



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

Office of Policy Planning

April 1, 2026

Tennessee Rep. David Hawk  
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Nashville, TN 37243  
Email: [rep.david.hawk@capitol.tn.gov](mailto:rep.david.hawk@capitol.tn.gov)

**Re: Tennessee House Bill 2278/Senate Bill 2414 Concerning Expiration of Ballad Health Certificate of Public Advantage and House Bill 819/Senate Bill 1369 Removing Certificate of Need Requirements for Acute Care Hospitals**

Dear Representative Hawk:

The Directors of the Federal Trade Commission’s (“FTC”) Office of Policy Planning, Bureau of Competition, and Bureau of Economics are pleased to respond to your March 27, 2026, inquiry about the competitive implications of proposed legislation pertaining to Tennessee’s Certificate of Public Advantage (“COPA”) and Certificate of Need (“CON”) laws. Promoting competition in the healthcare sector—which spurs innovation, lowers prices, and improves quality and access for healthcare services—is among Chairman Andrew Ferguson’s highest priorities for the FTC. We write this letter to advance these objectives.

With respect to COPA laws, we understand that the Tennessee General Assembly is considering proposed legislation to amend the Hospital Cooperation Act of 1993.<sup>1</sup> In 2018, Ballad Health obtained a COPA under this statute, which requires active supervision by the Tennessee Department of Health (“TDH”).<sup>2</sup> If enacted, House Bill 2278 (“HB2278”) and Senate Bill 2414 (“SB2414”) would allow the Ballad Health COPA to expire on June 30, 2028.<sup>3</sup> The consequence: eliminating all TDH supervision currently in effect relating to Ballad Health’s quality of healthcare services, availability and access to care, as well as population health initiatives—leaving only the current pricing restrictions to be enforced by the Tennessee Attorney General for no longer than five years.

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<sup>1</sup> Tennessee Code Annotated, Title 68, Chapter 11, Part 13.

<sup>2</sup> See Tennessee Department of Health, *Certificate of Public Advantage (COPA)*, <https://www.tn.gov/health/health-program-areas/health-planning/certificate-of-public-advantage.html>.

<sup>3</sup> Tennessee General Assembly (114<sup>th</sup> Legislative Session), House Bill 2278 and Senate Bill 2414 (introduced Feb. 2, 2026), <https://wapp.capitol.tn.gov/apps/BillInfo/Default?BillNumber=HB2278&GA=114>. As introduced, these are caption bills for which an amendment is necessary to achieve full effect. On March 26, 2026, the Senate passed SB2414 as amended before transmitting to the House. See Senate Health and Welfare Amendment No. 1 to SB2414, available at <https://capitol.tn.gov/Bills/114/Amend/SA0777.pdf>.

We write to highlight the FTC’s prior work regarding COPA laws, particularly the negative consequences of removing state regulatory oversight for a hospital monopoly formed pursuant to a COPA. The FTC generally recommends that state lawmakers not enact new COPA laws and repeal existing COPA laws. However, there is an important caveat. Repealing a COPA law or allowing a specific COPA to expire in the absence of competing healthcare systems enables a monopolist to exercise substantial market power unconstrained by state regulatory oversight or antitrust enforcement against merger-related harms.<sup>4</sup> In many ways, this scenario is the worst possible outcome for patients: the hospital evades antitrust scrutiny on the front end by virtue of the COPA, and then evades scrutiny by the state governments on the back end by virtue of the COPA’s expiration.

