

REGULATING HEALTHCARE COMPETITION IN INDIANA: THE UNCERTAIN FUTURE OF CERTIFICATE OF PUBLIC ADVANTAGE LAWS

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I. INTRODUCTION

What happens when state laws shield hospital mergers from federal antitrust enforcement? The rise of Certificate of Public Advantage (“COPA”) laws has sparked debate over whether they protect public interests or merely create monopolistic healthcare systems with less oversight. Indiana’s adoption of a COPA law brings this debate to the forefront, raising critical questions about how state-sanctioned hospital mergers interact with federal preemption and impact healthcare competition.

A. Certificates of Public Advantage and Legislation

The Supremacy Clause of the United States Constitution establishes that federal laws are “the supreme Law of the Land” and preempt state laws.¹

The constitution, therefore, declares, that the constitution itself, and the laws passed in pursuance of its provisions, shall be the supreme law of the land, and shall control all state legislation and state constitutions, which may be incompatible therewith; and it confides to this court the ultimate power of deciding all questions arising under the constitution and laws of the United States.²

In recent years, preemption has been circumvented in certain states which have enacted COPA laws that allow hospitals to merge without the threat of federal antitrust scrutiny.³

Indiana is one of nineteen states to have enacted a COPA law.⁴ These states are Florida, Idaho, Indiana, Kansas, Louisiana, Maine, Mississippi, Nebraska, New York, Ohio, Oregon, South Carolina, Tennessee, Texas, Virginia,

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1. U.S. CONST. art. VI, cl. 2.

2. *McCulloch v. Maryland*, 17 U.S. 316, 326–327 (1819).

3. *See Certificates of Public Advantage (COPAs)*, FED. TRADE COMM’N, <https://www.ftc.gov/news-events/features/certificates-public-advantage-copas#:~:> [https://perma.cc/E7HM-64VV] (last visited Jan. 1, 2026).

4. Amy Y. Gu, *States with Certificate of Public Advantage (COPA) Laws*, THE SOURCE ON HEALTHCARE PRICE & COMPETITION (Aug. 10, 2021), <https://sourceonhealthcare.org/updated-states-with-certificate-of-public-advantage-copa-laws/> [https://perma.cc/989T-DJFN].

Washington, West Virginia, Wisconsin, and Wyoming.⁵ Five other states have repealed COPA laws: Minnesota, Montana, North Carolina, North Dakota, and Colorado.⁶ Some states have repealed their COPA law post-merger to remove oversight on the merged hospital; other states have repealed their COPA law to prevent a COPA-related merger altogether.⁷

B. Reasons Hospitals Seek COPA Laws

Hospitals that seek COPA-related mergers urge that there are a variety of reasons to set federal antitrust laws aside and allow the mergers.⁸ Drafters of COPA laws claim that antitrust laws impede the ability of hospitals to provide healthcare in underserved communities more efficiently and economically.⁹ They argue that COPA allows for better healthcare, which otherwise would be denied to patients if hospitals were required to adhere to federal antitrust laws.¹⁰ The Federal Trade Commission (“FTC”) provides a list of arguments that hospitals ostensibly claim to support COPA laws: elimination of wasteful duplication; reduction of healthcare costs and generation of efficiency; rural hospitals would close if not for the merger; quality of patient care would improve; and mergers would enhance access to healthcare facilities and create more jobs.¹¹

The FTC provides counter arguments for all these claims, emphasizing that competition in the healthcare facility market benefits patients, employers, and hospital employees.¹² The agency has consistently advocated for applying federal antitrust laws to protect consumers, employees, and employers. Competition is not wasteful or unnecessary; it actually incentivizes hospitals to invest in improvements.¹³

Further, the FTC posits that many hospital mergers do not achieve the savings and efficiencies that proponents of COPA claim, but rather any cost

5. *COPA-Approved Hospital Transaction Exempted from Federal Antitrust Laws*, DUANE MORRIS LLP (Oct. 4, 2023), [https://www.duanemorris.com/alerts/copa_approved_hospital_transaction_exempted_federal_antitrust_laws_1023.html#:~: \[https://perma.cc/XPZ8-5R26\]](https://www.duanemorris.com/alerts/copa_approved_hospital_transaction_exempted_federal_antitrust_laws_1023.html#:~: [https://perma.cc/XPZ8-5R26]).

6. Jeffrey J. Amato, Conor Reidy, & Dana Cook-Milligan, *The FTC Picks a Fight Against the COPA Hospital Merger System*, WINSTON & STRAWN LLP (Sept. 2022), [https://www.winston.com/en/blogs-and-podcasts/competition-corner/the-ftc-picks-a-fight-against-the-copa-hospital-merger-system#:~: \[https://perma.cc/TLU7-TQHL\]](https://www.winston.com/en/blogs-and-podcasts/competition-corner/the-ftc-picks-a-fight-against-the-copa-hospital-merger-system#:~: [https://perma.cc/TLU7-TQHL]).

7. Fred Ashton, *FTC Warns That Monopoly Hospitals Use State COPA Laws to Evade Antitrust Enforcement*, AMERICAN ACTION FORUM, (Sept. 27, 2022), [https://www.americanactionforum.org/insight/ftc-warns-that-monopoly-hospitals-use-state-copa-laws-to-evade-antitrust-enforcement/ \[https://perma.cc/3X9V-HA5L\]](https://www.americanactionforum.org/insight/ftc-warns-that-monopoly-hospitals-use-state-copa-laws-to-evade-antitrust-enforcement/ [https://perma.cc/3X9V-HA5L]).

8. *Key COPA Facts*, FED. TRADE COMM’N 2, [https://www.ftc.gov/system/files/ftc_gov/pdf/Key_COPA_Facts.pdf \[https://perma.cc/2SQE-8LS4\]](https://www.ftc.gov/system/files/ftc_gov/pdf/Key_COPA_Facts.pdf [https://perma.cc/2SQE-8LS4]) (last visited Jan. 1, 2026).

9. *Id.* at 2.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

savings are a direct result of the elimination of services and job reductions.¹⁴ This raises broader concerns about whether laws, such as COPAs, truly serve the public interest or merely provide regulatory carveouts and an unfair advantage for specific entities.

C. Special Legislation

Special legislation is “[any] law that ‘pertains to and affects a particular case, person, place, or thing, as opposed to the general public.’”¹⁵ Indiana’s Constitution largely prohibits special legislation stating that “in all ... cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.”¹⁶ Given these constitutional constraints, Indiana’s COPA law warrants closer examination. Indiana’s COPA law, discussed below, has the hallmarks of special legislation, as the only subject of this particular law is a single merger of hospitals in the single county qualifying under the statute.¹⁷ In his article, “*State Constitutional Prohibitions on Special Laws*,” Justin Long explains the motivation behind the prohibition of special legislation enshrined in many state constitutions:

Since the nineteenth century, most states have had constitutional clauses prohibiting “special laws.” These clauses were ratified to protect the people of each state from domination by narrow economic elites, who would use their economic power to win grants of privilege from the state legislatures. To fight the corrupt favors garnered by private interests in this way, state constitutional drafters wrote clauses requiring their legislatures to pass only “general laws” that would apply equally to all members of the regulated class. For a brief period, these clauses were enforced in the courts—but more to protect economic elites than the democratic prerogatives of common people.¹⁸

Indiana’s COPA law raises similar concerns, as it appears to grant a unique regulatory privilege to a specific hospital merger rather than to establish a broadly applicable framework. This favoritism not only conflicts with the constitutional mandate for general laws but also underscores the risk of legislative capture, where private interests shape laws to their advantage rather than serving the public good. Given these factors, a closer examination of Indiana’s COPA law in light of special legislation prohibitions is both necessary and timely.

14. *Id.*

15. *City of Hammond v. Herman & Kittle Properties, Inc.*, 119 N.E.3d 70, 78 (Ind. 2019).

16. IND. CONST. art. IV, § 23.

17. *Certificate of Public Advantage*, IND. DEP’T OF HEALTH, <https://www.in.gov/health/cshcr/certificate-of-public-advantage/> [<https://perma.cc/78G2-EDL2>] (last visited Jan. 1, 2026).

