide adequate care as a reason they left the profession.¹³

¹² Marvit, Moshe Z., "A Textbook Example of a Boss's Campaign to Destroy a Union," In These Times, Nov. 17, 2014. <https://inthesetimes.com/article/university-of-pittsburgh-medical-center-union-busting>; and Dube, Lawrence E., "UPMC Hospitals Unlawfully Dominated Worker Council, NLRB Finds," Bloomberg Law, Aug. 31, 2018 <https://news.bloomberglaw.com/daily-labor-report/upmc-hospitals-unlawfully-dominated-worker-council-nlr-b-finds>

¹³ "Leaving the Bedside: Findings from the Pittsburgh Hospital Workers Survey," April 2022 <https://pghhospitalworkerssurvey.com/wp-content/uploads/2022/04/Leaving-the-Bedside.pdf>

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During the height of COVID, it was not unusual to spend a full 12-hour shift definitely trying to save one patient’s life — covered in sweat and full PPE — with no breaks, no water, no food, and no time to breathe.

Not only did very few COVID patients survive, but we also had the added emotional toll of having to give this news to their loved ones who were not able to be with them in the end. That was incredibly difficult, I will never forget those conversations.

Working in these conditions is stressful and intense. There are constant alarms ringing in my ears, as I pressure myself to work faster and faster. But I know that multitasking increases my chances of making a mistake, and as I work, in the back of my mind I am worried I might hurt a patient or lose my license.

The staffing shortage has only worsened since then, and so has the emotional burden. We are continually being put into situations that make us feel like we have to choose between one patient’s needs and well-being at the expense of others.

Because of this, many of my coworkers and I are now experiencing work-related post-traumatic stress. Some of us have started taking medicine for depression and anxiety, others are going to therapy — but many more have made the decision to leave the bedside.”

Jessica Guan
UPMC RN

Understaffing isn't the only way UPMC's power negatively affects patients. UPMC is also an insurer. As of 2021, UPMC controlled 17.5 percent of the health insurance market in Pennsylvania and 32 percent of the market in Western Pennsylvania.¹⁴ As a major insurer, it can use access to care as a means to acquire new patients and harm its competitors.

For example, the Pennsylvania Attorney General alleged in a lawsuit that UPMC has threatened to deny current patients access to continued care if they did not switch from a competitor's insurance network to UPMC's own.¹⁵ It took a temporary consent decree to end this practice, and later a 10-year contract negotiated by the AG's office.

Finally, UPMC is notorious for using its market power to acquire, and subsequently shut down, hospitals to reduce competition, including UPMC Pinnacle Lancaster and UPMC Susquehanna Sunbury. In other places, UPMC has acquired hospitals and then shut-down major departments and service lines.¹⁶ This allows it to drive patients to its other facilities, further consolidating its power.

Challenging the threat posed by UPMC to patients and workers in Western Pennsylvania means addressing both its ability to accumulate power and its ability to prevent workers from doing the same. Elected officials at the state, county, and local levels all have specific steps they can take to accomplish both, which are outlined below. This is not an exhaustive list, and there are surely other creative ideas out there, but this would put workers and patients back on an even playing field with UPMC, reintroducing competition into a healthcare system currently devoid of it.

The end goal is to reform the healthcare system in Western PA so that hospitals live up to the expectations people have of not-for-profit, charitable institutions and large employers that drive the economy. Lawmakers must ensure that UPMC can no longer unfairly abuse its size and power to squash competition and hold down standards for workers and patients. In a system where one employer is so dominant, policymakers must guarantee that workers are able to unionize and exercise their collective bargaining rights, providing a counterweight to UPMC's power in labor markets.

¹⁴ National Association of Insurance Commissioners, "2021 Market Share Reports: For the Top 125 Accident and Health Insurance Groups and Companies by State and Countrywide," <https://content.naic.org/sites/default/files/publication-msr-hb-accident-health.pdf>; and Gough, Paul J., "UPMC Sees \$1B Increase in Revenue," Feb. 28, 2022, <https://www.bizjournals.com/pittsburgh/news/2022/02/28/upmc-sees-1b-increase-in-revenue.html>

¹⁵ Commonwealth of Pennsylvania vs. UPMC, No 334 M.D. 2014 <https://www.attorneygeneral.gov/wp-content/uploads/2019/02/UPMC-filing.pdf>

¹⁶ For example, they closed a hospice that was part of recently-acquired UPMC Somerset.