With respect to CON laws, we understand that the Tennessee General Assembly is considering proposed legislation to amend the Tennessee Health Services and Planning Act of 2021,<sup>5</sup> which currently requires acute care hospitals to obtain CON approval before they can open new facilities in Tennessee. House Bill 819 (“HB819”) and Senate Bill 1369 (“SB1369”) were introduced to remove CON requirements for acute care hospitals beginning July 1, 2028, however, this effective date may be amended to July 1, 2030.<sup>6</sup> The General Assembly may find the FTC’s prior work regarding CON laws informative as it considers these bills. In the FTC’s experience, CON laws prevent the efficient functioning of healthcare markets. They create barriers to entry and expansion, thus limiting consumer choice and stifling innovation. For these reasons, the FTC and the U.S. Department of Justice Antitrust Division (“the Agencies”) have consistently advocated that states repeal or curtail their CON laws.<sup>7</sup>

### **House Bill 2278 and Senate Bill 2414: Ballard Health COPA Expiration**

As you may be aware, FTC staff opposed the Ballard Health COPA, issuing several public comments and providing testimony in 2016 to 2017.<sup>8</sup> FTC staff also held a public workshop in 2019, during which participants discussed early observations of the Ballard Health COPA.<sup>9</sup> Under

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<sup>4</sup> See Federal Trade Commission, *FTC Policy Perspectives on Certificates of Public Advantage* at 7 (Aug. 15, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/COPA\\_Policy\\_Paper.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/COPA_Policy_Paper.pdf).

<sup>5</sup> Tennessee Code Annotated, Title 68, Chapter 11, Part 16. See Tennessee Health Facilities Commission, *Certificate of Need*, <https://www.tn.gov/hfc/certificate-of-need-information.html>.

<sup>6</sup> Tennessee General Assembly (114<sup>th</sup> Legislative Session), House Bill 819 (introduced Feb. 4, 2025) and Senate Bill 1369 (introduced Feb. 6, 2026), <https://wapp.capitol.tn.gov/apps/BillInfo/Default?BillNumber=HB0819&ga=114>. On March 26, 2026, the Senate passed SB1369 as amended before transmitting to the House. The Senate amendments extended the effective date to July 1, 2030, and the House is considering similar amendments.

<sup>7</sup> For a recent overview of the Agencies’ CON advocacy, see FTC Letter to Rhode Island Governor McKee on Proposed CON Amendments (Apr. 16, 2025), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/ftc-letter-to-ri-gov-mckee-on-proposed-con-amendments.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/ftc-letter-to-ri-gov-mckee-on-proposed-con-amendments.pdf).

<sup>8</sup> FTC Staff Submissions Regarding the Proposed Merger and COPA Applications of Mountain States Health Alliance and Wellmont Health System, <https://www.ftc.gov/enforcement/cases-proceedings/151-0115/wellmont-healthmountain-states-health>.

<sup>9</sup> FTC Public Workshop, *A Health Check on COPAs: Assessing the Impact of Certificates of Public Advantage in Healthcare Markets* (Jun. 18, 2019), <https://www.ftc.gov/news-events/events/2019/06/health-check-copas-assessing-impact-certificates-public-advantage-healthcare-markets>. See Jackie DeFusco, *Ballad Health COPA: Insufficient or Raising the Standard for State Oversight?*, WJHL NEWS CHANNEL 11 (Jun. 26, 2019), <https://www.wjhl.com/news/local/ballad-health-copa-insufficient-or-raising-the-standard-for-state-oversight/>. Furthermore, FTC staff are currently conducting an empirical study of the Ballard Health COPA—particularly its

the Ballad Health COPA, TDH serves as the primary agency responsible for approving and monitoring compliance with the COPA.

As we understand HB2278 and SB2414, the proposed bills would end all state oversight of the Ballad Health COPA by TDH.<sup>10</sup> Currently, TDH oversight includes various terms and conditions relating to quality of healthcare services, expanded access to healthcare services, population health improvement initiatives, health research and graduate medical education, facility maintenance and capital expenditures, regional health information exchange, and employee benefits and protections.<sup>11</sup> After the Ballad Health COPA expires, only the pricing restrictions that are then in effect would remain until the earlier of June 30, 2033 or the date that a new inpatient acute care hospital opens in the geographic service area covered by the Ballad Health COPA. These pricing restrictions would be enforced by the Tennessee Attorney General pursuant to a supervision agreement, rather than TDH.