18. Justin R. Long, *State Constitutional Prohibitions on Special Laws*, 60 CLEV. ST. L. REV. 719 (2012).

D. Thesis

This note argues that the impending merger between two Indiana hospitals in Vigo County is not in the public's best interest as it is unlikely to provide the efficiencies and lower costs it purports to achieve. Instead, as the FTC argues, Vigo County residents will likely see increased healthcare costs and potentially longer wait times to be seen by a healthcare provider. Furthermore, Indiana's COPA law that permits these hospitals to apply to merge is contrary to Indiana's constitution by creating special legislation that pertains to and affects a particular entity rather than the general public. Finally, the merger contravenes federal antitrust laws by fostering a potential monopoly in the Vigo County healthcare market, undermining competition and harming Indiana consumers.

All COPA laws inherently conflict with federal antitrust principles and should not be exempt from appropriate scrutiny. Healthcare is a sector where quality of care should take precedence over motives for profit. Nonetheless, hospitals around the country are seeking COPA laws to secure the business advantages of monopolistic practices, almost exclusively at the expense of the consumers – patients who depend on affordable and accessible care.

First, this note provides background information detailing Indiana's COPA law, the state constitution's provisions on special legislation, relevant federal antitrust statutes, the FTC's stance on COPA laws, and a brief timeline of events relevant to this note. Second, this note analyzes many critical aspects of this debate: the language of Indiana's COPA statute, the hospitals' initial application, the Indiana Department of Health's requests for additional information, the FTC's and Indiana Attorney General's responses to the application, local reactions and comments at a town hall meeting regarding the proposed merger, the hospitals' decision to withdraw their initial application, a proposed bill repealing the COPA law, the hospitals' second application, the merger's implications for federal preemption, the application of Indiana's leading case on special legislation, the Indiana Department of Health's determination approving the merger, and the critical importance of maintaining affordable healthcare in Vigo County. Finally, this note concludes with discussing solutions to keep healthcare in Vigo County affordable and accessible.

II. BACKGROUND INFORMATION

A. Indiana's COPA Law

Indiana's COPA law was enacted and added to the Indiana Code to take effect on July 1, 2021.¹⁹ Indiana Code § 16-21-15-.05(a) provides the purpose and goals of the COPA law.²⁰ Subsection (a)(1) states that “[a] hospital merger

19. IND. CODE § 16-21-15-1 (2025).

20. IND. CODE § 16-21-15-.05(a) (2025).

may benefit the public by maintaining or improving the quality, efficiency, and accessibility of health care services offered to the public.”²¹ Subsection (a)(2) provides further that “[b]enefits resulting from a hospital merger may outweigh any anticompetitive effects of joining together competitors, including addressing unique challenges in providing health care services in rural areas.”²²

The statute sets forth criteria for counties in which hospitals would be eligible to apply for a COPA merger.²³ The county must (1) have a population less than 140,000 and not contiguous to a county with a population of more than 250,000, (2) have only two hospitals that are both in the statewide trauma care system and one of the hospitals must be a teaching hospital with a medical residency program, and (3) be a predominantly rural county.²⁴

Eligible hospitals seeking a COPA must submit an application to the Indiana Department of Health (“IDOH”) to govern any merger agreement and must have done so before May 13, 2025 (formerly).²⁵ The application must include a copy of the merger agreement and a description of the nature and scope of the merger.²⁶

The IDOH website lists Vigo County as the only county eligible under the law.²⁷ Two hospitals in Vigo County submitted their first COPA application to merge on September 14, 2023.²⁸ The period for comment for the Vigo County merger closed, and the review period was set to close on December 4, 2024.²⁹ However, before the IDOH could release a decision on approval, the hospitals withdrew the application on November 25, 2024,³⁰ and submitted a second application on February 5, 2025.³¹

On January 8, 2025, Indiana Senators Ed Charbonneau and Tyler Johnson introduced Senate Bill 119 to repeal the state’s existing COPA law.³² Prior to Senate Bill 119, the hospitals had until July 1, 2026 to submit any other new applications under the COPA law.³³ However, Senate Bill 119 ultimately

21. IND. CODE § 16-21-15-.05(a)(1) (2025).

22. IND. CODE § 16-21-15-.05(a)(2) (2025).

23. IND. CODE § 16-21-15-1 (2025).

24. *Id.*

25. S.B. 119, 124th Gen. Assemb., Reg. Sess. (Ind. 2025).

26. IND. CODE § 16-21-15-3(b) (2025).

27. *See* IND. DEP’T OF HEALTH, *supra* note 17.

28. *See Application for Certificate of Public Advantage*, UNION HOSP., INC. & TERRE HAUTE REG’L HOSP., L.P. (Sept. 14, 2023), <https://www.in.gov/health/cshcr/files/Redacted-COPA-Application-with-Attachments.pdf> [<https://perma.cc/7MR9-Y4Y2>] [hereinafter *September 2023 Application*].

29. *See* IND. DEP’T OF HEALTH, *supra* note 17.

30. Samantha Liss, *Indiana hospitals pull merger application after pushback over monopoly concerns*, WFYI (Nov. 28, 2024), <https://www.wfyi.org/news/articles/indiana-hospitals-pull-merger-application-after-pushback-over-monopoly-concerns> [<https://perma.cc/3TLP-8DYV>].

31. *See* Union Hosp., Inc. & Terre Haute Reg’l Hosp., L.P., *2025 Application for Certificate of Public Advantage*, IN.GOV (Feb. 5, 2025), <https://www.in.gov/health/cshcr/files/COPA-2025-Application-Reduced.pdf> [<https://perma.cc/Y3AA-Q5V9>] [hereinafter *February 2025 Application*].

32. S.B. 119, 124th Gen. Assemb., Reg. Sess. (Ind. 2025).

33. IND. DEP’T OF HEALTH, *supra* note 17; *see* IND. CODE § 16-21-15 (2025).

amended the COPA law, rather than repealed it, and shortened that window; it required the hospitals to submit their final application by May 13, 2025, and directed the IDOH to approve or deny the application by November 9, 2025.³⁴ This narrowed the timeframe for Union Health and Terre Haute Regional to obtain approval by more than a year. While the latest application, dated February 5, 2025, includes additions intended to strengthen its chances of approval by the IDOH, the initial application remains worth analyzing, as the hospitals' arguments did not significantly change between the two applications. This is likely due to the time constraint the hospitals faced in light of Senate Bill 119.

Under Indiana Code § 16-21-15-5, the hospitals must be monitored for at least five years after merging and then may elect to opt out of COPA.³⁵ Monitoring mergers is a concession merging hospitals make in order to justify antitrust exclusion. However, the five-year monitoring requirement provided in the statute, and the opt-out provision are now effectively moot. Notably, Indiana Code § 16-21-15-6, which covers the state department's annual review of approved certificates of public advantage, expires July 1, 2026, making the originally stipulated five years of review impossible for the proposed merger.³⁶ A successful merger under this language of Indiana's COPA statute would be monitored only for only a few months, after approval, with no opt-out notice required.

B. Special Legislation in Indiana

Indiana's COPA statute is specifically tailored for Union Health Hospital, Inc. ("Union Health") and Terre Haute Regional Hospital ("Terre Haute Regional") in Vigo County. This is made clear by the fact that it is listed as the only eligible county on the IDOH COPA page.³⁷

The Indiana Supreme Court recently addressed the constitutionality of special legislation in *Holcomb v. City of Bloomington*.³⁸ In *Holcomb*, the Indiana Supreme Court held that a state statute violated the Indiana Constitution prohibiting special legislation.³⁹ The legislature enacted a law that targeted only the city of Bloomington when it could have enacted a law that applied generally throughout Indiana.⁴⁰

The Court in *Holcomb* provided a two-pronged inquiry when dealing with special legislation: (1) assess whether the law is special or general and (2) if the law is special, assess whether it is permissible under the Indiana constitution.⁴¹

34. S.B. 119, 124th Gen. Assemb., Reg. Sess. (Ind. 2025).

35. IND. CODE § 16-21-15-5 (2025).

36. See IND. CODE § 16-21-15-6 (2025).

37. See IND. DEP'T OF HEALTH, *supra* note 17.

38. See *Holcomb v. City of Bloomington*, 158 N.E.3d 1250 (Ind. 2020).

39. *Id.* at 1255.

40. *Id.* at 1253.

41. *Id.* at 1264.