POLICY RECOMMENDATIONS TO REFORM THE HEALTHCARE INDUSTRY IN WESTERN PA

| | |
|---|---|
| Use Antitrust Law to Better Address Consolidated Hospital Power | <p>STATE</p> <ul style="list-style-type: none"> - Pass the Open Markets Act |
| Increase Scrutiny of Hospital Mergers | <p>STATE</p> <ul style="list-style-type: none"> - Pass the Open Markets Act |
| Increase Enforcement of Monopsony Power | <p>FEDERAL</p> <ul style="list-style-type: none"> - Empower the Federal Trade Commission (FTC) to conduct oversight of non-profit hospital <p>STATE</p> <ul style="list-style-type: none"> - Pass the Open Markets Act |
| Support Hospital Workers Forming Unions and Expect Employer Cooperation | <p>STATE</p> <ul style="list-style-type: none"> - Enact labor-peace laws <p>LOCAL</p> <ul style="list-style-type: none"> - Enact labor-peace laws |
| Abolish Training Repayment Agreement Programs (TRAPs) | <p>FEDERAL</p> <ul style="list-style-type: none"> - Encourage the Consumer Financial Protection Bureau to prohibit TRAPs <p>STATE</p> <ul style="list-style-type: none"> - Pass a legislative ban on TRAPs |
| Ban the Use of Non-Compete Agreements | <p>STATE</p> <ul style="list-style-type: none"> - Pass legislation being sponsored by Reps. Frankel and Verkat to ban the use of noncompetes in healthcare |
| Investigate and Reform UPMC's Tax-Exempt Status | <p>STATE</p> <ul style="list-style-type: none"> - Require the PA Auditor General to investigate UPMC's compliance with state law and its non-profit status - Mandate additional steps that hospitals, including UPMC, must take to achieve and retain their non-profit status <p>LOCAL</p> <ul style="list-style-type: none"> - Negotiate PILOT agreements with non-profit hospitals - Refile lawsuits challenging UPMC's non-profit status |
| Reform Hospital Pricing Powers | <p>STATE</p> <ul style="list-style-type: none"> - Ban Price Discrimination - Create an All-Payer System |
| Adopt 'Any Willing Insurer' Legislation to Prevent Refusals to Deal | <p>STATE</p> <ul style="list-style-type: none"> - Pass Rep. Frankel's legislation to require all health systems that also operate health insurance companies to contract with any willing insurer |

Use Antitrust Law to Better Address Consolidated Hospital Power: STATE

UPMC has consistently used anti-competitive tactics and business practices to attain its position of power and to eliminate or block other healthcare providers in Western Pennsylvania with little regard to its effect on workers and patients. For example, UPMC's aggressive history of hospital and healthcare acquisitions across the state can limit the quality of patient healthcare.

However, unlike many other American states, Pennsylvania does not have a state antitrust statute. As a result, when seeking to address anti-competitive behavior by UPMC or other dominant actors, Pennsylvania is forced to rely on either state consumer protection laws, which have limited reach into the most harmful behavior in question, or federal antitrust law, which has been progressively weakened over the past 40 years and is poorly suited to address anticompetitive practices in labor markets or in healthcare.

To remedy this gap in regulation and give the state the enforcement powers to prevent harms from hospital consolidation, Pennsylvania could pass the Pennsylvania Open Markets Act as a model piece of state antitrust legislation. It includes provisions that specifically prohibit dominant market actors, like UPMC, from abusing its advantaged position at the expense of workers, patients, or other healthcare providers. It prohibits anti-competitive mergers, establishes a system for the Pennsylvania Attorney General to be pre-notified of any planned mergers and acquisitions, and includes a stricter notification standard for healthcare mergers.

