

# Impact of Healthcare Market Concentration on Healthcare Prices & Premiums: What Can & Should be Done

## Program Agenda

Friday April 14, 2017

Rudin Conference Room, NYU; 295 Lafayette St, New York, NY 10012

**8:30am** – Coffee in conference room

**9am** – Introduction; Sherry Glied and Richard Scheffler

**9:15am** – First session: *Regulated Competition in Health Insurance Markets*

Presenter: Richard Frank (25-minute presentation; 20-minute audience discussion)

Chair: Sherry Glied

**10am** – Second session: *Analysis of Healthcare Market Concentration Trends From 2010 to 2016*

Presenter: Brent Fulton/Petris Center (25-minute presentation; 20-minute audience discussion)

Session Chair: Deborah Haas-Wilson

**10:45** – Coffee break

**11:15am** – Third session: *Impact of Market Power on Hospital and Physician Prices*

Presenter: Richard Scheffler/Petris Center (25-minute presentation; 20-minute audience discussion)

Session Chair: Ted Frech

**12pm** – Lunch; in conference room

**1pm** – Fourth session: *Coping with Market Power in Healthcare*

Presenter: Tim Greaney (25-minute presentation; 20-minute audience discussion)

Session Chair: Kathleen Foote

**1:45pm** - Fifth session: *The Anticompetitive Potential of Cross-Market Mergers in Health Care*

Presenter(s): Emilio Varanini; Jaime King and Erin Fuse Brown (25-minute presentation; 20-minute audience discussion)

Session Chair: Markus H. Meier

**2:30pm** – Afternoon break

**2:50pm** – Sixth session: First Presenter: Sherry Glied - *What's to be Done When Bigger Isn't Better: What Can and Should We Do About Rising Concentration in Provider and Health Insurance Markets* (20-minute presentation)

Second Presenter: Stuart Altman - *Can We Limit Concentration of Health Providers Without Controlling Private Insurance Payment Differentials: The Massachusetts Story* (20-minute presentation)

20 minutes for discussion

**3:50pm** – Open discussion

Panelists – Kathleen Foote, Ted Frech, John Kwoka, Richard Scheffler, Deborah Haas-Wilson, Tim Greaney

Session Chair: Sherry Glied

**5pm** – Meeting ends

### Speaker Bios

**Stuart Altman, PhD** - is the Chaikin Professor of National Health Policy at Brandeis University. He is an economist with five decades of experience as a policy advisor at the federal and state levels of government and a professor and academic administrator. He Chaired the Prospective Payment Assessment Commission (ProPac) which helped launch the DRG Medicare Hospital Payment System, and was President Clinton's appointee to the National Bipartisan Commission on the Future of Medicare. In November 2012, Governor Deval Patrick appointed Dr. Altman to chair Massachusetts' Health Policy Commission. The Commission is responsible for overseeing the state's healthcare spending control system.

**Erin Fuse Brown, JD, MPH** - is an Assistant Professor of Law at the Georgia State University College of Law and a faculty member of GSU's Center for Law, Health, & Society. She specializes in health law and policy, and her research focuses on the regulation of health care markets. She has published articles in legal and medical journals about hospital prices, medical billing and collection, health care competition and market failures, and policy solutions to vertical health care consolidation. Her work has been published in JAMA, the Annals of Internal Medicine, the AMA Journal of Ethics, the American Journal of Managed Care, the Hastings Law Journal, the Indiana Law Journal, the Minnesota Journal of Law, Science, & Technology, the Journal of Law, Medicine, & Ethics, and the American Journal of Public Health. Previously, Professor Fuse Brown was a Visiting Assistant Professor at Arizona State University's Sandra Day O'Connor College of Law, she practiced in the health care group of the San Francisco office of Ropes & Gray, LLP, and she clerked for the Honorable Alan C. Kay in the U.S. District Court for the District of Hawai'i. Professor Fuse Brown received a J.D. from Georgetown University Law Center, an M.P.H. from Johns Hopkins University Bloomberg School of Public Health, and a B.A. from Dartmouth College.