“[T]he constitutionality of special legislation hinges on the uniqueness of the identified class and the relationship between that uniqueness and the law.” A special law is permissible “when an affected class’s unique characteristics justify the differential treatment the law provides to that class.” But a special law is not permissible “when there are no unique circumstances of an affected class that warrant the special treatment—meaning that a general law could be made applicable.”⁴²

C. Relevant Federal Antitrust Statutes

The issue of whether the federal antitrust laws should preempt Indiana’s COPA law is significant. There are three primary federal antitrust laws: The Sherman Act, The Clayton Act, and The Federal Trade Commission Act. These laws aim to protect consumers by preventing corporations from minimizing competition through monopolistic practices.

The Sherman Act makes it illegal for companies to “monopolize, conspire to monopolize, or attempt to monopolize a market for products or services.”⁴³ A firm has unlawfully monopolized if it has obtained or maintained market power by suppressing competition and engaging in anticompetitive conduct, rather than through competition.⁴⁴

The Clayton Act prohibits certain actions that might restrict competition.⁴⁵ Examples of this are tying agreements, predatory pricing, and mergers that could lessen competition. The Department of Justice (“DOJ”) explains that:

[a]n illegal merger occurs when two companies join together in a way that may substantially lessen competition or tend to create a monopoly in a relevant market. This reduction in competition can harm consumers by potentially leading to higher prices or fewer choices for products or services. It can also harm workers by potentially leading to lower wages or fewer choices for employment.⁴⁶

Finally, the Federal Trade Commission Act empowers the FTC to, among other things, prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.⁴⁷

The FTC has provided “*Statements of Antitrust Enforcement Policy in Health Care*” to provide guidance on how the FTC and DOJ believe antitrust

42. *Id.* at 1253 (quoting *Herman & Kittle Props., Inc.*, 119 N.E.3d 70, 84 (Ind. 2019)).

43. 15 U.S.C. § 2; see *The Antitrust Laws*, U.S. DEP’T OF JUST., <https://www.justice.gov/atr/antitrust-laws-and-you#:~:> [<https://perma.cc/E4B2-HNWH>] (last updated Dec. 20, 2023).

44. *Id.*

45. 15 U.S.C. § 12; see U.S. DEP’T OF JUST., *supra* note 43.

46. *Id.*

47. 15 U.S.C. §§ 41–58; see *Federal Trade Commission Act*, FED. TRADE COMM’N, <https://www.ftc.gov/legal-library/browse/statutes/federal-trade-commission-act> [<https://perma.cc/QXV9-2NAZ>] (last visited Jan. 1, 2026).

statutes should be enforced in the healthcare industry.⁴⁸ In the Statements, the agencies lay out an antitrust safety zone where they “will not challenge any merger between two general acute-care hospitals where one of the hospitals (1) has an average of fewer than 100 licensed beds over the three most recent years, and (2) has an average daily inpatient census of fewer than 40 patients over the three most recent years, absent extraordinary circumstances.”⁴⁹

D. The Federal Trade Commission’s View on COPAs

The FTC strongly disfavors COPA-related mergers. In a detailed report, the FTC extensively covers what COPA-related mergers look like and their effects.⁵⁰ The report analyzes the effects of COPA-related mergers in each state that has passed a COPA law. Five helpful examples are COPA-related mergers that occurred in North Carolina, Montana, Tennessee and Virginia, South Carolina, and Maine. When a state’s COPA law expires or state legislatures repeal the statute, oversight over the merged hospitals ceases.

In North Carolina, 20 years after the Merger of two Asheville hospitals, the state’s COPA law was repealed, and no competitive or regulatory constraints were imposed on the merged hospital.⁵¹ The merged hospital increased prices by at least 20% more than “peer hospitals” during the COPA period, and by another 38% after the COPA law was repealed.⁵²

In Montana, when the only two general hospitals in Great Falls merged, the merged hospital increased its prices by 20% when the State COPA law was repealed.⁵³

Two healthcare entities merged in Portland, Maine under the state’s COPA: Southern Maine Medical Center and Maine Medical Center.⁵⁴ Southern Maine Medical Center increased its prices by about 8% to 13% during the COPA period, and by almost 50% after the COPA expired.⁵⁵ Maine Medical Center’s prices increased its prices by 38% during the COPA period and by 62% after the COPA expired.⁵⁶

A 2018 COPA-related merger resulted in “Ballad Health,” a twenty-hospital

48. See generally *Statements of Antitrust Enforcement Policy in Health Care*, U.S. DEP’T OF JUST. & FED. TRADE COMM’N (Aug. 1996), https://www.ftc.gov/system/files/attachments/competition-policy-guidance/statements_of_antitrust_enforcement_policy_in_health_care_august_1996.pdf [https://perma.cc/8XWC-5XNL].

49. *Id.* at 8–9.

50. See *FTC Policy Perspectives on Certificates of Public Advantage*, FED. TRADE COMM’N (Aug. 15, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/COPA_Policy_Paper.pdf [https://perma.cc/NS29-K55R].

51. *Id.* at 8.

52. *Id.*

53. *Id.*

54. *Id.* at 12.

55. *Id.* at 10.

56. *Id.*

chain in Tennessee, Virginia, North Carolina, and Kentucky.⁵⁷ Ballard Health is “the only option for hospital care for most of the approximately 1.1 million people in a 29-county swath of Appalachia.”⁵⁸ Initially, the hospitals held by Ballard Health were permitted to continue operations if, after an annual review, both states affirmed that Ballard Health’s control provided a public benefit.⁵⁹ Recently, Tennessee lawmakers lowered the standard applied to Ballard Health: “the minimum score Ballard needs to meet to show a ‘clear and convincing’ public benefit has been lowered from 85 out of 100 to 70 out of 100.”⁶⁰ Lowering this standard significantly undermines the function of oversight because reducing the bar for the hospital’s public benefit is essentially the same as having no oversight at all.

In contrast, a merged hospital in Columbia, South Carolina was subject to rate and revenue controls under its COPA law.⁶¹ Research on the price effects showed that prices remained consistent with surrounding competition; the FTC submits that this is because there was still surrounding competition, and the merger did not result in a monopoly.⁶² Oversight on merged hospitals is continuous and non-expiring under South Carolina’s COPA statute.⁶³ The examples above illustrate that regulatory oversight in COPA-related mergers is more effective at controlling costs for patients than the absence of oversight.

Zack Cooper, an Associate Professor of Public Health and Associate Professor of Economics at Yale University, provided an estimate of the increase in costs in an official comment to the proposed merger in Terre Haute.⁶⁴ Cooper estimated that the Union Health and Terre Haute Regional merger “would raise commercial prices by between 10% and 30%, raise local insurance premiums by 3% to 10%, lower nurses’ wages by approximately 5%, and cause approximately 500 job losses outside the health sector.”⁶⁵ Cooper also noted that this significant level of job loss could result in “one to two excess deaths in the community from suicide or overdose.”⁶⁶ These projections highlight that the merger’s impact extends far beyond hospital finances, threatening broader community well-being and public health.

57. About Us, BALLAD HEALTH, <https://www.balladhealth.org/about-us>. [<https://perma.cc/YZQ2-NLUN>] (last visited Feb. 26, 2026).

58. Brett Kelman, *Ballad Health’s Hospital Monopoly Underperformed. Then Tennessee Lowered the Bar*, KFF HEALTH NEWS (Jun. 3, 2025), <https://kffhealthnews.org/news/article/ballad-health-copa-hospital-monopoly-underperformed-tennessee-lowered-standards-public-health-benefit-appalachia/> [<https://perma.cc/X4DW-T3C5>].

59. *Id.*

60. *Id.*

61. FED. TRADE COMM’N, *supra* note 50, at 9.

62. *Id.*

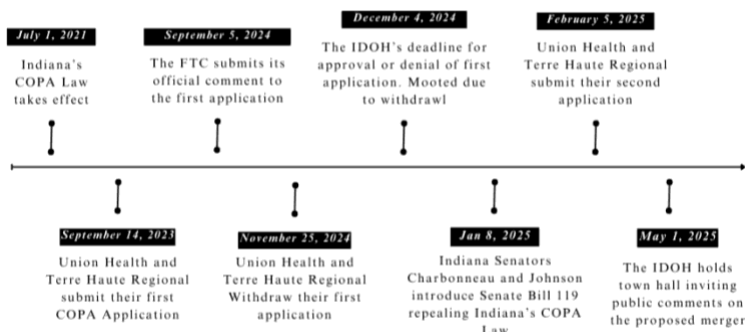
63. S.C. Code Ann. § 44-7-570 (2024).

