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***The Healing Power of Antitrust***

**INTRODUCTION**

Healthcare in rural America has hit a crisis point. While the health of people living in rural areas is worse than those living in urban areas, the rural population is nonetheless deprived of the healthcare services they deserve and need.[[1]](#footnote-1) Rural Americans are more likely to be poor, unemployed, and uninsured, and are also more likely to suffer from a severe chronic condition or substance abuse disorder than their urban counterparts.[[2]](#footnote-2) They are also more likely to live with a disability that impacts their mobility, self-care, and their ability to live independently.[[3]](#footnote-3) Sadly, residents in rural areas also experience higher rates of suicide than do residents in metropolitan areas.[[4]](#footnote-4)

For people of color, life in rural America is even harder.[[5]](#footnote-5) Racial and ethnic minorities in rural areas are less likely to receive primary care due to the prohibitive cost, and they are more likely than White Americans in rural areas to die from a severe health condition such asdiabetes, high blood pressure, or heart disease.[[6]](#footnote-6) Children in rural America are disproportionately affected too.[[7]](#footnote-7) Empirical evidence shows that rural communities experience higher child and infant mortality rates as compared to urban communities.[[8]](#footnote-8) The same applies for young adults.

Although rural communities experience worse health outcomes than urban communities, hospitals in rural America are closing at a dangerous rate.[[9]](#footnote-9) Recent research studies show that since 2010, 140 rural hospitals shut their doors and 30% of all hospitals in rural America are at immediate risk of closure.[[10]](#footnote-10) As hospital closures in rural America increase, hospital deserts in the nation also increase in size and number. Hospital deserts are areas without access to hospitals and primary care physicians, and every state has at least one such health-desert county.

The following map is illustrative:

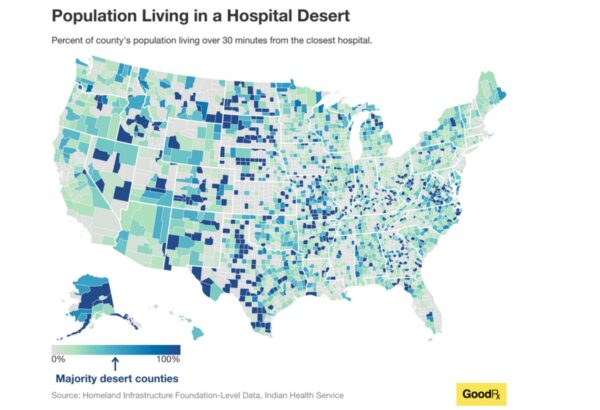


Figure 1: *Healthcare Deserts, County by County*.[[11]](#footnote-11)

The map in Figure 1 illustrates two important things: first, that in more than 20% of American counties, residents live in a hospital desert.[[12]](#footnote-12) Second, that hospital deserts are primarily located in rural America. [[13]](#footnote-13) Indeed, the states with the highest percentages of their respective populations living in hospital deserts include Alabama, Alaska, Vermont, Maine, and Arkansas, where most hospital deserts are concentrated in rural areas.[[14]](#footnote-14)

Research demonstrates that hospital deserts reduce access to care for rural residents and exacerbate the rising health disparities in America. Essentially, this is because when a hospital shuts its doors, rural residents must travel long distances to receive care. Rural populations, however, tend to be vulnerable and some residents may not even have access to a vehicle.[[15]](#footnote-15) For this reason, data show that rural residents often skip doctor appointments, delay necessary care, forego diagnostic testing, or stop adhering to their treatment.[[16]](#footnote-16) A leading study examining the relationship between transportation barriers and health outcomes in rural America is illustrative: after surveying 600 cancer patients in Texas who lacked access to a vehicle, researchers found that 38% of whites, 55% of African Americans, and 60% of Hispanics delayed cancer treatment due to insurmountable transportation barriers.[[17]](#footnote-17) Another leading study points to similar conclusions. It demonstrates that rural children are often deprived of much-needed care because of the high transportation barriers they face.[[18]](#footnote-18)

Moreover, driving great distances to receive time-sensitive care, such as emergency or obstetric care, increases mortality rates for rural Americans. For instance, robust research studies show that between 2011 and 2019, almost 200 rural hospitals stopped providing obstetric services,[[19]](#footnote-19) forcing rural women to travel even 60 miles for care and delivery.[[20]](#footnote-20) Traveling long distances to receive much needed care increases the risk of complications and the stress rural women and their families experience when the time to give birth arrives.[[21]](#footnote-21) Moreover, many obstetric emergencies require medical response within minutes, rather than the hours it may take a rural resident to drive to a hospital.[[22]](#footnote-22) Sadly, physicians warn that, for rural women and women of color, giving birth to a child is now [more dangerous](https://jamanetwork.com/journals/jama/article-abstract/2702413) than it was 20 years ago.[[23]](#footnote-23)