**Kathleen Foote, JD** - Senior Assistant Attorney General Kathleen Foote joined the California Attorney General's Office in 1988 and has been Chief of its Antitrust Section since 2001. She is chairman of the Multistate Antitrust Task Force of the National Association of Attorneys General. She is past co-chair of the State Enforcement Committee of the ABA Section of Antitrust Law and serves on the American Antitrust Institute's Advisory Board. She is the 2013 recipient of AAI's Fred Kahn Award for Achievement, and was named 2013's Antitrust Lawyer of the Year by the California State Bar's antitrust committee. Her team received California Lawyer Magazine's Lawyer of the Year Award in 2011 for their successful state law challenges to resale price maintenance schemes, as well as a federal challenge to asserted labor antitrust exemption of a multi-employer revenue-sharing agreement during a strike. Before joining the State, Ms. Foote was Associate Dean at University of San Francisco School of Law. Earlier, she spent three years as a litigation associate with the San Francisco law firm of McCutchen, Doyle, Brown and Enersen (now Bingham). She earned her undergraduate degree from Harvard and her law degree from USF School of Law. She also served two terms as mayor of the city of Mill Valley, California.

**Richard Frank, PhD** - is the Margaret T. Morris Professor of Health Economics in the Department of Health Care Policy at Harvard Medical School. From 2009 to 2011, he served as the deputy assistant secretary for planning and evaluation at DHHS directing the office of Disability, Aging and Long-Term Care Policy. From 2013 to 2014, he served as a Special Advisor to the Office of the Secretary at the Department of Health and Human Services, and from 2014 to 2016 he served as Assistant Secretary for Planning and Evaluation in the Department of Health and Human Services. His research is focused on the economics of mental health and substance abuse care, long term care financing policy, health care competition, implementation of health reform and disability policy. Dr. Frank served as an editor for the Journal of Health Economics from 2005 to 2014. Dr. Frank was awarded the Georgescu-Roegen Prize from the Southern Economic Association, the Carl A. Taube Award from the American Public Health Association, and the Emily Mumford Medal from Columbia University's Department of Psychiatry. In 2011, he received the Distinguished Service Award from the Mental Health Association of Maryland. Dr. Frank also received the John Eisenberg Mentorship Award from the National Research Service Awards. He was elected to the Institute of Medicine (National Academy of Medicine) in 1997. He is co-author with Sherry Glied of the book *Better but Not Well* (Johns Hopkins Press).

**H.E. (Ted) Frech III, PhD** - is Professor of Economics in the College of Letters and Science and a Professor of Technology Management in the College of Engineering, University of California, Santa Barbara. He has been a visiting or adjunct professor at Harvard University, Curtin University in Australia, the University of Chicago, the Naval Postgraduate School and Sciences Po in Paris. He received his B.S. in industrial engineering from the University of Missouri and his Ph.D. in economics from the University of California, Los Angeles. Prof. Frech has published widely, often in health care and health insurance. Prof. Frech has lectured in many countries and has testified in court, regulatory bodies, Congress and state legislatures.

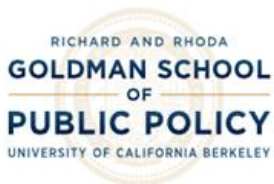
**Brent Fulton, PhD, MBA** - Brent D. Fulton, Ph.D., MBA, is an Assistant Adjunct Professor of Health Economics and Public Policy, and Associate Director of the Nicholas C. Petris Center on Health Care Markets and Consumer Welfare, School of Public Health, University of California, Berkeley. His research areas include healthcare market concentration, health insurance markets (rate review regulation, risk adjustment and reinsurance), health reform (accountable care organizations), health workforce (pay for performance and task shifting), and mental health services (attention-deficit/hyperactivity disorder). Brent's doctorate is in public policy analysis from Pardee RAND Graduate School and his MBA is from the University of California, Los Angeles.