64. See Zack Cooper, *Public Comment to the Indiana Department of Health Regarding the Certificate of Public Advantage Application of Union Health and Terre Haute Regional Hospital*, YALE TOBIN CTR. OF ECON. POL’Y (Mar. 21, 2025), https://tobin.yale.edu/sites/default/files/2025-03/20250321_public_comment.pdf [<https://perma.cc/Y9D9-DKSN>].

65. *Id.* at 1.

66. *Id.* at 2.

E. Timeline of Key Events



Although IDOH was to approve or deny the application by June 21, 2025, that deadline was extended to November 9, 2025, on which date the IDOH ultimately approved the merger.⁶⁷

III. ANALYSIS

Indiana healthcare costs are currently the eighth highest in the United States.⁶⁸ As highlighted above, COPA law mergers often lead to higher healthcare costs for patients, especially when not under state oversight and when competition becomes extremely scarce to nonexistent. This analysis will cover the language of Indiana's COPA statute, the hospitals' initial application and their communications with the IDOH, the FTC's and local responses to the proposed merger, the withdrawal of the initial application and Senate Bill 119, the effect of state law in light of federal preemption, the potential for a circuit split and possible outcomes in higher courts, application of the *Holcomb* framework, and, finally, why it is crucial for healthcare to remain affordable in Vigo County.

A. The Language of Indiana's COPA Statute

If the IDOH approves the hospitals' final application and the hospitals merge close to the sunset provision date of July 1, 2026, they may never be

67. *The decision On Merger Between Union & Regional Delayed*, WVIG THE LEGEND, (Jun. 20, 2025), <https://www.wvigthelegend.com/2025/06/20/the-decision-on-merger-between-union-regional-delayed/> [<https://perma.cc/A8Q5-R5WC>]; Casey Smith, *Indiana approves Terre Haute hospital merger despite competition concerns*, IND. CAP. CHRON. (Nov. 11, 2025 7:00 AM), <https://indianacapitalchronicle.com/2025/11/11/indiana-approves-terre-haute-hospital-merger-despite-competition-concerns/> [<https://perma.cc/WW9H-SGY9>].

68. Whitney Downard, *Indiana hospital prices 8th-highest in nation, study finds, but hospitals dismiss analysis*, IND. CAP. CHRON. (May 14, 2024 7:00 AM), <https://indianacapitalchronicle.com/2024/05/14/indiana-hospital-prices-8th-highest-in-nation-study-finds-but-hospitals-dismiss-analysis/> [<https://perma.cc/6XSC-YAA2>].

subject to oversight. This defeats the original purpose of the statute and any protections the statute lays out for consumers are made a nullity. Regardless of the narrowing window of time, strict county qualifications preclude any other facilities from qualifying under COPA. The statute expires after five years, and regulatory oversight expires shortly before the statute expires entirely. The statute contains tightly controlled provisions that pave the road to merging in a single county with a single merger target and with very little oversight and regulation set to expire soon.

B. Union Health and Terre Haute Regional's Initial Application

Union Health and Terre Haute Regional submitted their first application under the COPA law on September 14, 2023.⁶⁹ While this application was withdrawn and a new application was submitted, this initial application remains worth analyzing, as some of the statements between the two applications vary.

In the initial application, the hospitals address the anticipated staff reduction and couch the reduction in terms of employees “wish[ing] to seek other employment opportunities.”⁷⁰ The hospitals appear cognizant of the fact that it is very likely that employees will need to seek employment elsewhere. They provide examples such as competing healthcare facilities, critical access hospitals in other counties, home healthcare and hospice agencies, and private practices.⁷¹ If employees wish to remain employed in Vigo County, they can also seek employment at a new battery component manufacturer as well as a casino resort which will be hiring residents of Vigo County.⁷²

As to how the workplace may change for employees, the hospitals include a table of employee initiatives in the application.⁷³ The table lists items such as employee wellness screenings, health advocate coaches, and a weight loss clinic.⁷⁴ However, neither the table, nor the application as a whole, provides how the merger will affect employee salaries. This is a crucial part of employee retention.

The application seems to downplay the inevitable profitability that the proposed merger would bring. It states that “substantially reducing operating costs is not a primary goal of the Merger;” however, because costs to the hospitals will certainly be reduced, this “should not be interpreted as disregard for the health care costs paid by the residents of Vigo County.”⁷⁵ The hospitals also claim that the “Post-Merger Initiatives implemented by [Union Health] will reduce health care costs, will improve the quality of care provided by the

69. See *September 2023 Application*, *supra* note 28.

70. *Id.* at 8.

71. See *id.* at 9.

72. *Id.*

73. *Id.* at 469 (citing page 1 of appended document “Enhanced Population Health Services-Initiatives”).

74. *Id.*

75. *Id.* at 19.

Combined Clinical Platform, and will significantly improve the health status of the residents of Vigo County . . .”⁷⁶

Economist Milton Friedman famously said that the primary responsibility of a business is to maximize profits for shareholders, and that businesses should not engage in socially responsible activities unless they directly benefit the company’s profits, as doing so would essentially be spending other people’s money without their consent.⁷⁷ Friedman has been criticized for this position. Many companies attempt to distance themselves from Friedman and follow the concept of corporate social responsibility (“CSR”).⁷⁸ This trend is driven in part by consumer awareness influencing purchasing decisions.⁷⁹

It is important to question the true nature of the motivation for this merger. By downplaying the topic of profits as much as the application does (there is no forecast of future profits in the publicly available documents), one can wonder if that is not the true driver of seeking the merger. While Friedman’s view is unpopular and even immoral to some economists, it is still worth considering the true motives of the only two hospitals in one county seeking to merge. The hospitals can argue that it is socially responsible to merge in order to provide better healthcare to the citizens of Vigo County; however, given the historic trend in other states where COPA-related mergers occurred under similar conditions as Vigo County’s, costs to patients will likely rise, profits will substantially increase, and competition will be eliminated. Especially because Indiana’s COPA law limits oversight. Avoiding antitrust should carry a heavy burden, particularly for COPA laws which historically harm the consumer and employees.

In its official comment to the proposed merger, the FTC notes that both hospitals are financially stable.⁸⁰ Terre Haute Regional is part of the HCA Healthcare network of hospitals, which is the largest and most profitable of all health systems in the United States, with net patient revenues nationally of over \$51 billion in the most recent twelve months tracked by Definitive Healthcare,

76. *Id.*

77. Milton Friedman, *A Friedman doctrine-- The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES (Sept. 13, 1970), <https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html> [https://perma.cc/LA2J-NJ9Q]; see also Brian P. Schaefer, *Shareholders and Social Responsibility*, 81 J. OF BUS. ETHICS 297, 297 (2008) (on file with author).

78. Hildegunn Mellesmo Aslaksen, Clare Hildebrandt & Hans Chr. Garmann Johnsen, *The long-term transformation of the concept of CSR: towards a more comprehensive emphasis on sustainability*, 6 INT’L J. CORP. SOC. RESP. 1, 3 (2021).

79. Jennifer Dublino, *Can You Make a Profit and Be Socially Responsible?*, BUSINESS.COM, (Jul. 3, 2023), <https://www.business.com/articles/can-you-make-a-profit-and-be-socially-responsible/> [https://perma.cc/7CZX-JTCC].

80. *Staff Submission to Indiana Health Department Regarding the COPA Application of Union Health and Terre Haute Regional Hospital*, FED. TRADE COMM’N, at 10, <https://www.ftc.gov/legal-library/browse/advocacy-filings/staff-submission-indiana-health-department-regarding-copa-application-union-health-terre-haute> [https://perma.cc/H3NR-PLJL] [hereinafter *Staff Submission*].

a data analytics company.⁸¹ Terre Haute Regional very likely has the wherewithal to fill alleged gaps in healthcare services without skirting antitrust laws and quashing its only competition.

C. Responses to the Indiana Department of Health's Request for Interrogatories

The IDOH submitted requests for interrogatories (“FR12”) from the hospitals.⁸² In RFI2, the IDOH requested input on the consequences of granting the COPA and denying the COPA.⁸³ The hospitals exhibit, “Attachment O,” states that granting the COPA provides benefits in “Access, Quality and Safety, Patient Experience and Service Continuity, Pricing, and Efficiency.”⁸⁴ “Attachment P,” which states the effects of denying the COPA, is not available publicly in either PDF file of requests and responses.