But hospital closures affect not only health but also the economy of rural America. Rural hospitals are often the largest employers in their communities.[[24]](#footnote-24) Hence, they are economic anchors in rural areas.[[25]](#footnote-25) A 2017 report published by the American Hospital Association (AHA) shows that hospitals create more than 16 million jobs in the nation.[[26]](#footnote-26) These include jobs both in the healthcare sector and jobs in other industries, such as the construction industry.[[27]](#footnote-27) Besides providing jobs, rural hospitals also support their local businesses by purchasing their products and services.[[28]](#footnote-28) By doing so, they contribute to local tax revenues which, in turn, increase the funding available for infrastructure and public services, including road maintenance and education.[[29]](#footnote-29) The presence of higher quality infrastructure in rural neighborhoods attracts new residents, which ultimately leads to further growth.[[30]](#footnote-30)

Because hospitals are engines for growth and opportunity in rural communities, the price Americans pay each time a hospital closes is very high.[[31]](#footnote-31) For instance, when a hospital shuts its doors, several community members employed by the hospital may move to urban areas to pursue alternative employment. This, in turn, may reduce local revenues and inhibit a rural community’s growth. In addition, community members who lose their jobs have less disposable income to spend, which ultimately threatens the jobs of those who depend on the expenditures of other local residents.[[32]](#footnote-32) Recent data reveal that when a hospital shuts its doors, employment is reduced by 4.3% per capita, community income declines by 2.7%, and labor force participation decreases by 2.8%.[[33]](#footnote-33)

Should rural communities give up hope? By examining the hospital closure epidemic in rural America, this article demonstrates that the answer to this question should be a strong no. This is because many hospital deserts are the result of several business strategies rural and urban hospitals employ in America. These include unreasonable non-competes which discourage physicians and nurses from offering their services to rural communities already suffering from a shortage of health professionals, and a rash of hospital mergers that have increased consolidation in the hospital industry and have deepened the hospital closure crisis in rural America. By examining these business strategies through the lenses of antitrust, this article demonstrates that the rising hospital epidemic and the resulting hospital closures in rural America are neither natural nor inevitable.

This article proceeds as follows: Part I identifies the roots of the problem, exploring what causes hospital closures in rural America. Such causes include certain sociodemographic characteristics of residents in rural areas, the low volume of patients that rural hospitals treat, and the severe shortage of nurses and physicians rural areas experience. Due to these factors, rural hospitals are more financially vulnerable than their urban counterparts. Part II explores some of the solutions proposed so far, including the increased use of telemedicine in underserved areas, Medicaid expansion, and greater reliance on health promotion programs, to name a few. The relative strengths and weaknesses of these solutions are identified and explained in the context of the broader problem. Part III explores the business strategies American hospitals apply that contribute to the mounting hospital closure crisis, including merging with competitors and imposing non-compete agreements on their physicians, nurses, and clinicians. By doing so, part III demonstrates that the trauma and losses that hospital deserts cause to the most vulnerable rural Americans cannot be cured without the healing power of antitrust law.

Part V identifies three potential ways in which antitrust enforcers and the courts can address the severe harms that hospital deserts cause to rural populations in America. First, the enforcers and the courts should expand their merger analysis by assessing the impact of hospital mergers on labor markets. Second, they should treat all non-compete agreements in the healthcare sector as per se illegal. Third, they should accept mergers in rural areas only under the condition that the merged entity will not shut down facilities or cut essential services in rural areas.

This article is the first to address the need for antitrust enforcers and the courts to confront the harms that hospital deserts pose to millions of Americans. If they fail to do so, they risk contributing to the rising racial and health inequities that undermine the social, moral, and economic fabric of America.

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10. *See* O’Grady et al., *supra* note 4. [↑](#footnote-ref-10)
11. Amanda Nguyen et al., Mapping Healthcare Deserts 6 (2021), https://assets.ctfassets.net/4f3rgqwzdznj/6iU4VnrKD1eIDthc7i1hcl/2d42cfeb3e24e897f281eebfc7708eab/Healthcare\_Deserts\_Sept\_2021.pdf. [↑](#footnote-ref-11)
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13. *See id.* at. [↑](#footnote-ref-13)
14. *See id.* at. [↑](#footnote-ref-14)
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