

# Impact of Market Consolidation: Providers and Payers

Seventh National Accountable Care  
Organization Summit

Leigh Oliver, Hogan Lovells  
Joshua Soven, Gibson Dunn  
Christine White, Northwell Health

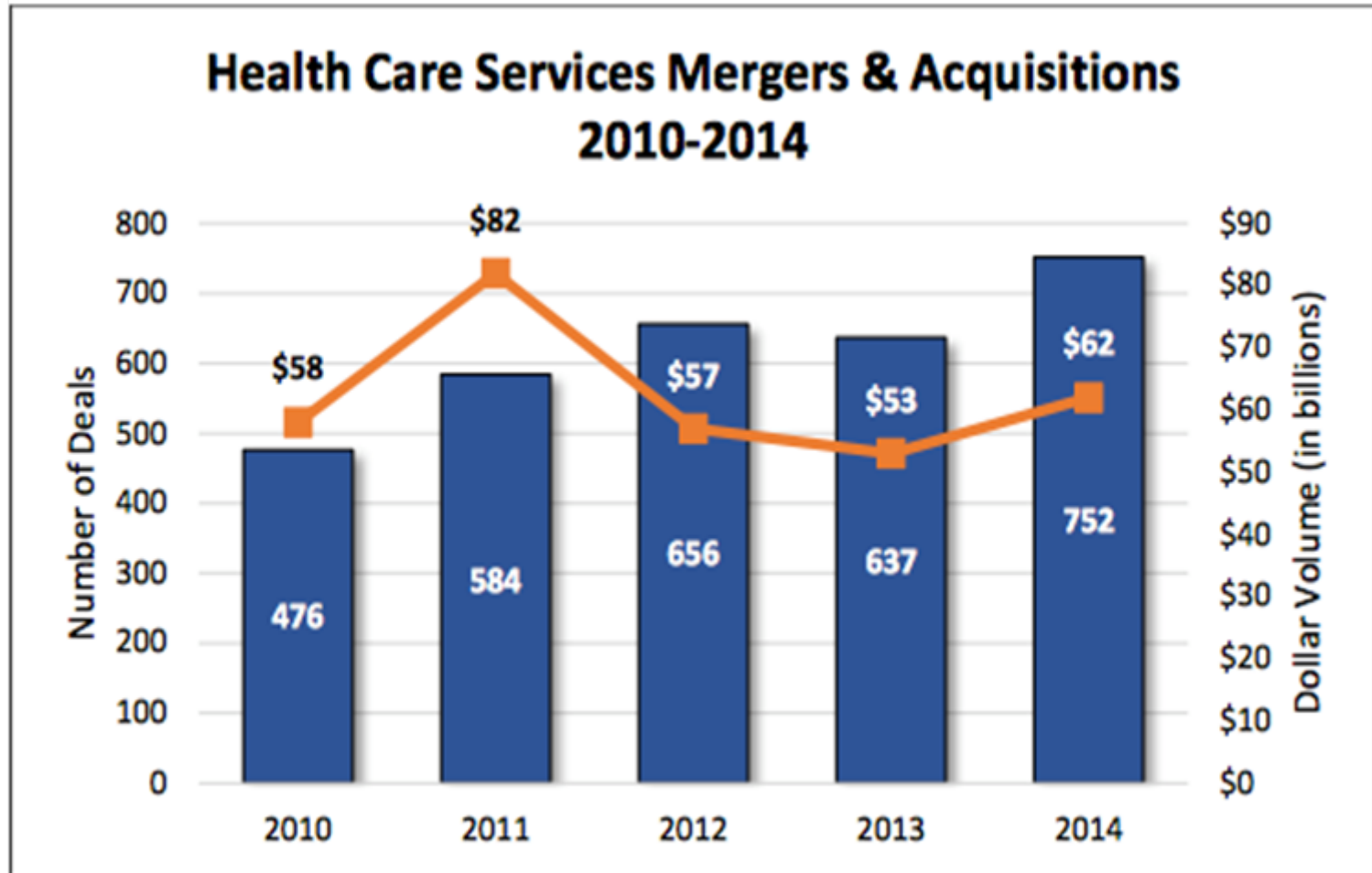
June 9, 2016  
Washington, D.C.

# Consolidation Making Headlines...

## “Healthcare M&A Remains Red Hot in 2016...”

Last year was new record high for merger and acquisition activity globally as nearly **\$5 trillion in deals were cut**, bolstered by consolidation in the healthcare sector, where drugmakers, hospitals, and providers are combining in an effort to increase their scale. On Monday, **Shire** and Baxalta announced a \$32 billion merger that indicates healthcare M&A isn't going to slow in 2016.