Increase Scrutiny of Hospital Mergers: STATE

UPMC has attained its position of dominance in Western Pennsylvania through the same methods pursued by many monopolies: An aggressive strategy of mergers and acquisitions of competing hospitals, outpatient clinics, and independent healthcare providers. This has included large acquisitions of other hospitals and healthcare systems, as detailed above, as well as small acquisitions of, for example, independent physicians' practices.¹⁷

Each of these acquisitions adds to UPMC's monopoly, increasing its ability to raise prices for patients, to lower wages for healthcare workers, and to squeeze other healthcare providers out of the market. The concentration of hospitals has been empirically linked to significant increases in patient mortality¹⁸ and unfair bargaining power over healthcare employees when determining wages, benefits, and working conditions.

¹⁷ See, for example, Paul J. Gough, "UPMC to buy biggest independent physician's practice in Erie," *Pittsburgh Business Times*, September 14, 2011, <https://www.bizjournals.com/pittsburgh/news/2011/09/14/upmc-acquires-Erie-independent-practice.html>

¹⁸ Gaynor, Martin, Rodrigo Moreno-Serra, Carol Propper, "Death by Market Power: Reform, Competition, and Patient Outcomes in the National Health Service," *American Economic Journal: Economic Policy*, 5 (4): 134-66. <https://www.aeaweb.org/articles?id=10.1257/pol.5.4.134>

To prevent UPMC from continuing to extend its market power over Pennsylvanians' healthcare, lawmakers should introduce strict merger review policies specific to healthcare. Specifically, the PA Open Markets Act includes the necessary provisions to require UPMC and others to notify the Pennsylvania Attorney General of any mergers that have the potential to harm patients and healthcare workers. To ensure that healthcare consolidation cannot happen under the radar through a series of small acquisitions, the PA Open Markets Act requires all mergers between Pennsylvania healthcare providers – of any size – to be reported to the Attorney General.

With information about healthcare mergers, large and small, the Attorney General can identify the acquisitions pursued by UPMC or any others and seek to block them, whether under the PA Open Markets Act or federal antitrust law.

Increase Enforcement of Monopsony Power: FEDERAL STATE

UPMC is notorious for abusing its dominance in Western Pennsylvania to suppress wages, degrade working conditions, provide worse benefits, and prevent workers from switching jobs to pursue better opportunities. As explained above, this “monopsony” power occurs when a buyer has power, such as UPMC’s power over its own workers in healthcare labor markets.

Traditional antitrust law tends to ignore this sort of anti-competitive behavior and abuse. Guided by a “consumer welfare standard” for the past 40 years, federal antitrust law primarily seeks to intervene when consumers are harmed by higher prices, but generally ignores when workers are hurt through anticompetitive business and employer practices.

To diminish UPMC’s unfair control over healthcare labor markets, Pennsylvania state can incorporate specific standards into any potential state antitrust law to enforce against the harms and abuses from monopsony power. The Pennsylvania Open Markets Act includes specific rules prohibiting companies from monopsonizing or attempting to monopsonize any market, including labor markets. The PA Open Markets Act could be further expanded on this front to include specific prohibitions on practices used by UPMC to both abuse and further cement its power in labor markets, such as prohibiting contract terms like non-compete agreements for employees, and banning no-poach agreements with other employers to not hire each others’ workers. And state and local lawmakers can push the federal government to allow the Federal Trade Commission to conduct oversight of non-profit hospitals, which it is currently barred from doing under federal law, by passing the Stop Anticompetitive Healthcare Act, sponsored by Reps. Pramila Jayapal and Victoria Spartz.

Support Hospital Workers Forming Unions and Expect Employer Cooperation: STATE

LOCAL

Transforming hospital jobs and making them sustainable for workers and the economy will require workers to have a voice and increased bargaining power. Jobs in the steel industry did not start out as good jobs. It was only through workers building power and negotiating for higher standards that those jobs built the middle class.

Workers are entitled to form unions and collectively bargain for better wages and conditions without fear of discrimination from their employers. Nevertheless, employees say that UPMC has repeatedly violated their rights to unionize. While they have sought relief before the National Labor Relations Board, they have not always been successful. State legislators must step up to support and elevate workers' efforts to improve their labor conditions.