D. The Federal Trade Commission's Response to the First COPA Application

The FTC responded to the Union Health and Terre Haute Regional's COPA application through an official comment on September 5, 2024.⁸⁵ As stated above, it is in the FTC's power to prevent methods of unfair competition under the Federal Trade Commission Act.⁸⁶ Its response highlights concerns about the effect the COPA would have on consumers, especially concerning healthcare costs, quality of care, innovation reduction, reduced access to care, and lower wages for hospital employees.⁸⁷

Moreover, the FTC's comment emphasizes the importance of competition in any market, as well as the dangers of a possible monopoly and how monopolies harm consumers, stating that “mergers resulting in a combined share of 30% or more are presumptively unlawful under the antitrust laws.”⁸⁸

81. *Top IDNs by net patient revenue*, DEFINITIVE HEALTHCARE (Jul. 18, 2025), <https://www.definitivehc.com/resources/healthcare-insights/top-idns-by-net-patient-revenue#:~:text=The%20top%20IDN%20in%20the,the%20number%20of%20staffed%20beds> [https://perma.cc/G9Q3-CNNM].

82. *Applicants' Responses to the Second Request for Information*, IN.GOV 1, <https://www.in.gov/health/cshcr/files/RFI-2-Initial-Response.pdf> [https://perma.cc/M7W6-UJ5P] (last visited Jan. 5, 2026).

83. *Union Hospital Inc.'s Subsequent Submission for the Department of Health's Second Request for Information*, IN.GOV 68, <https://secure.in.gov/health/cshcr/files/RFI-2-Subsequent-Submission-.pdf> [https://perma.cc/2GM8-JFNW] (last visited Jan. 5, 2026).

84. *Union Hospital Inc.'s Subsequent Submission for the Department of Health's Second Request for Information* 68, IN.GOV, <https://www.in.gov/health/cshcr/certificate-of-public-advantage/pendingapproved-copas/> [https://perma.cc/2GM8-JFNW].

85. *See Staff Submission*, *supra* note 80, at 1.

86. 15 U.S.C. §§ 41–58.

87. *See Staff Submission*, *supra* note 80, at 1.

88. *Id.* at 3; *see also Competition And Monopoly: Single-Firm Conduct Under Section 2 Of The Sherman Act: Chapter 2*, U.S. DEPT. OF JUSTICE, <https://www.justice.gov/archives/atr/>

The merger between Union Health and Terre Haute Regional would result in a combined share of nearly 74% of commercially insured inpatient hospital services.⁸⁹ This should sound alarms. Some Vigo County residents may have to travel or incur significant medical death if their health insurance does not cover care at the merged hospital.

The comment also points out that both hospitals are financially stable enough to continue operation without the proposed merger.⁹⁰ The hospitals can frame this to bolster their argument that they are financially stable enough to be both pro-patient and pro-employee; however, there are many ways that patients and employees will actually be worse off now that the IDOH has approved the application for merger. The merger will “eliminate competition between the two parties to hire employees.”⁹¹ Additionally, “the proposed merger [may] give the combined hospital system increased bargaining leverage with insurers to negotiate significantly higher reimbursement rates, because insurers would no longer be able to credibly threaten (either implicitly or explicitly) to temporarily terminate one competitor from in-network status during negotiations.”⁹² This is why the sunset provision in the statute is important: while the hospitals’ application states they intend to avoid increased healthcare costs for patients, and is silent on whether employee wages will be lowered, this oversight has an expiration date after which they can engage in practices, including monopolistic ones, which are most profitable for the hospital, even if that means higher costs to patients, lower wages for employees, and, in turn, compromised quality of care for patients.

The sunset provision is also crucial when taking into account price increases from hospital mergers that were COPA-related in other states. Every example provided by the FTC illustrates that merged hospitals drastically increased prices once the COPA in the state expired.⁹³ The notable exception to this is South Carolina, whose oversight never expired. The COPA in Indiana, including oversight, will expire shortly after the merger.

Terre Haute Regional paid just over \$500,000 in county taxes for 2023.⁹⁴ “This revenue could be lost if [Terre Haute Regional] is acquired by Union Health, a non-profit hospital that is exempt from paying taxes.”⁹⁵ While taxes are not a traditional antitrust concern, the economic impact of losing one of the county’s major tax-paying businesses could be detrimental. It is worth

competition-and-monopoly-single-firm-conduct-under-section-2-sherman-act-chapter-2#:~:text=Monopoly%20power%20entails%20both%20greater,the%20existence%20of%20monopoly%20power. [https://perma.cc/G57F-383V]. There is no hardline rule for the threshold of what percentage of the market share indicates a monopoly. Some courts say at or above 50% is a violation. Either way, 74% would be an absolute violation in the Federal Court system.

89. See *Staff Submission*, *supra* note 80, at 3.

90. *Id.* at 10.

91. *Id.* at 54.

92. *Id.* at 34.

93. See FED. TRADE COMM’N, *supra* note 50, at 7–9; see *supra* Part II.

94. *Id.* at 65.

95. *Id.* at 65.

considering this amount of loss in taxpayer dollars, especially coupled with the possible effects of the merger to patients and employees in a small community like Vigo County. When Vigo County loses this tax revenue, its citizens could experience an increase in taxes and health care costs, and a decrease in wages.

This merger is also not in the antitrust safety zone laid out by the FTC and DOJ Enforcement Policy.⁹⁶ The two hospitals have neither an average of fewer than 100 licensed beds over the three most recent years, nor an average daily inpatient census of fewer than forty patients over the three most recent years that the FTC and DOJ zone of safety lays out.⁹⁷ Union Health is licensed for 341 beds⁹⁸ and Terre Haute Regional is licensed for 278 beds,⁹⁹ and neither hospital has an inpatient census of fewer than forty patients.¹⁰⁰

E. Local Responses to the Proposed Merger

While the FTC remains avidly against COPA-related mergers, local responses to the COPA are mixed. Some community members express concern over the impact the merger would have on healthcare access and costs, while others view it as a necessary measure for hospital sustainability.

IndyStar article authors Gloria Sachdev and Zack Cooper point out that hospital monopolies result in higher prices.¹⁰¹ They predict that residents of Vigo County would see a 10% or more increase in the cost of healthcare, a 7% cut in nurses' pay, and about 500 jobs lost as a result of the merger.¹⁰² "Not all hospital mergers are bad; however, when close competitors merge, a large body of research shows that prices increase."¹⁰³

Conversely, local proponents of the Vigo County COPA merger insist that the existing competition between the two hospitals is not benefiting the community, and that the merger would overcome persistent health disparities.¹⁰⁴ Proponents also claim the merger will result in economies of scale that will create access to new, more affordable expertise and resources that enhance the quality of care.¹⁰⁵

While the local proponents raise a fair point, their argument is unpersuasive.

96. See U.S. DEP'T OF JUST. & FED. TRADE COMM'N, *supra* note 48, at 8.

97. *Id.* at 8–9.

98. See FED. TRADE COMM'N, *supra* note 50, at 5.

99. *Id.* at 6.

100. *Id.* at 15.

101. Gloria Sachdev & Zack Cooper, *Opinion: Terre Haute hospital merger would raise health care costs in Vigo County*, INDYSTAR, <https://www.indystar.com/story/opinion/2024/10/22/union-health-terre-haute-regional-merger-raise-prices/75775348007/> [<https://perma.cc/7J4A-ALXW>] (last updated Oct. 24, 2024).

102. *Id.*

103. *Id.*

104. Steve Holman, *Terre Haute hospital merger would improve Wabash Valley health care*, INDYSTAR, <https://www.indystar.com/story/opinion/readers/2024/09/09/union-health-terre-haute-regional-hospital-merger-health-care/75105398007/> [<https://perma.cc/SJ69-8MZW>] (last updated Mar. 2, 2025).

105. *Id.*

Historical evidence from COPA mergers in other states strongly contradicts the expectation of cost efficiency; once state oversight lapses, anticipated cost savings often fail to materialize. Instead, healthcare costs often significantly increase due to diminished competition and inefficiencies that arise from market consolidation. These examples underscore that relying solely on the assumption of cost efficiency, without robust and ongoing regulatory mechanisms, is both speculative and unsupported by real-world outcomes.