# Increase in M&A All Sectors of Health Care



*Source: The Health Care M&A Information Source, March 2015*

# Enforcement

Stats & Data 2014

JANUARY - DECEMBER 2014  
FEDERAL TRADE COMMISSION

## COMPETITION

### ANTITRUST ENFORCEMENT

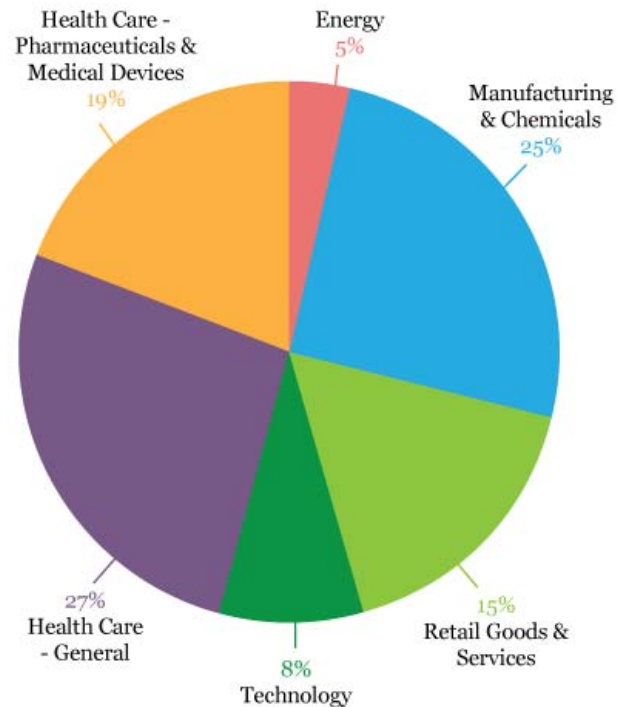
Merger Consent Orders	14
Filed Merger Cases	2 <sup>‡</sup>
Abandoned Transactions	3
Non-Merger Actions	8
Civil Penalty Actions	1

### POLICY INITIATIVES

Workshops	4
Reports	4
Advocacy & Amicus Briefs	16

<sup>‡</sup> Updated May 2015.

Enforcement Actions by Sector  
Fiscal Years 2010-2014



# Consolidation in the News...

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**BUSINESS DAY**

## *F.T.C. Wary of Mergers by Hospitals*

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WASHINGTON — As hospitals merge and buy up physician practices, creating new behemoths, one federal agency is raising a lonely but powerful voice, suggesting that consumers may be victimized by the trend toward consolidation.