We respectfully suggest that the General Assembly review the FTC staff policy paper entitled *FTC Policy Perspectives on Certificates of Public Advantage*<sup>12</sup> during its consideration of HB2414 and SB2278. This policy paper describes the available empirical support for the FTC’s long-standing concerns with COPAs, which allow for anticompetitive hospital consolidation that is likely to raise the prices of healthcare services for consumers, reduce quality of care and patient health outcomes, limit patient access for healthcare services and facilities, and depress wages for hospital employees.

The policy paper also describes FTC staff’s observations that COPAs can be extremely difficult to implement and monitor over time, and regulatory conditions are often unsuccessful in mitigating merger-related price and quality harms. One challenge is that hospitals exploit regulatory fatigue in an effort to evade COPA regulations. After being allowed to merge, “the hospitals subject to COPAs often lobby for repeal of COPA oversight or fewer COPA conditions, citing costs and difficulties of compliance.”<sup>13</sup>

Given this risk, the policy paper expressly warns about the consequences of states repealing COPA legislation in a way that “eliminate[s] state regulatory oversight of the hospital systems that were allowed to merge under COPAs.”<sup>14</sup> For such a legislative change, “the practical effect” is to hand the “merged healthcare system” monopoly power “unconstrained by either state regulation or antitrust enforcement against merger-related harms.”<sup>15</sup> In sum, when

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potential impact on prices, quality of care, access to services, and employee wages. FTC Press Release, *FTC to Study the Impact of COPAs* (Oct. 21, 2019), <https://www.ftc.gov/news-events/press-releases/2019/10/ftc-study-impact-copas>. As of now, the study is ongoing and findings have not been completed.

<sup>10</sup> Tennessee General Assembly (114<sup>th</sup> Legislative Session), House Bill 2278 and Senate Bill 2414 (introduced Feb. 2, 2026), <https://wapp.capitol.tn.gov/apps/BillInfo/Default?BillNumber=HB2278&GA=114>.

<sup>11</sup> See Fifth Amended and Restated Terms of Certification Governing the Certificate of Public Advantage Issued to Ballad Health (Jan. 1, 2025), <https://www.tn.gov/content/dam/tn/health/documents/copa/Fifth-Amended-and-Restated-TOC-Governing-the-COPA.pdf>.

<sup>12</sup> See Federal Trade Commission, *FTC Policy Perspectives on Certificates of Public Advantage* (Aug. 15, 2022) and *Key COPA Facts*, both available at [www.ftc.gov/copa](http://www.ftc.gov/copa).

<sup>13</sup> Federal Trade Commission, *FTC Policy Perspectives on Certificates of Public Advantage* at 4 (Aug. 15, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/COPA\\_Policy\\_Paper.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/COPA_Policy_Paper.pdf).

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Id.* at 4.

COPAs expire the risk of price and quality harms increases significantly, including harm to quality of care and availability of healthcare services.<sup>16</sup> The FTC takes seriously monopolies in healthcare markets and if state regulatory oversight is eliminated, for example in the wake of a COPA expiration, the Commission will review developments closely.

The FTC staff comments and testimony concerning Ballad Health’s application for a COPA may also be instructive for the General Assembly. During that process, FTC staff discussed future competition concerns, including potential roadblocks to antitrust enforcement and to new entrants seeking to compete in the market. Obtaining effective relief through antitrust enforcement is inherently challenging after mergers have already been consummated.<sup>17</sup> As for new entrants, FTC staff explained that CON laws posed a regulatory barrier to entry. And the combined hospital system “would have every incentive to oppose potential entrants’ CON applications, making entry even less likely.”<sup>18</sup> To address this concern, Ballad Health was originally prohibited from opposing CON applications. This condition, however, has since been removed, leaving Ballad Health free to oppose the entry of new competitors.<sup>19</sup>

To the extent that Tennessee’s COPA law is amended and the Ballad Health COPA expires, the General Assembly may want to consider the FTC’s research in deciding whether the legislature has sufficiently mitigated the risks of increased prices of healthcare services for consumers, reduced quality of care and patient health outcomes, less patient access for healthcare services and facilities, and depressed wages for hospital employees.

