

# CAPITOL STREET

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April 28, 2023

## Hospitals Under The Gun

### Site Neutral Generates \$100 B+ Could Pay for Workforce/Telehealth YE

Relevant Companies



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Hospital sentiment is not terrific in Washington these days. The bloom is off the rose – hospitals saved the day during COVID, but they are now largely viewed as a cost burden to the overall system. The view is held by many in the House & Senate, Democrats and Republicans alike. There are several headwinds coming down the pike, see our take on 5 catalysts below under Key Points.

## »» Our Take & Next Up

We could see legislative activity impacting hospitals in 4Q 2203. Site neutral savings (given they can exceed \$100 B) could pay for myriad bipartisan policies such as extending telehealth flexibilities beyond 2024 and beefing up the healthcare workforce. Remember there are many members working to improve the healthcare workforce, including Sens Cassidy (LA) & Sanders (VT), Reps Blackburn (TN), and others. Hospitals are being scrutinized by Congress, as well as the FTC for anticompetitive behavior. The sentiment is negative for both for-profit and non-for-profit hospitals.

We are keeping an eye out for the ~5 additional legislative drafts on site-neutral, following the House E&C site neutral draft legislation we summarized here i.e., Two more from E&C, House Education & Workforce, Ways & Means, and Senate Finance Committee have indicated they will weigh in.

## »» Key Points

### 1 – SITE NEUTRAL POLICIES GENERATE \$100 B+

House Energy & Commerce Committee floated a draft Site Neutral Bill ([here](#)); Negative for HCA, THC, UHS, CYH. Note that 5 other bills are currently being drafted. This bill would take effect in 2026, and would give HHS broad power over classifying which

services receive site neutral payments, as determined by comparisons between the payments for settings over the preceding 4 years (2022-2026). There are two other House E&C bills focused on site-neutral.

**Five other committee bills negatively impacting hospitals are in the works.** Also, the non-partisan MedPAC recommends site neutral payments. Last year, MedPAC said similar site-neutral proposals would have saved Medicare \$6.6 B in 2019, and out-of-pocket costs for Medicare patients would have dropped by \$1.7 B that year. See MedPAC's recommendation [here](#).

**Site neutral payments would result in Medicare pay cuts to hospitals as they would no longer be able to bill at the outpatient rate.** This would be negative for hospitals with outpatient departments such as HCA, THC, & UHS. The American Hospital Association (AHA) strongly opposes site-neutral payment cuts, which would reduce access to critical health care services, especially in rural and other underserved communities. See AHA fact sheet [here](#).

## 2 – CMS PRICE TRANSPARENCY ENFORCEMENT

**CMS announced yesterday it will more strongly enforce price transparency requirements.** CMS said this week ([here](#)), the agency will standardize how long hospitals have to complete each step of the transparency process and start *automatically* issuing fines to those who miss deadlines. As of April 2023, CMS has issued more than 730 warning notices and 269 requests for corrective action plans from hospitals. CMS issued fines to four hospitals.

## 3 – HOSPITAL NON-PROFIT STATUS

**At a Congressional hearing focusing on nonprofit status, lawmakers noted that hospitals are not spending enough on community benefits.** Questioning from House members centered around community benefit standards set by the IRS, a comparison of community spending between for profit and nonprofit hospitals and understanding how to quantify the impact of social determinants of health focused work.

**Witnesses at the Ways & Means hearing this week also touched on the way that PE control often uses a shielded design to block oversight from the government.** Yesterday afternoon, the House Ways and Means Committee held a hearing on Tax-Exempt Hospitals and the Community Benefit Standard (see [here](#)). Witnesses included Jessica Lucas-Judy (Director, Strategic Issues, U.S. Government Accountability Office), Ge Bai, PhD, CPA (Professor of Accounting and Health Policy, Johns Hopkins University), Zachary Levinson, PhD (Project Director, KFF), Melinda Reid Hatton (General Counsel, American Hospital Association).

## 4 – FTC ASKED TO REVIEW NON PROFIT MERGERS

**Under a new bipartisan bill, the Federal Trade Commission (FTC) would be allowed to approve and vet nonprofit mergers ([here](#)).** There has been growing concern in Congress about 'secret' contracting behaviors by non-profit hospitals, as almost half of all US facilities fall beyond the purview of the agency. The bill is sponsored by Reps. Victoria Spartz (R-IN) and Pramila Jayapal (D-WA).

**Recall the FTC has been concerned about excessive hospital consolidation.** FTC opposition likely caused NY hospital merger to collapse. SUNY Upstate Medical University drops its hopes of acquiring Crouse Health, a deal announced in April 2022 ([here](#)). This news came amid FTC opposition of the proposed merger (see FTC letter [here](#)). The agency expressed concerns of consumers experiencing higher healthcare costs and reduced services. Last year, HCA and Steward Health Care abandoned their deal involving five Utah hospitals only 13 days after the FTC challenged the transaction (see FTC statement [here](#)). On February 15, CommonSpirit Health announced it will acquire Steward Health Care's sites of care in Utah (to be managed by Centura Health), Steward's second stab at selling off the five hospitals in Utah.

## 5 – AMERICAN HOSPITAL ASSOCIATION IN DC

**AHA annual meeting was also in town this week.** The meetings' overarching goals were highlighted by AHA CEO and President Rick Pollack, as being (1) stabilizing our financial situation, (2) strengthening our workforce and (3) securing our ability to continue to serve our communities. See [here](#) and [here](#) for daily conference summaries.

**We have not yet heard a strong argument from the hospital community on its site-neutral stance.** The group emphasizes workforce and inflationary pressures. The group was called to testify in two major hearings this week – one on healthcare costs and one on nonprofit status.

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