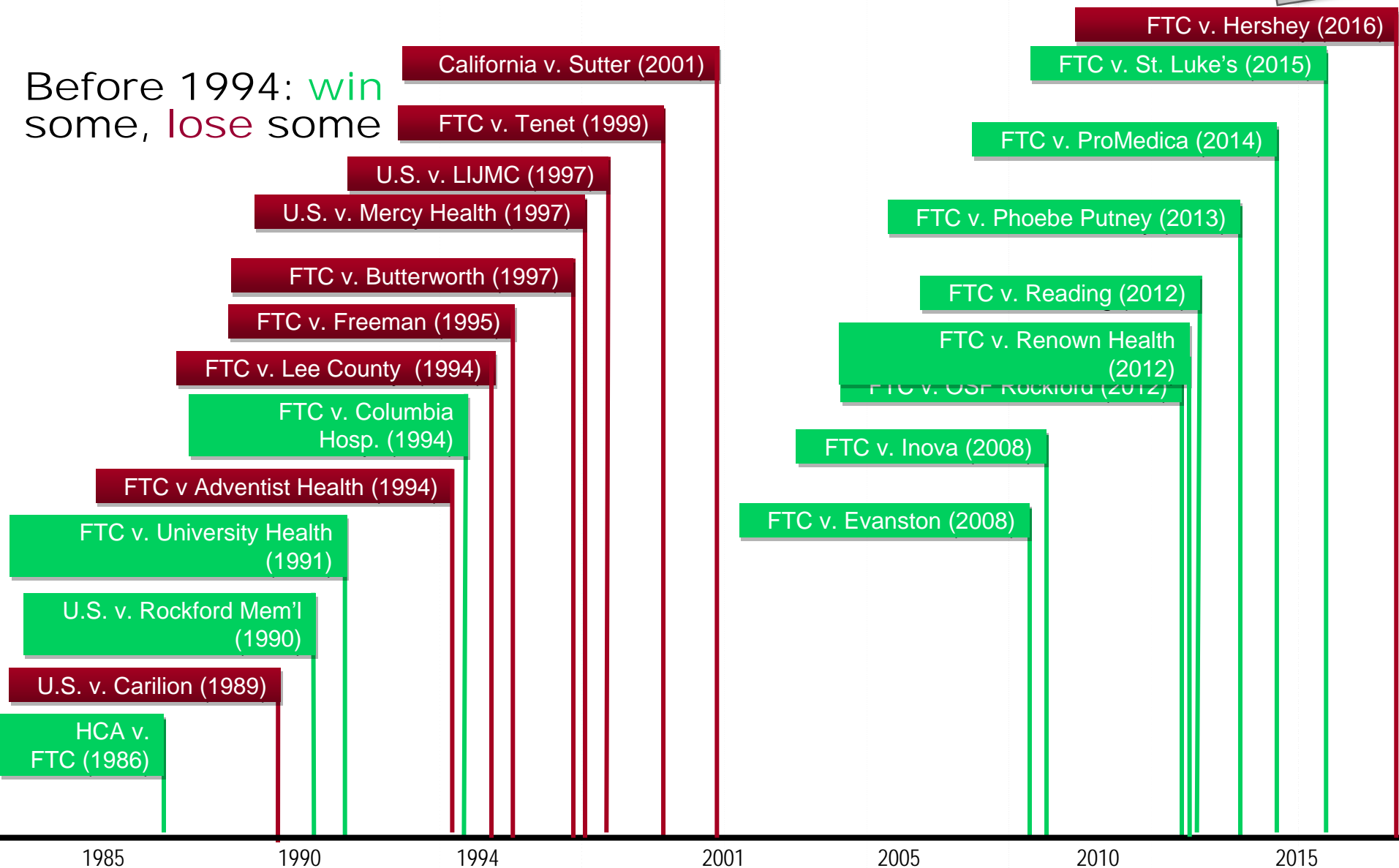
Hospitals often say they acquire other hospitals and physician groups so they can coordinate care, in keeping with the goals of the Affordable Care Act. But the agency, the Federal Trade Commission, says that mergers tend to reduce competition, and that doctors and hospitals can usually achieve the benefits of coordinated care without a full merger.

***New York Times***  
Sept 17, 2014

# Government merger history...

Pending  
Appeal

Before 1994: **win**  
some, **lose** some



# Trends: Growth in Hospital Systems



# *FTC v. St. Luke's and Saltzer*

## Efficiency Justifications

### **Saltzer's Goal in Entering Transaction**



**To provide comprehensive, coordinated, high value care to the patients it serves, through:**

- Improving accessibility and quality of care for all patients;
- Greater participation in community outreach efforts;
- Transitioning to value-based delivery of care and compensation and risk-based contracts;
- Obtaining and benefiting from technological upgrades, including Epic and WhiteCloud;
- Improving Saltzer's ability to recruit and retain physicians;
- Creating efficiencies and reducing the cost of medical care.



# *FTC v. St. Luke's and Saltzer*

anticompetitive effects only in the adult PCP market. The district court consolidated this case with the one filed by the Private Hospitals, and after the merger prohibited by the Competition Act because of the Nampa adult PCP market.

The district court expressed its belief that the merger would genuinely improve the U.S. health care system, and expressed its belief that the merger would genuinely intend to move toward a better health care system, and expressed its belief that the merger would “improve patient outcomes” if left intact. Nonetheless, the court found that the “huge market share” of the post-merger entity “creates a substantial risk of anticompetitive price increases” in the Nampa adult PCP market. Rejecting an argument by St. Luke’s that the efficiencies excused the potential anticompetitive price effects, the district court ordered divestiture. This appeal followed.

## **II. Standard of Review**

We review the district court’s findings of fact for clear error and its conclusions of law de novo. *Husain v. Olympic Airways*, 316 F.3d 829, 835 (9th Cir. 2002), *aff’d*, 540 U.S. 644 (2004). The question is whether a finding of fact is “clearly erroneous,” not whether there is a “compelling case” for an alternative finding. *California v. Am. Stores Co.*, 872 F.2d 837, 842 (9th Cir. 1989), *rev’d on other grounds*, 495 U.S. 271 (1990). The district court’s choice of remedy is reviewed for abuse of discretion. *Theme Promotions, Inc.*

The district court expressly noted the troubled state of the U.S. health care system, found that St. Luke’s and Saltzer genuinely intended to move toward a better health care system, and expressed its belief that the merger would “improve patient outcomes” if left intact. Nonetheless, the court found that the “huge market share” of the post-merger entity “creates a substantial risk of anticompetitive price increases” in the Nampa adult PCP market. Rejecting an

# *FTC v. Hershey Penn State*

## Opinion of District Court Judge Jones (*Appeal pending*)



The patients of Hershey and Pinnacle stand to gain much from a combined entity that is capable of competing with a variety of other merged and already growing hospital systems in the region. This decision further recognizes a growing need for all those involved to adapt to an evolving landscape of healthcare that includes, among other changes, the institution of the Affordable Care Act, fluctuations in Medicare and Medicaid reimbursement, and the adoption of risk-based contracting.

