

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of Policy Planning
Bureau of Competition
Bureau of Economics

September 1, 2015

Susan Puglisi, Esq.
Virginia Department of Health
Office of Licensure and Certification
9960 Mayland Drive, Suite 401
Richmond, Virginia 23233
Email: _____

Re: Virginia's Rules and Regulations Governing Cooperative Agreements, 12
VAC 5, Chapter 221

Dear Ms. Puglisi

The staff of the Federal Trade Commission's ("FTC") Office of Policy Planning, Bureau of Competition, and Bureau of Economics respectfully submits this public comment regarding Virginia's Rules and Regulations Governing Cooperative Agreements as promulgated by the Virginia Department of Health. The FTC staff welcomes the opportunity to consult with the Commissioner of the Virginia Department of Health ("Commissioner") during her review of any Cooperative Agreement application, to help ensure that any substantive determination as to the potential effects of a Cooperative Agreement includes a rigorous competition analysis based on accepted legal and economic principles.

According to the emergency rules and regulations under consideration, the Commissioner is authorized to approve an application for the sharing, allocation, consolidation by merger or other combination of assets among two or more hospitals operating in a Participating Locality in southwest Virginia if he determines by a preponderance of the evidence that the benefits likely to result from the Cooperative Agreement outweigh the disadvantages likely to result from a reduction in competition.⁵ The emergency rules also state that "[t]he Commissioner may consult with the Federal Trade Commission when reviewing an Application."⁶

Among the benefits to be considered by the Commissioner when reviewing the Cooperative Agreement applications are:

- x enhancement in quality of care and population health status;
- x preservation of hospital facilities to ensure access to care;
- x gains in cost efficiency of hospital services provided;

- x improvements in utilization of hospital resources and equipment;
- x avoidance of duplication of hospital resources;
- x participation in the state Medicaid program; and
- x total cost of care.

Among the disadvantages to be considered by the Commissioner when reviewing the Cooperative Agreement applications are:

Organization Summit in Washington, DC: Antitrust Enforcement in Health Care: Proscription, not Prescription (June 19, 2014), https://www.ftc.gov/system/files/documents/public_statements/409481/140619_aco_spec_eo11717.pdf that the federal antitrust agencies have challenged very