The IDOH held a town hall regarding the merger on May 1, 2025. The Mayor of Terre Haute, Brandon Sakbun, initially opposed the proposed merger in its early stages, but now supports it.¹⁰⁶ Mayor Sakbun stated that “based off of *that* data, based off of *those* numbers, and based off of the unfortunate reality that my options are to support a decision to keep jobs here or to not support and have a chance of jobs leaving.”¹⁰⁷ It is unclear what data and numbers he was referring to. The mayor’s allegations would directly conflict with Professor Cooper’s conflation regarding job loss.

Union Health and Terre Haute Regional employees spoke out at the town hall as well.¹⁰⁸ The employees were either actively against the merger, or indifferent.¹⁰⁹ Employees that were against the merger expressed fear for the state of their employment at their respective hospitals.¹¹⁰ Although there were signs of indifference from some of the speakers, none of the employees that spoke at the town hall expressed support for the merger.¹¹¹

F. Withdrawal, FTC Response, and the Future of Indiana’s COPA Law

On November 25, 2024, Union Health and Terre Haute Regional withdrew their September 2024 application.¹¹² Union Health’s statement regarding the withdrawal states that the hospitals wanted to “continue to work with IDOH, to ensure the benefits, including improved access, quality, prevention and early intervention, are outlined in the new application.”¹¹³ The withdrawal suggests the hospitals’ had serious concerns that they faced denial.

In its statement about the withdrawal, the director of the FTC’s Office of Policy Planning is quoted saying the withdrawal is “good news for patients and

106. Cole Nobbe, *Local residents voice opinion on hospital merger*, MYWABASHVALLEY (May 1, 2025), <https://www.mywabashvalley.com/news/local-news/local-residents-voice-opinion-on-hospital-merger/> [https://perma.cc/MJJ8-P5C2].

107. *Id.* (emphasis added)

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. Liss, *supra* note 30.

113. *Union Health COPA Application Update*, UNION HEALTH (Nov. 25, 2024), <https://www.union.health/news/unionhealthcopaapplicationupdate> [https://perma.cc/G8WH-T4LX] (referring to archived information accessed via permalink).

healthcare workers in Indiana's Wabash Valley region.”¹¹⁴ The statement implies that the IDOH is taking the application seriously and is carefully considering the application, the FTC's official comment, and the 360 other unique comments that the IDOH received.¹¹⁵ The FTC maintains its strong opposition to anticompetitive hospital mergers, including those involving COPA agreements.¹¹⁶

On January 8, 2025, Indiana Senators Ed Charbonneau and Tyler Johnson introduced Senate Bill 119 to repeal, and which ultimately amended, the state's COPA law.¹¹⁷ Senator Charbonneau, who chairs the Senate health committee, helped create the COPA law in 2021.¹¹⁸ Senator Charbonneau admitted that he “didn't think [he] was doing 100% the right thing last time,” but now believes repealing the COPA law is the right decision.¹¹⁹

The withdrawal and proposed amendment to the COPA law was not the death knell for the Vigo County hospitals' merger attempt, but rather a strategic pivot to meet a rapidly shifting legislative deadline. Originally, hospitals had until July 1, 2026, to secure COPA approval. Senate Bill 119 amended that timeline twice: first moving the deadline to July 1, 2025, and then extending it slightly to November 9, 2025. As a result, Union Health and Terre Haute Regional faced a significantly shortened window to obtain approval. The compressed timeline created a race against time; any delay would have left the hospitals without the regulatory shield that COPA status provides. Given the FTC's strong stance against COPA-related mergers and those resulting in a market share exceeding 30%, the accelerated deadlines could have jeopardized the partnership before it begun.¹²⁰ However, because the hospitals submitted a new application before the deadline, the amendment did not prevent them from continuing their efforts to merge.

G. Union Health and Terre Haute Regional's Second Application

The two hospitals submitted a second application on February 5, 2025.¹²¹ The timing of the withdrawal of the first application November 24, 2024, and the filing of the second on February 5, 2025, were mere days after the November

114. *Statement Regarding Union Health's COPA Application Withdrawal*, FED. TRADE COMM'N (Nov. 26, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/11/statement-regarding-union-healths-copa-application-withdrawal> [<https://perma.cc/A2VT-AGDP>].

115. *Id.*

116. *Id.*

117. S.B. 119, 124th Gen. Assemb., Reg. Sess. (Ind. 2025).

118. Samantha Liss, *Indiana State Senator Moves To Scrap Hospital Monopoly Law He Helped Create*, KFF HEALTH NEWS (Jan. 8, 2025), <https://kffhealthnews.org/news/article/indiana-copa-state-senate-legislation-repeal-hospital-merger-monopoly/> [<https://perma.cc/D43T-AQYW>].

119. *Id.*

120. See U.S. DEP'T OF JUST. & FED. TRADE COMM'N, *supra* note 48.

121. *February 2025 Application*, *supra* note 31.

5, 2024 Presidential election, and likely a result of an impending change in FTC leadership.

The FTC's submission to the first application is dated September 5, 2024. The position of the FTC was to vigorously oppose the proposed merger. The hospitals may have decided that with a change of guard at FTC, they would be in a better position to reboot the whole process.

On January 20, 2025, Andrew N. Ferguson, a former FTC Commissioner, was sworn in as the new FTC Chairman.¹²² Sixteen days later, on February 5, 2025, the hospitals submitted the second application.

According to the NY Times Deal Book Newsletter, the appointment of Ferguson "validates the view of corporate deal makers that a second Trump administration would be good for [mergers and acquisitions], after [former FTC Chair Lina] Khan challenged big takeovers to help shift antitrust case law."¹²³

The second application, as expected, reiterates many of the same points as the first application. The second application, however, adds an attempt to convince the IDOH that the merger would enhance competition "at the State and regional level by facilitating the entrance of a new, lower-cost regional provider to the Indiana hospital market."¹²⁴ The relevant points from the new application to this note are how the hospitals plan to address employee retention and healthcare costs to patients. The second application also seeks to bolster the argument by citing recent case law relating to an abandoned hospital merger in North Carolina.¹²⁵

When it comes to employment, the second application provides an "Analysis of the effects (both positive and negative) of the proposed merger agreement on: Employment, the healthcare workforce, recruiting and retention."¹²⁶ The analysis immediately states that the hospitals "do not anticipate any negative impacts on employment or the healthcare workforce as a result of the Merger."¹²⁷ Their second application backpedals on their position in the first application about post-merger opportunities of current employees. The section relating to employment in the second application makes the following "commitments" to current and potential employees:

1. Union Hospital or an Affiliate will offer employment to all employees who are employed by Regional Hospital and Regional Healthcare Partners at the time of the Merger.¹²⁸

122. Press Release, Fed. Trade Comm'n, *Andrew N. Ferguson Takes Over as FTC Chairman*, (Jan. 22, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/01/andrew-n-ferguson-takes-over-ftc-chairman> [<https://perma.cc/P2B6-VK9A>].

123. Andrew Ross Sorkin, et al., *The F.T.C.'s Next, More Deal-Friendly Leader*, N.Y. TIMES (Dec. 11, 2024), <https://www.nytimes.com/2024/12/11/business/dealbook/ftc-trump-ferguson-khan.html> [<https://perma.cc/5US7-UFSR>] (on file with author).

124. *February 2025 Application*, *supra* note 31, at 14.

125. *Id.* at 51.

126. *Id.* at 91.

127. *Id.*

128. *Id.* at 92.

2. Union Hospital or an Affiliate will offer employment to Regional Hospital and Regional Healthcare Partners employees at salary and hourly wage levels that are the same as, or better than, Regional Hospital and Regional Healthcare Partners levels.¹²⁹
3. Union Hospital or an Affiliate will honor full credit for paid time off balances of Regional Hospital and Regional Healthcare Partners employees who transition to employment by Union Hospital or an Affiliate.¹³⁰
4. Union Hospital will conduct annual employee and physician satisfaction surveys to help reduce turnover and improve retention of employees of the Combined Enterprise, and will report the results in each Annual Report.¹³¹
5. Union Hospital will invest at least \$6,900,000 in Graduate Medical Education each year during the first five years of the Merger.¹³²

These commitments are vastly different from the first application's suggestion that affected employees seek employment at a new battery component manufacturer or a casino resort hiring residents of Vigo County.¹³³

Each commitment is supplemented with an “accountability mechanism” intended to assure that the hospitals will fulfill their promises. While these commitments may provide reassurance to current employees and potentially influence the IDOH's decision on the application, their true impact is questionable given that oversight expires shortly after the proposed merger is implemented. The so-called accountability mechanisms merely require that commitments be mentioned in an annual report, but, without oversight, who will verify their inclusion? More importantly, who will enforce compliance if the promises are not upheld?