# *FTC v. Hershey Penn State*

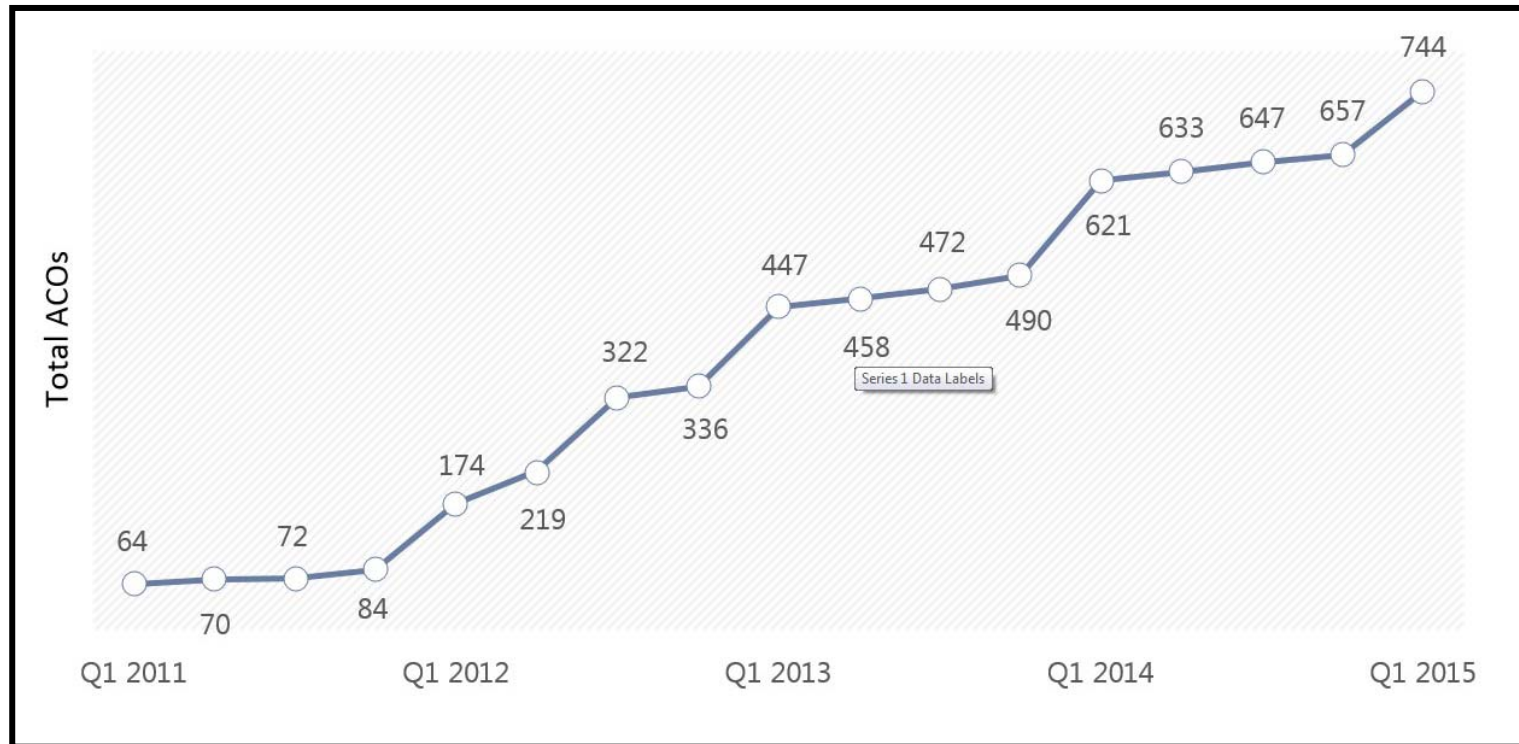
## Opinion of District Court Judge Jones