Legislators and the public have the right to expect cooperation from non-profit hospital systems when workers choose to organize. Other states and localities have pursued labor-peace laws that ensure employers respect workers' rights. Pennsylvania could do the same.

Abolish Training Repayment Agreement Programs: FEDERAL STATE

One way that UPMC engages in predatory conduct to stifle working conditions and worker mobility is through the use of Tuition Assistance Programs, otherwise known as Training Repayment Agreement Provisions ("TRAPs"). Nurses who receive training through UPMC's proprietary training program can have their wages garnished, and if their employment status changes for any reason - including termination without cause - they may be liable for full repayment. This "shadow debt" or "debt peonage" has the effect of "trap"-ping unwitting employees in costly and potentially disastrous financial debt if they seek to end their employment. TRAPs have been used to circumvent state-level bans on non-compete clauses and to further stifle labor market competition.

A recent report by the Student Borrower Protection Center documented the widespread and accelerating use of TRAPs by big businesses, who often already control a large market share of their respective industry.¹⁹ The report found that the healthcare industry in particular is increasingly reliant on TRAPs to ensnare nurses and other healthcare workers. During the COVID-19 pandemic, as many healthcare workers sought alternative employment to escape unsafe working conditions, TRAPs were applied to entry-level hospital workers, nurses, and immigrant workers as a non-negotiable condition of employment. Consistent with the testimony

¹⁹ Student Borrower Protection Center, "Trapped at Work: How Big Business Uses Student Debt to Restrict Worker Mobility," July 2022

of UPMC healthcare workers, the report found that TRAPs were more often used by less desirable hospitals with unsafe working or patient care conditions.

Employers will argue that TRAPs reduce the risk that an employee will receive the benefit of training and depart employment immediately, depriving the employer of the value of its training investment. Often, however, TRAPs are buried deep in employment contracts and are designed to trap the employee in substandard working conditions, reduce bargaining power, and enhance labor market dominance. For a system like UPMC, which already dominates the healthcare industry in Pennsylvania, healthcare employees find themselves with few alternative employment opportunities, while remaining indebted to their former employers.

In recent months, consumer and labor advocates have called on the Consumer Financial Protection Bureau to prohibit TRAPs as an “unfair, deceptive, or abusive act or practice” (UDAAP).²⁰ The FTC and NLRB also released a joint Memorandum of Understanding which identified as an issue of joint regulatory interest the imposition of one-sided, restrictive employment contracts like TRAPs.²¹ In a comment to the Federal Trade Commission, National Nurses United described how TRAPs were used to stifle the bargaining power of recently-graduated RNs.²² State policymakers can also ban the use of TRAPs, similar to how state policymakers have limited or banned the use of non-compete clauses.

Ban the Use of Non-Compete Agreements: STATE

Non-compete agreements – which restrict the ability of workers to be employed by a competitor of their current employer if they leave their job, often within a certain geographic distance – are a key way UPMC, and many other employers, prevent healthcare workers from changing jobs or using the threat of working for a competitor as a way to leverage higher pay, better benefits, or better working conditions. UPMC’s extensive reach in Western Pennsylvania makes it functionally impossible for workers who have a non-compete to find sufficient employment in their field. State legislators should ban the enforcement of non-competes for workers in medically-related jobs.

In December 2022, Pennsylvania Representatives Dan Frankel and Arvid Venkat (an emergency physician) announced an intent to introduce legislation that would ban the use of noncompetes in healthcare.²³

²⁰ Student Borrower Protection Center, Letter to Hon. Rohit Chopra, Consumer Financial Protection Bureau, “Request for Information Regarding Employer-Driven Debt,” September 9, 2022 <https://consumerfed.org/wp-content/uploads/2022/09/Employer-Driven-Debt-RFI-Coalition-Comment.pdf>