**Sherry Glied, PhD** - In August 2013, Sherry Glied became Dean of New York University's Robert F. Wagner Graduate School of Public Service. From 1989-2013, she was Professor of Health Policy and Management at Columbia University's Mailman School of Public Health. From July 2010 through August 2012, Glied served as Assistant Secretary for Planning and Evaluation at the Department of Health and Human Services. She had previously served as Senior Economist for health care and labor market policy on the President's Council of Economic Advisers in 1992-1993, under Presidents Bush and Clinton. Glied's principal areas of research are in health policy reform and mental health care policy.

**Thomas (Tim) Greaney, JD** - is Chester A. Myers Professor of Law and Co-Director of the Center for Health Law Studies at Saint Louis University School of Law. In the Fall, 2017 he will join the faculty at the University of California Hastings College of Law. His research focuses on the application of antitrust law to the health care sector, health care financing, and health care law and policy. He has written over 50 scholarly articles and chapters and is co-author of the nation's leading health law casebook, *Health Law: Cases, Materials and Problems* (West, 7th edition 2013) and a treatise on health law, *Health Law* (West 3rd Ed. 2014). He has testified on antitrust issues before the Judiciary Committee of the House of Representatives and has spoken at workshops of the Federal Trade Commission. Before joining the Saint Louis University faculty, he served as an Assistant Chief in the Department of Justice Antitrust Division, supervising health care antitrust litigation. Professor Greaney has been named Health Law Professor of the Year by the American Society of Law and Medicine. He has also been a Fulbright Fellow studying European Community competition law in Brussels, Belgium. He received his B.A. from Wesleyan University and his J.D. from Harvard Law School.

**Deborah Haas-Wilson, PhD** - is the Marilyn Carlson Nelson Professor of Economics at Smith College. She was a Visiting Professor of Public Policy at the Harvard Kennedy School from 2014 to 2016. Haas-Wilson received her B.A. in economics from the University of Michigan at Ann Arbor, and her Ph.D. in economics from University of California at Berkeley. Professor Haas-Wilson was a recipient of the Robert Wood Johnson Foundation's Investigator Awards in Health Policy Research. Her research focuses on competition and competition policies in health care markets. Her articles have appeared in the *Journal of Political Economy*, *Journal of Economic Perspectives*, *Journal of Law and Economics*, *Review of Economics and Statistics*, *Journal of Health Economics*, and other peer-reviewed journals. She is the author of *Managed Care and Monopoly Power: The Antitrust Challenge* (Harvard University Press, 2003) and co-editor of *Uncertain Times: Kenneth Arrow and the Changing Economics of Health Care* (Duke University Press, 2003). Haas-Wilson works as an expert in health care antitrust, including cases involving the competitive effects of coordinated conduct, competitive effects of hospital mergers, physician mergers, and commercial health insurer mergers, and the effects of vertical consolidation in health care markets. She has served as an expert on antitrust issues to the Federal Trade Commission, the Massachusetts Attorney General, and numerous private entities.

**Jaime S. King, JD, PhD** - is a Professor of Law at the University of California Hastings College of the Law. She is also the Associate Dean and Co-Director of the UCSF/UC Hastings Consortium on Science, Law and Health Policy, the Co-Founder and Co-Director of the UCSF/UC Hastings Masters in Health Law and Policy Program, and the Co-Director of the Concentration on Law and Health Sciences. Professor King holds a Ph.D. in Health Policy from Harvard University, a J.D. from Emory University, and a B.A. from Dartmouth College. Professor King's research focuses on the drivers of healthcare costs, with a special interest in market consolidation and efforts to improve transparency in healthcare pricing. She is the Co-Founder and Executive Editor of *The Source on Healthcare Price and Competition*, a multi-disciplinary web-based resource for information and analysis about healthcare price and competition. In 2015, she testified before the House Judiciary Subcommittee on Regulatory Reform, Commercial, and Antitrust Law on issues surrounding health insurance mergers. Professor King is the 2015 recipient of the Hastings Foundation Faculty Award for Outstanding Scholarship. Prior to joining the faculty at UC Hastings, she served as a Fellow at the Center for Law and the Biosciences at Stanford Law School (2006-2008) and the American Society of Law, Medicine, and Ethics (2005-2006). In 2012, she was named the John "Jack" Wennberg Fellow for the Informed Medical Decisions Foundation for her research on shared decision-making.