*(Appeal pending)*



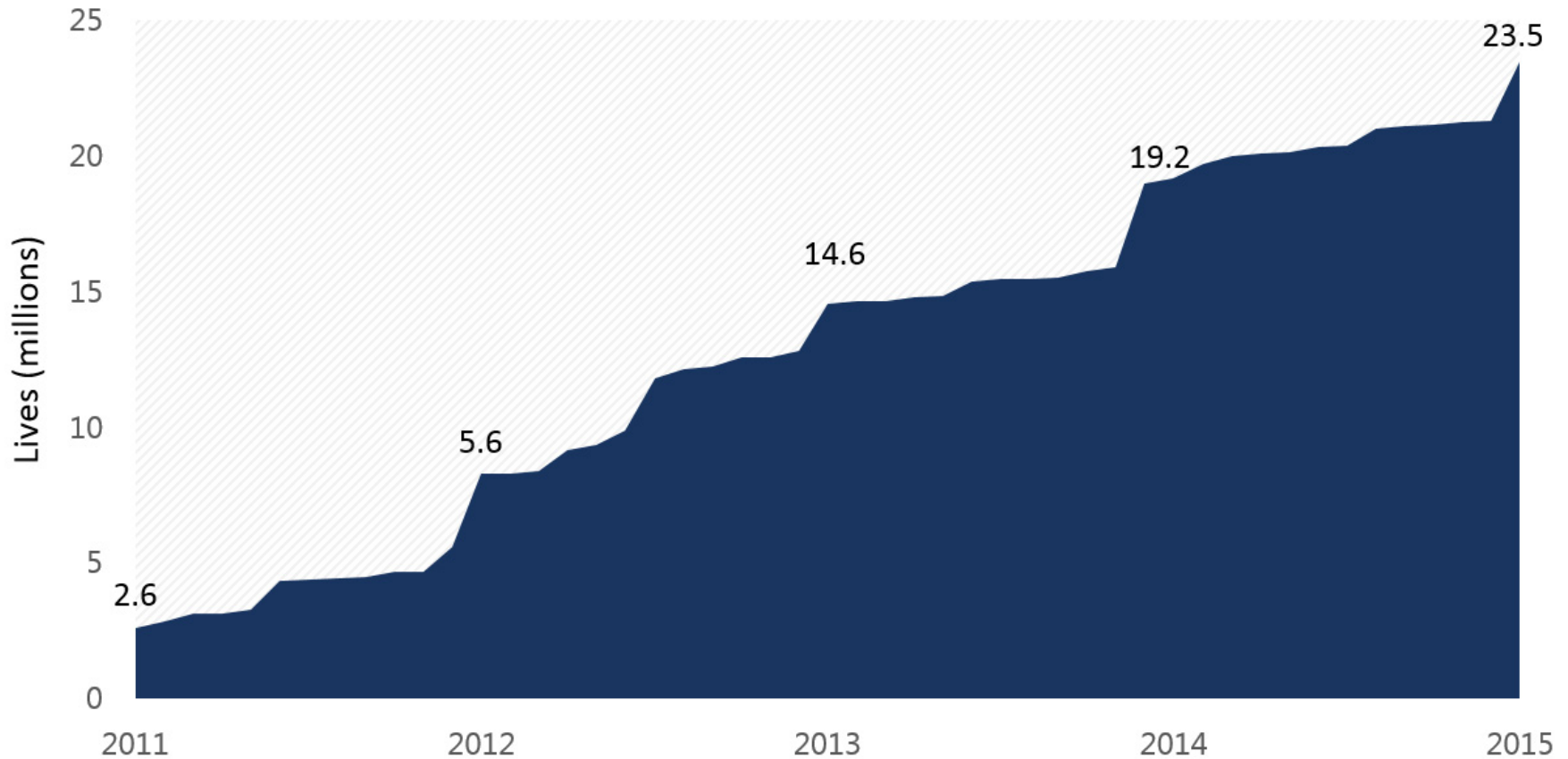
Our determination reflects the healthcare world as it is, and not as the FTC wishes it to be. We find it no small irony that the same federal government under which the FTC operates has created a climate that virtually compels institutions to seek alliances such as the Hospitals intend here. Like the corner store, the community medical center is a charming but increasingly antiquated concept. It is better for the people they treat that such hospitals unite and survive rather than remain divided and wither.

# Increasing Number of ACOs



<http://healthaffairs.org/blog/2015/03/31/growth-and-dispersion-of-accountable-care-organizations-in-2015-2/>

# Total Covered ACO Lives



Source: Leavitt Partners Center for Accountable Care Intelligence

# Health Insurance Mergers: Is Bigger Really Better?

- Aetna proposes to acquire Humana in a \$34 billion transaction
- Anthem seeks to take over Cigna in a \$48 billion dollar transaction
- This reduce major insurers from 5 to 3, controlling nearly half of the commercial insurance industry

