



**American Hospital
Association®**

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May 15, 2018

United States Senate
Washington, DC 20510

Dear Senator:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, and our clinician partners – including more than 270,000 affiliated physicians, 2 million nurses and other caregivers – and the 43,000 health care leaders who belong to our professional membership groups, the American Hospital Association (AHA) is pleased to support S. 2847, the Standard Merger and Acquisition Reviews Through Equal Rules Act of 2018, also known as the SMARTER Act.

The SMARTER Act removes a regulatory roadblock to hospital realignment. Hospital integration and realignment is essential if the field is to be successful in its drive to build an efficient and effective continuum of care that delivers care to communities in innovative ways and in new, more convenient settings. The SMARTER Act is important legislation that will help hospitals and health systems evolve to serve the needs of their communities in the face of changing payment and delivery system reforms so they can better coordinate and integrate care to lower costs and improve quality for patients.

The SMARTER Act is narrowly crafted to accomplish an important outcome: to ensure that all proposed transactions face the same enforcement process and standard of review regardless of whether the Federal Trade Commission (FTC) or the Antitrust Division of the Department of Justice (DOJ) reviews the transaction. It codifies key recommendations of the bipartisan Antitrust Modernization Commission created in 2002. Both the FTC and DOJ are charged with enforcing Section 7 of the Clayton Act, which prohibits transactions whose effect “may be substantially to lessen competition, or to tend to create a monopoly.” However, the two agencies follow different enforcement processes and are subject to different standards of review. While the DOJ litigates transactions in a full hearing on the merits in federal court before an impartial judge, the FTC’s practice is to pursue a preliminary injunction in federal court while at the same time commencing internal administrative proceedings in which the agency has a decided advantage. Moreover, a federal judge applies a different, and arguably more deferential, standard of review to a request for a preliminary injunction from the FTC, as compared to the same request from the DOJ. Therefore, parties whose proposed transaction is reviewed by the FTC can reasonably expect a more burdensome enforcement process, a higher likelihood of abandoning the transaction, and the potential for a different substantive outcome.



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While the AHA supports enforcement of the antitrust laws, relying exclusively on the federal courts to determine the competitiveness of a transaction ensures that hospitals, and others, receive a full hearing on the merits. Requiring both antitrust agencies to prove their case before a judge in the federal courts and not just internal proceedings in which the agency has an advantage protects due process and promotes efficiency. The SMARTER Act ensures a neutral judge makes a decision on the merits of each merger and leads to a quicker resolution so parties have certainty about their case.

We applaud your leadership on this important issue and look forward to working with you to secure passage of this legislation. Please contact me if you have questions or feel free to have a member of your team contact Travis Robey, senior associate director for federal relations, at trobey@aha.org or (202) 626-2328.

Sincerely,

/s/

Thomas P. Nickels
Executive Vice President