### **House Bill 819 and Senate Bill 1369: Removal of CON Requirements**

We understand that HB819 and SB1369 have been proposed to remove CON requirements for acute care hospitals. The potential opening of a new inpatient acute care hospital would be a positive step towards replacing the hospital competition that was lost in Northeast Tennessee as a result of the merger that formed Ballad Health. Removing unnecessary CON regulatory barriers to facilitate new hospital entry is consistent with recommendations in

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<sup>16</sup> *Id.* at 4, 7, 12.

<sup>17</sup> See FTC Staff Submission to TDH Regarding COPA Application of Mountain States Health Alliance and Wellmont Health System at 63–64 (Nov. 21, 2016), [https://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-submission-tennessee-department-health-regarding-certificate-public-advantage-application/161122wellmontcommenttenn.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-submission-tennessee-department-health-regarding-certificate-public-advantage-application/161122wellmontcommenttenn.pdf); see also FTC Staff Supplemental Submission to TDH Regarding COPA Application of Mountain States Health Alliance and Wellmont Health System at 9 (Jan. 5, 2017), [https://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-supplemental-submission-tennessee-department-health-regarding-certificate-public-advantage/170105mshatennesseesuppcmt.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-supplemental-submission-tennessee-department-health-regarding-certificate-public-advantage/170105mshatennesseesuppcmt.pdf) (discussing “the challenges of prying apart an integrated system of 19 hospitals” and whether there would likely be “any meaningful ability to return Mountain States and Wellmont to their pre-consolidation state” to “rectify” the loss competition).

<sup>18</sup> See FTC Staff Submission to TDH Regarding COPA Application of Mountain States Health Alliance and Wellmont Health System at 51–52 (Nov. 21, 2016), [https://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-submission-tennessee-department-health-regarding-certificate-public-advantage-application/161122wellmontcommenttenn.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-submission-tennessee-department-health-regarding-certificate-public-advantage-application/161122wellmontcommenttenn.pdf).

<sup>19</sup> Federal Trade Commission, *FTC Policy Perspectives on Certificates of Public Advantage* at 11 (Aug. 15, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/COPA\\_Policy\\_Paper.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/COPA_Policy_Paper.pdf).

FTC staff's prior advocacy,<sup>20</sup> as well as the Trump Administration's Rural Health Transformation program.<sup>21</sup>

Competition in health care markets benefits consumers by containing costs, reducing prices, improving quality, and encouraging innovation. Empirical evidence demonstrates that competition generally results in lower prices for, and broader access to, health care products and services. And non-price competition promotes higher quality care and encourages innovation.<sup>22</sup>

In contrast, based on considerable experience and several decades of studying the competitive effects of CON laws, the FTC has found that CON laws create barriers to entry and expansion, limit consumer choice, and stifle innovation. Incumbent providers may leverage CON laws to thwart or delay entry and expansion by potential competitors and other market participants. Most of the evidence to date suggests that CON laws have not been successful in controlling healthcare costs or improving quality of healthcare services.<sup>23</sup> Moreover, CON laws require new entrants and incumbent providers to obtain state-issued approval before constructing new facilities or offering certain healthcare services. By interfering with the market forces that normally determine the supply of facilities and services, CON laws can suppress supply, misallocate resources, and shield incumbent healthcare providers from competition by new entrants.

Specifically, prior FTC advocacy explains that CON laws can:

- Raise the cost of entry and expansion—by adding time, uncertainty, and the cost of the approval process itself—for firms that have the potential to offer new, lower-cost, more convenient, or higher-quality services;
- Remove, reduce, or delay the competitive pressures that typically incentivize incumbent firms to innovate, improve existing services, introduce new services, or moderate prices; and
- Prohibit entry or expansion in the event that a CON is denied.<sup>24</sup>

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<sup>20</sup> See, e.g., Joint Statement of the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice Regarding Certificate-of-Need Laws and Alaska Senate Bill 62 (Apr. 12, 2017) [hereinafter FTC-DOJ Alaska Statement], <https://www.justice.gov/archives/opa/press-release/file/957186/dl>; Joint Statement of the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice on Certificate-of-Need Laws and South Carolina House Bill 3250 (Jan. 11, 2016) [hereinafter FTC-DOJ South Carolina Statement], <https://www.justice.gov/atr/file/812606/download>; Joint Statement of the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice to the Virginia Certificate of Public Need Work Group (Oct. 26, 2015) [hereinafter FTC-DOJ Virginia Statement], <https://www.justice.gov/atr/case-document/file/788171/dl>.

