



Building Service 32BJ Health Fund

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September 9, 2024

State of New York Public Health and Health Planning Council (PHHPC)
Empire State Plaza – Corning Tower, Room 1805
Albany, New York 12237
RE: Nuvance Health/Northwell Health Merger

Dear PHHPC Councilmember:

The 32BJ Health Fund provides affordable, comprehensive, and innovative health coverage with no employee premium sharing to over 200,000 SEIU Local 32BJ union members and their families, including 1,268 plan participants living in Putnam and Dutchess counties. As a self-funded plan, hospital prices directly impact the Fund’s budget and ability to keep costs low for our plan participants. We write to express our concern about the Northwell/Nuvance merger and its potential negative impacts on our plan participants’ healthcare quality, access and affordability. High hospital prices impact sustainability for the 32BJ Health Fund and therefore threaten to increase health benefit costs. **We urge PHHPC to hold a public hearing to include meaningful community input before deciding on this transaction.**

Northwell: high prices & substantial market power

As a purchaser of healthcare, the 32BJ Health Fund has direct experience of how Northwell’s market power negatively impacts our ability to secure affordability and quality healthcare for our members.

HIGH PRICES. Northwell commands exceptionally high prices from commercial payers, with the system as a whole priced at 342% of Medicare prices and its highest-priced facility at 615% of Medicare prices. These prices are far above the costs required for care, with Northwell hospitals’ breakeven rate at just 119% of Medicare.¹

SUBSTANTIAL MARKET POWER. Northwell is already the largest health care system in New York State, dominating the markets in the counties it serves with almost double market share as its closest competitor.² From 2016 to 2022, Northwell’s total net assets increased by 68 percent.³ With this merger, Northwell would continue to increase its already substantial footprint.

¹ The commercial “breakeven rate” is the reimbursement rate a hospital needs to receive from commercial payers to cover all of its expenses for hospital inpatient and outpatient services, without profit. The National Academy of State Health Policy (NASHP) reports commercial breakeven and prices both as multiples of Medicare rates for comparability. (NASHP (2022). Understanding NASHP’s Hospital Cost Tool: Commercial Breakeven. <https://nashp.org/commercial-breakeven/>).

² Fitch Affirms Northwell, NY’s Revs at ‘A-’; Outlook Stable (April 23, 2023). Fitch Ratings. <https://www.fitchratings.com/research/us-public-finance/fitch-affirms-northwell-ny-revs-at-a-outlook-stable-28-04-2023>

³ Audited Financial Statements for Financial Years 2022 as posted on Electronic Municipal Market Access and accessed April 2024.

Decades of economic research⁴ establishes that hospital consolidation increases prices,⁵ reducing patient's ability to afford healthcare⁶ and impacting entire communities through higher premiums, higher out-of-pocket costs, reduced wages, and even increased unemployment.⁷ A 2019 study found price increases of 7-9 percent after systems acquire hospitals in separate markets within the same state⁸ -- an impact often missed since antitrust review has typically focused on within-market mergers.⁹ Notably, this merger would expand Northwell's market into the mid-Hudson Valley, but the within-state impacts were not addressed by New York's AG.¹⁰

If PHHPC decides to approve the transaction, we believe reasonable conditions must include:

- **Affordability:** PHHPC should prohibit all merged entities from increasing prices as a result of the merger, limit price increases to no more than the Producer Price Index for a period of five years thereafter, and require reports to the Department of Health, PHHPC, and the NYS AG on contract prices, price trends and healthcare spending.
- **Quality & Access:** To ensure accountability to the promises made in proposing this merger, PHHPC should require Northwell to maintain or improve quality and access in the areas served by current Nuvance hospitals and practices, along with reporting on key measures, such as no reduction in emergency, behavioral health, or labor and delivery services.
- **Anticompetitive practices:** New York does not have full protections from anticompetitive contracting practices between health insurance payors and providers (most notably all-or-nothing, anti-steering, and anti-tiering provisions). Without conditions and oversight from NYS, we anticipate Northwell will continue to use its substantial market power to secure cost-inflating anticompetitive contracting language exceptions as detailed elsewhere in this letter. Furthermore, beyond price impacts, as reported in *The Wall Street Journal*, the 32BJ Health Fund has experienced [significant negative impact from hospitals leveraging market power](#) to assert a "must have" status in carrier networks.¹¹

Regular reports to the Department of Health, PHHPC, and the NYS AG should address the following, and should be made publicly available:

- Whether the transaction is resulting in lower costs as measured by changes in contract prices and health care spending;
- Whether there are changes in referral patterns at the acquired Nuvance practices, and how care is being directed to the most appropriate, lowest-cost setting, and efforts to coordinate care across facilities to avoid duplication of services; and
- Whether quality is improving as determined by changes in performance on key quality measures.

The 32BJ Health Fund urges PHHPC to hold a public hearing to include meaningful community input before deciding on this transaction. If this request is denied, we ask that PHHPC place conditions on the

⁴ Leukemia and Lymphoma Society (March 2024). Healthcare Consolidating is Raising Prices and Jeopardizing Cancer Care: Policymaker Recommendations. <https://lls.org/sites/default/files/2024-03/consolidation-report.pdf>

⁵ Rabbani, M. (2021, April 5). Non-profit hospital mergers: the effect on healthcare costs and utilization. *International Journal of Health Economics and Management*, 21, 427–455. <https://doi.org/10.1007/s10754-021-09303-8>

⁶ Arnold, D., & Whaley, C.M. (2020). Who Pays for Health Care Costs? The Effects of Health Care Prices on Wages. RAND Corporation, WR-A621-2. <https://doi.org/10.7249/WRA621-2>

⁷ Brot-Goldberg, Z. et al (2014). Who Pays for Rising Health Care Prices? Evidence from Hospital Mergers. *National Bureau of Economic Research*. <https://www.nber.org/papers/w32613>

⁸ Dafny, L., Ho, K., & Lee, R.S. (April 10, 2019). The price effects of cross-market mergers: theory and evidence from the hospital industry. *The RAND Journal of Economics*, 5, 0(2), 286–325. <https://doi.org/10.1111/1756-2171.12270>.

⁹ Slaughter, R. (May 14, 2019) "Antitrust and Health Care Providers Policies to Promote Competition and Protect Patients Center for American Progress." Washington, DC: Federal Trade Commission.

https://www.ftc.gov/system/files/documents/public_statements/1520570/slaughter_-_hospital_speech_5-14-19.pdf

¹⁰ Offices of the Attorneys General of the State of Connecticut and the State of New York. (August 23, 2024). Agreement of Assurances with Northwell Health, Northwell Healthcare, & Nuvance Health. https://portal.ct.gov/-/media/ag/press_releases/2024/agreement-of-assurances---northwell-nuvance.pdf

¹¹ *The Wall Street Journal*. (May 21 2024). Hospital to Union: Pay Up or You're Stuck With Us in Your Health Plan. <https://www.wsj.com/health/healthcare/new-york-presbyterian-hospital-payment-union-3b2100f5>

transaction to prohibit further price increases and anticompetitive practices, along with a written response to this letter of concern.

Please let us know if you have any questions or would like any further information.

Sincerely,

A handwritten signature in cursive script that reads "Peter Goldberger". The signature is written in black ink and is positioned to the left of the typed name.

Peter Goldberger
Executive Director
32BJ Health Fund