²¹ Memorandum of Understanding Between the FTC and NLRB Regarding Information Sharing, Cross-Agency Training, and Outreach in Areas of Common Regulatory Interest; July 19, 2022 <https://www.nlr.gov/sites/default/files/attachments/pages/node-7857/ftcnlr-mou-71922.pdf>

²² National Nurses United, Comment Submitted on Federal Trade Commission and Department of Justice Merger Enforcement No. FTC-2022-0003 (Apr. 21, 2022), <https://www.regulations.gov/comment/FTC-2022-0003-1831>

²³ House Co-Sponsorship Memorandum, Barring Non-Compete Agreements in Healthcare Employment <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20230&cosponId=38812>

Previously, in the 2021-2022 session, House Bill 681 sought to do the same, and was backed by a bipartisan group of state legislators.²⁴ Legislators backing HB 681 included Rep. Kathy Rapp (R), then chair of the House Health Committee, as well as Rep. Frankel, a Democrat who served as that committee’s minority chair. Senator Michele Brooks also introduced legislation moderating the use of noncompetes in healthcare employment during the 2021-2022 session, though her bill (SB 1358) applied only to physicians.

Investigate and Reform UPMC’s Tax-Exempt Status: STATE LOCAL

UPMC’s status as a non-profit and institution of purely public charity qualifies it for tax exemptions at the state, county, and local level. From Allegheny County alone, for example, UPMC receives about \$50 million annually in real estate tax exemptions.²⁵

However, UPMC has failed to abide by the conditions binding purely public charities in Pennsylvania, as laid out in two exhaustively detailed lawsuits, one filed by the city of Pittsburgh and the other by the Pennsylvania Attorney General. Specifically, UPMC is one of the worst performers in Pennsylvania and nationally in terms of charitable spending, ranking 209th out of 307 hospital systems in the U.S. in a 2022 survey. That same survey ranked UPMC fifth worst in the nation in terms of its “fair share deficit,” i.e., the amount it spends on charitable giving versus the value of its various tax exemptions.²⁶ The upshot: UPMC receives far more from taxpayers than it pays out in terms of real benefits for the community.

Pennsylvania lawmakers have several options for restricting or eliminating UPMC’s tax-exempt status to ensure that the public is receiving adequate services for its investment into the region’s healthcare system and that public subsidies support model employers, not low-road jobs that lead to Pennsylvania workers acquiring medical debt and relying on public assistance. The legislature can require the Department of the Auditor General to investigate whether UPMC is complying with state law, and issue recommendations for remedying any deficiencies. Or the state legislature can mandate additional steps that hospitals, including UPMC, must take to achieve and retain their non-profit status, such as providing a certain level of uncompensated care or achieving certain labor peace requirements. Pennsylvania lawmakers can also petition the IRS to revoke UPMC’s tax-exempt status, on the grounds that it is not fulfilling the necessary requirements.

24 Reps. Dan Frankel, Kathy Rapp and Torren Ecker, “Op-Ed: Noncompete provisions harm patients, workers and Pennsylvania,” GoErie.com, <https://www.goerie.com/story/opinion/2021/04/20/hb-681-targets-noncompete-clauses-harm-patients-workers-and-pa/7292350002/>

25 Herzenberg, Stephen, Diana Polson, and Nthando Thandiwe, “Fair Taxation for Pittsburgh—A Foundation for a More Just City Beyond American Rescue Plan Dollars,” Pittsburgh Budget and Policy Center, April 14, 2022. <https://krc-pbpc.org/wp-content/uploads/Pgh-Fair-Taxation-Brief-4-14-22-Final.pdf>

26 Lown Institute Hospitals Index, 2022 results, Fair Share Spending, <https://lownhospitalsindex.org/2022-fair-share-spending/>

The city of Pittsburgh, or any other local taxing body, can also reinstate its lawsuit challenging UPMC's tax-exempt status, with the goal of having that status modified or revoked. Or local governments, including the city of Pittsburgh, can negotiate payment-in-lieu-of-taxes (PILOT) agreements with UPMC to ensure that it is contributing adequately to city revenue, such as those UPMC pays in other parts of the state. Currently, UPMC pays PILOTs for a number of its facilities outside of the Pittsburgh area, including UPMC Hamot, UPMC Altoona, and UPMC Williamsport. The PILOT for UPMC Williamsport was negotiated as recently as 2020.