<sup>21</sup> See Centers for Medicare & Medicaid Services, *Rural Health Transformation (RHT) Program*, <https://www.cms.gov/priorities/rural-health-transformation-rht-program/overview>; Rich Daly, *Federal Scoring System Spurs State Action on Certificate-of-Need Laws*, Healthcare Financial Management Association (Jan. 26, 2026), <https://www.hfma.org/fast-finance/federal-scoring-system-spurs-state-action-on-certificate-of-need-laws/>.

<sup>22</sup> See, e.g., FTC-DOJ Alaska Statement at 5, 10–11, for discussion of the benefits of competition.

<sup>23</sup> See FTC Letter to Rhode Island Governor McKee on Proposed CON Amendments at 2 (Apr. 16, 2025), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/ftc-letter-to-ri-gov-mckee-on-proposed-con-amendments.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/ftc-letter-to-ri-gov-mckee-on-proposed-con-amendments.pdf).

<sup>24</sup> See, e.g., FTC-DOJ Alaska Statement at 5–6; FTC-DOJ South Carolina Statement at 6–7; FTC-DOJ Virginia Statement at 6–7.

For all of these reasons, the Agencies have consistently suggested that states repeal or narrow their CON laws.

As originally introduced, the effective date of HB819 and SB1369 would have been July 1, 2028—one day after the Ballad Health COPA may be set to expire. Since then, the Senate passed amendments that extend the effective date to July 1, 2030, and the House is considering similar amendments.<sup>25</sup> This extension would create a two-year gap between the Ballad Health COPA expiration in 2028 and the removal of the CON requirement for acute care hospitals in 2030. As noted above, the prior FTC staff comment discussed how Tennessee’s CON laws “pose an additional barrier to entry.”<sup>26</sup> Ballad Health, for its part, would have “every incentive” to oppose competitors applying for CONs, which would decrease the likelihood of entry.

The General Assembly may wish to consider the FTC’s research and previous advocacy efforts in deciding whether delaying competition by delaying the repeal of CON laws undermines the legislature’s goal of increasing competition. Repealing the CON laws as soon as possible—and in no event later than the expiration of any COPA—would offer the promise of additional competition in Northeast Tennessee.

## **Conclusion**

We invite the General Assembly to work collaboratively with us to minimize the harmful effects of anticompetitive hospital consolidation, as well as to enhance the benefits of hospital competition by removing unnecessary regulatory barriers to entry. We are happy to speak with you further about the recommendations and studies described in the FTC’s prior advocacy regarding COPA and CON laws and regulations.

Please direct all questions regarding this submission to Stephanie Wilkinson, Attorney Advisor, Office of Policy Planning, 202-326-2084, [swilkinson@ftc.gov](mailto:swilkinson@ftc.gov), and Ricardo Woolery, Attorney Advisor, Office of Policy Planning, 202-326-3623, [rwoolery@ftc.gov](mailto:rwoolery@ftc.gov).

Best regards,

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/s/ ***Daniel Guarnera***  
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<sup>25</sup> See SB1369 Amendments 1–3 and HB819 Amendments 1–2, available at <https://wapp.capitol.tn.gov/apps/BillInfo/Default?BillNumber=HB0819&ga=114>.

<sup>26</sup> See FTC Staff Submission to TDH Regarding COPA Application of Mountain States Health Alliance and Wellmont Health System at 51–52 (Nov. 21, 2016), [https://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-submission-tennessee-department-health-regarding-certificate-public-advantage-application/161122wellmontcommenttenn.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-submission-tennessee-department-health-regarding-certificate-public-advantage-application/161122wellmontcommenttenn.pdf).