The second application further asserts that healthcare service prices will not be negatively impacted by the merger.¹³⁴ However, the post-merger impact on costs to patients is inconsistent throughout the application. First, it states that reducing operation costs—and, by extension, patient costs—is “not a primary goal of the merger.”¹³⁵ Yet, it later promises that, while not a primary goal, “the Post-Merger Initiatives implemented by Union Hospital will reduce health care costs, will improve the quality of care provided by the Combined Clinical Platform, and will significantly improve the health status of the residents of Vigo County and the other counties of the Service Area.”¹³⁶ Although this may be what the IDOH needs to hear, the FTC's historical analysis on COPA laws

129. *Id.* at 93.

130. *Id.*

131. *Id.*

132. *Id.* at 94.

133. *September 2023 Application*, *supra* note 28, at 9.

134. *February 2025 Application*, *supra* note 31, at 14.

135. *Id.* at 36.

136. *Id.*

predicts a very different outcome.

It is difficult to reconcile an outlay of \$34.5 million over five years for medical education and retainment of employees, while at the same time lowering costs to patients after the merger. From a financial standpoint, retaining all employees after a merger ignores the economies of scale inherent to a merger, and offers little credibility to an argument that there are economic savings to be passed on to the patients.

Ensuring that the hospitals uphold these promises requires ongoing oversight. Unfortunately, that oversight is set to expire quickly under Indiana's COPA law. Ultimately, while the hospitals pledge to lower costs through specific initiatives, there will be no method of enforcement once the merger is complete.

Finally, the hospitals bring up recent case law about a non-COPA proposed merger in North Carolina. The application states:

In *FTC v. Novant Health, Inc.*, the district court denied the FTC's request for a preliminary injunction to prevent Novant's acquisition of two competitor hospitals from CHS under similar circumstances. In that case, one of the target hospitals was at risk of imminent closure and the other had already discontinued key services. Although one target hospital was profitable "for now," the court held that because at most it could only hope to maintain its already limited competitive position for a short time, "the proposed merger carries at least as much likelihood of competitive benefits as it does competitive harm and the FTC is unlikely to ultimately be successful in proving that the transaction may 'substantially lessen competition.'"

Although the transaction was ultimately abandoned after the Fourth Circuit granted the FTC an emergency injunction pending its appeal of the district court's decision, the district court's competitive analysis still resonates. There are many close parallels between the challenges the seller (CHS) faced in that case and Regional Hospital's present situation. The court reasoned that the target hospital's competitive problems were "real" because they related broadly to the seller's belief that the hospital lacked a sufficient physician practice network and other access points of care to justify investments. And like Regional Hospital, these problems predated the decision to sell the hospital. The court found that under these circumstances the public interest favored allowing the merger to proceed rather than risk the loss of services from the community. The same is true in *Terre Haute*.¹³⁷

The competitive analysis in *Novant* is case-specific and lacks broader

137. *Id.* at 55 (citing *Fed. Trade Comm'n v. Cmty. Health Sys., Inc.*, 736 F. Supp. 3d 335 (W.D.N.C. 2024), *opinion vacated, appeal dismissed sub nom.*, *Fed. Trade Comm'n v. Novant Health, Inc.*, 2024 WL 3561941 (4th Cir. July 24, 2024)).

applicability. It pertains to Novant Health, Inc.’s proposed acquisition of two hospitals from Community Health System, a distinct transaction with its own market dynamics. Moreover, the analysis holds no precedential value in this context. The case was litigated in federal court, appealed to the Fourth Circuit, and voluntarily dismissed, whereas Indiana falls within the jurisdiction of the Seventh Circuit. As a result, any legal or economic analyses drawn from that case are not binding and have little applicability to the present merger.¹³⁸

Shortly after Union Health submitted the second application and opponents displayed pushback, HCA Healthcare, which owns Terre Haute Regional, stated that if the IDOH denied the application, “market conditions are such that HCA [would] need to seriously consider ending services or closing the hospital.”¹³⁹ This is a precarious argument. As previously noted, HCA is the largest and most profitable health system in the United States. Issuing such a statement and threatening closure if the application were denied appears to be a calculated tactic to pressure the IDOH into approving the application, disregarding the concerns of current patients, potential patients, and employees.

H. The Indiana Attorney General’s Opposition

On April 17, 2025, Indiana’s Attorney General, Todd Rokita, provided his opinion and recommendation on the merger in an official statement.¹⁴⁰ The Attorney General stated that “consolidation at the expense of free-market competition is not the way to address...” challenges that hospitals often face.¹⁴¹ Rokita ultimately recommended that the IDOH deny the COPA re-application.¹⁴²

Attorney General Rokita also expressed that approval of the COPA merger would “lead to the monopolization of Terre Haute hospital systems that (would) be unchecked in raising healthcare costs, stifling innovation, suppressing wages, and reducing access to care for the citizens of Terre Haute and the surrounding community.”¹⁴³

The letter from Attorney General Rokita continues by pointing out the importance of competition that “fosters efficiency, ingenuity, and technological

138. *See* U.S. v. Articles of Drug Consisting of 203 Paper Bags, 818 F.2d 569, 572 (7th Cir. 1987) (stating that “[a] single district court decision...has little precedential effect. It is not binding on the circuit, or even on other district judges in the same district.”).

139. Ron Southwick, *As proposed Indiana hospital merger faces opposition, a warning of a closure without a deal*, CHIEF HEALTHCARE EXEC. (May 23, 2025), <https://www.chiefhealthcareexecutive.com/view/as-proposed-indiana-hospital-merger-faces-opposition-a-warning-of-a-closure-without-a-deal> [https://perma.cc/S5T9-2MCC].

140. Letter from Attorney General Todd Rokita to the Indiana Department of Health 1 (Apr. 17, 2025), <https://image.subscription.in.gov/lib/fe2e11747364047b721071/m/1/19d30b17-7feb-46ca-838d-b6dbbea7afe6.pdf> [https://perma.cc/6WUN-GGKS].

141. *Id.*

142. *Id.*

143. *Id.*

advancement.”¹⁴⁴ Rokita cautioned that removing competitive pressure would erode these benefits, ultimately harming both the quality of care and the long-term sustainability of healthcare services in the region.¹⁴⁵

I. Effect of Ignoring Federal Preemption

COPA laws, like Indiana’s, by their nature are set up to avoid the scrutiny of federal antitrust laws. Adhering to federal antitrust laws must be weighed against the healthcare opportunities and overall benefits to the consumer that come from these COPA laws. Richard Squire states in his article that:

[I]n cases of conflict between state economic regulation and the Sherman Antitrust Act . . . the Court applies its doctrine of ‘state-action immunity,’ under which a state regulation is unenforceable only if it arises from or causes a ‘violation’ of the same federal antitrust rules that restrict the market conduct of private firms.¹⁴⁶

Indiana’s case is not merely about a company becoming a monopoly, it is about a company seemingly attempting to become a monopoly with the help of the State’s law, which circumvents existing federal laws enacted to prevent monopolies. The federal antitrust laws were put in place for the specific purpose of protecting consumers and employees. States have gotten around the doctrine of federal preemption with the ruling in the 1943 decision *Parker v. Brown*.¹⁴⁷ In *Parker*, the Supreme Court stated that “[t]he Sherman Act makes no mention of the state as such, and gives no hint that it was intended to restrain state action or official action directed by a state.”¹⁴⁸

The 74% market share resulting from the merger of Union Health and Terre Haute Regional would certainly violate the Sherman Act, as it exceeds the 30% threshold that the FTC provides for presumption of an unlawful merger. If not for Indiana’s COPA law backed by the *Parker* case, these hospitals would never be permitted to merge. When companies need to lobby the state legislature to allow a merger that otherwise would be federally illegal, good policy guidelines should require them to present strong support for a social benefit that outweighs the waiver. The paucity of regulation in this case argues against merger.