Reform Hospital Pricing Powers: STATE

UPMC uses a wide variety of pricing tactics to maintain its control over healthcare in Western Pennsylvania. By using a web of opaque and misleading pricing systems, UPMC is able to overcharge patients and government payers, charge or reimburse different amounts for its own insurer or medical system relative to other systems, and use such pricing to squeeze other healthcare providers out of the market. Many of these practices directly harm consumers through high and unpredictable medical costs, limited patient choice, and opaque explanations of medical costs.

Additionally, as part of a general strategy by UPMC and other medical systems to consolidate their control over segments of the healthcare industry in Western Pennsylvania, such practices further cement its dominant position over workers. As the dominant healthcare provider, UPMC uses opaque billing or discriminatory insurance reimbursement practices to limit the market share of competing healthcare systems. Downstream, this limits the alternative employment options available to healthcare workers looking for better jobs or to bargain for better wages.

There are two policy solutions to limit these pricing practices:

- **Ban Price Discrimination:** UPMC locks other healthcare providers out of the market by refusing to offer in-network reimbursement for its insurance beneficiaries who choose to use other health systems. The result is that those patients pay more to use a competing healthcare provider, and must travel, sometimes great distances, to a UPMC facility for in-network rates.

This practice could be ended by prohibiting “price discrimination.” Price discrimination is where equivalent goods or services, including healthcare, are provided to one buyer at one price and at a different price for other buyers. The federal Robinson-Patman Act has prohibited price discrimination for goods since 1935, but it exempts services from the law, and has been broadly not enforced by the government since the 1980s.

Pennsylvania could end this practice by prohibiting any company or healthcare system from “discriminating in price or price policy among purchasers of a product, service, resource, or facility of like grade and quality.” Prohibiting price discrimination would prevent UPMC from entrenching its market power over other healthcare systems by providing differential insurance coverage based on whether its beneficiaries sought to use their insurance at UPMC facilities versus others. Prohibiting price discrimination would stop UPMC from abusing its market power over patients, competing insurance plans, or competing health systems.

- **Create an All-Payer System:** Pennsylvania could also shift to an all-payer system, under which the state sets prices for specific healthcare services and procedures, thus eliminating the ability of hospitals to engage in price discrimination. An independent public body sets rates, and all payers, private and public, pay the same price for the same service at the same hospital. Further, hospital revenues, and the growth of health spending overall, are capped.

Maryland currently operates an all-payer system, which has increased hospital quality while effectively constraining costs.²⁷ Implementing such a system requires a Medicare waiver.

Adopt ‘Any Willing Insurer’ Legislation to Prevent Refusals to Deal: STATE

UPMC’s refusal to deal with Highmark insurees reveals the extent to which it is willing to leverage its power as an insurer to drive business to its provider network, and vice versa, despite the harm it can cause to patients. A hospital such as UPMC that has an insurance arm will always be able to drive patients to purchase its insurance, as it can deny care to patients who use alternative insurance, threatening to cut them off unless they switch. The state can address this by passing “any willing insurer” legislation, which requires hospitals to accept any registered insurer desiring to contract with it. Thus, hospitals would be forced to compete on quality of care in order to acquire new patients, not on blocking access to their networks for certain patients in order to force them to switch insurers.

In 2021, Pennsylvania Representative Dan Frankel introduced legislation that, if passed, would have required all health systems that also operate health insurance companies (called integrated delivery networks, or IDNs) contract with any willing insurer.²⁸ If passed, UPMC and its primary competitors would be governed by this legislation as they qualify as IDNs.

²⁷ Jackson-Fowl, Madeline, and Willem Daniel, “Understanding the Success behind Maryland’s Model,” *Delaware Journal of Public Health*. 2019 Dec 18;5(5):34-35. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8389156/>

²⁸ Co-Sponsorship Memo, Expanding Fair Access to Hospital Care, HB2883 and 2884, <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20210&cosponId=34354>

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