**John E. Kwoka, PhD** – is the Neal F. Finnegan Distinguished Professor of Economics at Northeastern University. His recent book *Mergers, Merger Control, and Remedies: A Retrospective on U.S. Policy* evaluates the effects of mergers and the effectiveness of merger control and remedies, and has been widely reported and cited in current policy debates. His book *The Antitrust Revolution*, co-edited with L.J. White and now going into its seventh edition, is a compilation of case studies of major U.S. antitrust proceedings. Kwoka has previously served in various capacities at the Federal Trade Commission, the Antitrust Division of the Department of Justice, and the Federal Communications Commission, and has taught at several universities. He is on the boards of the American Antitrust Institute and the Industrial Organization Society, and is a member of the Merger Working Group of the ICN.

**Markus H. Meier** – Markus is the Assistant Director in charge of the Federal Trade Commission’s Health Care Division in Washington, D.C. He leads an office of thirty-five lawyers who investigate and litigate alleged violations of antitrust law by pharmaceutical companies, physicians, and other health-care professionals. Since November 2015, Markus also has been serving as the Acting Deputy Director of the FTC’s Bureau of Competition, where he helps oversee more than 270 lawyers and other professionals investigating and litigating merger and non-merger cases. Markus joined the FTC in 1990 and became head of the Health Care Division in 2006. In addition to his work at the FTC, Markus has been in private practice, where he worked on antitrust litigation and represented clients before the FTC and Department of Justice. He has served as a Special Assistant United States Attorney prosecuting criminal cases. And he was a resident advisor to the Indonesian Competition Commission in Jakarta in 2001. Before joining the FTC, Markus served as an officer in the United States Army. He is a graduate of the George Mason School of Law, has a master’s degree in public administration from Old Dominion University, and a bachelor’s degree from the University of Virginia.

**Richard Scheffler, PhD** - is Distinguished Professor of Health Economics and Public Policy and the founding director of the Petris Center for Healthcare Markets and Consumer Welfare and the Global Center for Health Economics and Public Policy in the School of Public Health and the Goldman School of Public Policy at the University of California, Berkeley. He also holds the Chair in Healthcare Markets and Consumer Welfare endowed by the Office of the Attorney General for the State of California. Dr. Scheffler has been a visiting professor at the London School of Economics, Charles University in Prague, at the Department of Economics at the University of Pompeu Fabra in Barcelona and at Carlos III University of Madrid, Spain, where he was awarded the Chair of Excellence. He has been a visiting scholar at the World Bank, the Rockefeller Foundation in Bellagio, and the Institute of Medicine at the National Academy of Sciences. In 2015 he was awarded the Gold Medal for Charles University in Prague for his longstanding and continued support of international scientific and educational collaboration. Dr. Scheffler has been a Fulbright scholar in Czech Republic and Chile. He was an Oxford University Astor Visiting Lecturer on the Global Health Workforce in 2016. He published an Op-Ed in the New York Times with Sherry Glied entitled, “States Can Contain Healthcare Costs, Here’s How”.

**Emilio E. Varanini, JD** - is a Deputy Attorney General in the Antitrust Section of the California Attorney General’s Office who advises on health care competition policy issues and works on health care competition investigations. He has an economics degree with general distinction from the University of California at Berkeley and a law degree from the University of California at Los Angeles. He is the Co-Chair of the Health Care Committee of the National Association of Attorneys General’s Antitrust Task Force. Emilio co-authored an article on Accountable Care Organizations (“ACO”) that was published in the *Journal of Health Politics, Policy and Law*. He was the lead author of the multi-state St. Luke’s amicus brief filed in 2014 in the Ninth Circuit and of the multi-state Hershey amicus brief filed in 2016 in the Third Circuit. He also represented California in D.C. at Phase II of the Anthem-Cigna merger trial in December of 2015.