J. Existing Case Law, Potential for a Circuit Split, and Supreme Court Involvement

The FTC has litigated COPA laws in other states. In *Louisiana Children’s Med. Ctr. v. Att’y Gen. of United States*, the District Court held that Louisiana’s

144. *Id.* at 2.

145. *Id.* at 4.

146. Richard Squire, *Antitrust and the Supremacy Clause*, 59 STAN. L. REV. 77, 78 (2006).

147. *Parker v. Brown*, 317 U.S. 341 (1943).

148. *Id.* at 351.

COPA law is valid and “that the Hospitals’ transaction [was] exempt from the federal antitrust laws and need not comply with Section 7A [of the Clayton Act]’s requirements.”¹⁴⁹ The Court found that under the State Action Doctrine, “Congress does ‘not intend to compromise the States’ ability to regulate their domestic commerce’ absent a clear statement to the contrary.”¹⁵⁰ The Court further quotes the Supreme Court in *Parker* which states that “the Sherman Act by its terms applied to ‘[e]very person,’ ... the State of California did not qualify as a ‘person’ absent a clear statement of Congress’s intent to reach states”¹⁵¹

If COPA laws are challenged by the FTC, any appeal to the United States Supreme Court could be detrimental to consumers across the United States. It is well known that the current Supreme Court leans toward curtailing administrative power.¹⁵² Depending on the outcome of such a decision, more states could easily enact COPA laws with similar sunset provisions and healthcare costs could increase severely across the country. This could also create opportunities for states to pass laws that circumvent federal antitrust scrutiny in other markets, potentially leading to higher prices for essential goods and services.

K. Applying the Framework from Holcomb

Even if Indiana’s COPA law is not preempted by the federal antitrust laws because of *Parker*, or the State Action Doctrine, Indiana’s COPA statute may violate Indiana’s State Constitution prohibiting special legislation. The framework from *Holcomb* should be applied to this case.

Like the controversial statute in *Holcomb*, which targeted only the city of Bloomington, Indiana’s COPA law is clearly a special law because it targets only Vigo County, and only the proposed merger in question.

The next step in the *Holcomb* framework is assessing whether the special law is permissible: a strong argument against permissibility is that there are no unique characteristics or circumstances about the affected class, which includes residents of Vigo County or the two hospitals, that warrant special treatment for these parties.

As Long states in his article, special legislation is prohibited in many states to prevent exactly what Indiana’s COPA law empowers: “domination by narrow economic elites.”¹⁵³ The merger between the Vigo County hospitals is not a lawful opportunity, but rather the product of exploiting a narrowly tailored statute that violates Indiana’s Constitution. If state departments, such as the

149. *Louisiana Children’s Med. Ctr. v. Att’y Gen. of United States*, No. CV 23-1305, 2023 WL 6293887 at 12 (E.D. La. Sept. 27, 2023).

150. *Id.* at 5 (quoting *S. Motor Carriers Rate Conf., Inc. v. United States*, 471 U.S. 48, 56 (1985)).

151. *Louisiana Children’s Med. Ctr.*, 2023 WL 6293887, at 5.

152. *See Loper Bright Enterprises v. Raimondo*, 603 US __ (2024) which removed the Chevron Deference Doctrine for which courts were required to defer to an agency’s reasonable interpretation of an ambiguous statute that the agency administered.

153. Long, *supra* note 18.

IDOH, or the judiciary overlook unconstitutional statutes, the legislature may push the boundaries further, resulting in the enactment of laws that are unconstitutional in even more respects. The *Holcomb* framework applies to the case in Vigo County and is likely a violation of Indiana's Constitution.

L. The IDOH's Determination and Its Implications

The IDOH approved the merger on November 9, 2025.¹⁵⁴ In its decision, the department admitted that the merger would be anticompetitive and “result in a monopoly for inpatient acute care services in Vigo County.”¹⁵⁵ The department provided conditions in an attempt to ensure that the public benefits and harm from reduced competition is avoided.¹⁵⁶ The hospital must follow commitments to maintain or improve quality, keep average pricing below 265% of Medicare rates, get permission before raising hospital-based service charges, ensure that care remains accessible to Vigo County residents, and protect employment of staff.¹⁵⁷ However, the major concerns surrounding violations of federal antitrust law, violations of Indiana Constitutional law, and lack of oversight remain.

The IDOH's determination itself acknowledges that the merger is anticompetitive and would result in a monopoly. By approving the merger under these conditions, the Department appears to have accepted conduct that would otherwise violate federal antitrust laws, relying instead on the COPA framework to justify it. Although one of the original concerns surrounding Indiana's COPA statute was that active supervision might rarely occur in practice, the Department's approval permits the hospital to terminate oversight after only five years. Given the long lifespan of a hospital, a five-year term is brief, and the underlying competitive and consumer protection concerns will persist long after oversight expires.

M. Healthcare Must Remain Affordable in Vigo County

Vigo County is a vulnerable community where maintaining affordable healthcare is essential. In 2022, the county faced significant challenges: the poverty rate was 20%, only 48,800 residents out of the total population of 106,355 were employed, and the median household income was just under \$53,000,¹⁵⁸ which is substantially lower than the United States median

154. *Determination: Application for Certificate of Public Advantage, Union Hospital, Inc. and Terre Haute Regional Hospital, L.P.*, IND. DEPT. OF HEALTH (Nov. 9, 2025), <https://www.in.gov/health/cshcr/files/COPA.Determination.2025.pdf> [<https://perma.cc/P2JA-AVDU>] (last visited Jan. 5, 2026).

155. *Id.* at 2.

156. *Id.* at 3.

157. *Id.* at 5–13.

158. *Vigo County, IN*, DATA USA, <https://datausa.io/profile/geo/vigo-county-in?redirect=true#:~:text=In%202022%2C%20the%20median%20household,previous%20year's%20value%20of%20%2448%2C552> [<https://perma.cc/RV92-UJ4J>] (last visited Dec. 18, 2025).

household income of \$77,540 in the same year.¹⁵⁹

Vigo County residents will strongly feel the financial effects of increased healthcare prices, and a greater tax burden to make up for any shortfall resulting from the merger. Union Health and Terre Haute Regional are two of the county's largest employers, providing jobs for a combined 2,779 Terre Haute residents.¹⁶⁰ Where the COPA application provides alternative places of work, which some are completely unrelated to healthcare, it is likely suggesting that this merger will cost many of these employees their jobs.

Ultimately, the merger poses a triple threat to Vigo County: increased healthcare costs for a financially vulnerable population, potential job losses that could further strain the local economy, and reduced tax revenue from the non-profit status of merged hospitals. These concerns underscore the importance of carefully scrutinizing the long-term economic and social impact of proposed consolidations.

IV. CONCLUSION

To best protect patients, the merger should be blocked through the courts under the Sherman Act, the Clayton Act, the Federal Trade Commission Act, Article 4 of Indiana's Constitution, and the *Holcomb* case, or the agreed COPA terms should be amended to eliminate the sunset provision and guarantee ongoing oversight. As seen in the FTC's list of states that had COPA-related mergers occur, the only hospital that merged and *did not* drastically increase prices was one hospital in South Carolina, where the COPA never expired and legislative oversight on the hospital remained.

The only other hospital on the FTC's list, which had prices consistent with competitors, was the merger in Maine. This was due to remaining competition in the area; Vigo County does not have such competition because the hospitals involved in the merger are the only two hospitals in the county. It is true that some of the hospitals' initiatives will be successful; however, based on the effects consumers have faced in other states that have approved COPA mergers, Vigo County residents will likely be adversely affected financially and will be left with limited options for affordable healthcare.

The creators and proponents of Indiana's COPA law constructed a Trojan Horse to breach the walls of antitrust protections. With the application now approved, the FTC stands precariously close to taking on the role of Cassandra, warning fruitlessly of impending harm, which may or may not materialize.

159. *Median Household Income in the United States from 1967 to 2024*, STATISTA, <https://www.statista.com/statistics/200838/median-household-income-in-the-united-states/> [https://perma.cc/PGE9-BZYD] (last visited Feb. 26, 2026).

160. *Major Employers - by Number of Employees*, TERRE HAUTE ECON. DEV. CORP., <https://terrehauteedc.com/top-employers-terre-haute-vigo-county-indiana> [https://perma.cc/8YCG-Y526] (last visited Dec. 18, 2025) (referring to archived information accessed via permalink).