## **Health Affairs Special Issue Summary –**

### **1. Richard G Frank**

Paper Title: *Regulated Competition in Health Insurance Markets*

Author: Richard Frank

**Abstract:** Public health insurance programs have come to rely on competition to provide consumers and taxpayers with efficient program outcomes. Medicare Advantage, the Health Insurance Marketplaces, and Medicaid Managed Care arrangements all make use of markets forces. Because these programs have complicated policy goals they can be especially vulnerable to the presence of market power. In this paper, we assess the structure of markets in the Medicare Advantage and Marketplaces and assess evidence on the consequences of market power in the two programs. We discuss recent lessons learned and potential pro-competition policies that might enhance the performance of Medicare Advantage and the individual health insurance market.

### **1. BRENT FULTON:**

Paper Title: *Analysis of Healthcare Market Concentration Trends from 2010 to 2016*

Author: Fulton and Petris Team

**Abstract:** The Council of Economic Advisors demurred on the lack of market concentration measures across many sectors of the economy. In this paper, we intend to fill the gap within the healthcare sector. We report market concentration trends from 2010 to 2016 at the metropolitan statistical area (MSA) level across the United States for hospitals, physician organizations and health insurers. We found that most of these product markets are becoming increasingly concentrated, raising concerns that the potential for exercising market power is outweighing potential efficiencies gained from consolidation.

### **2. RICHARD SCHEFFLER:**

Paper Title: *Impact of Market Power on Hospital and Physician Prices*

Author: Scheffler and Petris Team

**Abstract:** This paper examines the relationship between measures of market power and hospital as well as physician prices. It uses selected 2010-2014 data from the HCCI claims data base of over 5 billion claims lines for 40 million commercially insured enrollees. Market power measures are constructed for hospitals, physicians, and insurers using the Herfindahl-Hirschman Index, top 4 market shares, and number of firms. Fixed effects regression models are estimated that relate measures of provider and insurer market power to hospital and physician prices. The theory of countervailing market power between insurers and providers is empirically tested and its implications are discussed.

### **3. TIM GREANEY:**

Paper Title: *Coping with Market Power in Healthcare*

Author: Thomas (Tim) Greaney, Saint Louis University School of Law

**Abstract:** This article will discuss antitrust and regulatory responses to market power in health care sectors. It will first analyze the limitations of antitrust enforcement in preventing the acquisition or exercise of market power. Next it will discuss efforts to enlist courts to engage in regulatory supervision of dominant providers through “conduct remedies”—court orders sanctioning mergers or other behaviors conditioned upon compliance with court-ordered restrictions on price, margins, future acquisitions or other matters. Third it will examine the



structure and impact of more complete regulatory regimes such as certificate of public advantage (COPA) programs and insurance department controls over the terms of health plan contracting with providers. The article will seek to compare approaches based on the institutional capabilities and the design of regulatory controls.

**4. EMILIO VARANINI, JAIME KING, ERIN FUSE BROWN:**

Paper Title: *The Anticompetitive Potential of Cross-Market Mergers in Health Care*

Authors: Emilio Varanini, J.D., Erin C. Fuse Brown, J.D., M.P.H., and Jaime S. King, J.D., Ph.D.

Abstract: Healthcare consolidation in the United States has been widespread at all levels and across all entities. In more recent years, this consolidation has extended beyond horizontal mergers of hospitals or other providers to include vertical and out-of-market mergers, or “cross-market mergers.” Cross-market mergers include the merger or acquisition of any healthcare entity that does not directly compete with the acquiring entity in the same product or geographic market. Antitrust enforcers have historically had little in the way of market theory, economic models, or empirical data to inform their analysis on the potential impacts of cross-market mergers on competition. However, recent developments in economic theory and empirical studies now offer evidence that that vertical and cross market mergers can harm competition and drive price increases in healthcare markets when a common insurer exists across those markets. This article examines the applicability of the emerging economic models and empirical evidence on cross-market mergers in healthcare for legal and antitrust enforcement purposes. The article presents the case that antitrust enforcers should consider these theories in evaluating cross-market mergers and addresses the attendant challenges of doing so.

**5. SHERRY GLIED:**

Paper Title: *What's to be Done When Bigger Isn't Better: What Can and Should We Do About Rising Concentration in Health Care and Health Insurance Markets*

Author: Sherry Glied

Abstract: This paper will be based on a panel discussion, which will include the following experts on healthcare and market concentration. Kathleen Foote, Ted Frech, John Kwoka, Richard Scheffler, Deborah Haas-Wilson, Tim Greaney. The paper will focus on what can be done to improve competition in healthcare markets. Federal and State policies will be highlighted.

**Conference Participant List:**

<b>Name</b>	<b>Professional Title</b>	<b>Organization</b>
Ted Agres	Senior Editor	Health Affairs
Stuart H. Altman	Chaikin Professor of Health Policy	Heller School, Brandeis University
Dan Arnold	PhD Student	University of California, Santa Barbara
Bob Berenson	Fellow	Urban Institute
Sophie Beutel	Program Associate, Health Care Coverage and Access	The Commonwealth Fund
Larry Brown	Professor Health Policy and Management	Mailman School of Public Health, Columbia University
Larry Casalino	Chief, Division of Health Policy and Economics	Weill Cornell Medical College
Tom D'Aunno	Director, Health Policy and Management Program	NYU Wagner Graduate School of Public Service
Lisl Dunlop	Partner	Manatt, Phelps and Phillips, LLP
Randall P. Ellis	Professor, Department of Economics	Boston University
Deborah Feinstein		Formerly Federal Trade Commission
Matt Fiedler	Fellow, Center for Health Policy	Brookings Institution
Harry First	Charles L. Denison Professor of Law	NYU
Kathleen Foote	Senior Assistant Attorney General	California Department of Justice
Richard Frank	Professor	Harvard University
Ted Frech	Professor of Economics	University of California, Santa Barbara
Deborah Freund	University Professor	Claremont Graduate University
Brent Fulton	Assistant Adjunct Professor of Health Economics and Public Policy, and Associate Director of the Nicholas C. Petris Center	University of California, Berkeley
Erin C. Fuse Brown	Assistant Professor of Law	Georgia State University College of Law
Sherry Glied	Dean	NYU Wagner Graduate School of Public Service
Tim Greaney	Professor of Law and Co-Director of the Center for Health Law Studies	Saint Louis University School of Law
Munira Gunja	Senior Research Associate	The Commonwealth Fund
Deborah Haas-Wilson	Marilyn Carlson Nelson Professor of Economics	Smith College, Department of Economics
Scott Hemphill	Professor of Law	NYU School of Law
Kate Ho	Associate Professor of Economics	Columbia University
Krisztina Horvath	PhD Student	Boston College Department

		of Economics
Paul Howard	Director and Senior Fellow for Health Policy	Manhattan Institute
Jaime King	Associate Dean and Professor of Law	University of California, Hastings College of the Law
Jim Knickman	Derzon Clinical Professor	NYU Wagner Graduate School of Public Service
Thomas Koch	Economist	Federal Trade Commission
Rick Kronick	Professor	UC San Diego
John Kwoka	Neal F. Finnegan Distinguished Professor of Economics	Northeastern University
Miriam Laugesen	Associate Professor	Columbia University
Shawn Maree Bishop	Vice President	Commonwealth Fund
David Mechanic	Professor Emeritus	Rutgers University
Markus H. Meier	Acting Deputy Director	Federal Trade Commission
Don Metz	Executive Editor	Health Affairs
Kati Phillips	Program Manager	University of California, Berkeley Nicholas C. Petris Center
Alexis Pozen	Assistant Professor	CUNY School of Public Health
David Sandman	President & CEO	New York State Health Foundation
Richard Scheffler	Distinguished Professor Health Economics and Public Policy, Director Nichoal C. Petris Center	University of California, Berkeley
Cathy Schoen	Senior Scholar	New York Academy of Medicine
Amy Shefrin	Program Officer	New York State Health Foundation
Emilio Varanini	Deputy Attorney General in the Antitrust Section	California Attorney General's Office
Megan Wulff	Deputy Director for Market Performance	Massachusetts Health Policy Commission
Zsolt Udvari	PhD Student	Boston University