

# **Legal & Policy Issues Raised by Vanguard's Proposed Purchase of the Detroit Medical Center**

Peter J. Hammer  
Professor of Law  
Wayne State University  
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# Why hold a policy forum?

- Conversion raises important social issues
- Transaction represents substantial change
- Health care is intrinsically complicated
- Important to know what we don't know

# Need open, healthy discussion

- What are the right questions to ask?
- What are necessary sources of expertise?
- Whose voices are not represented?
- What additional information is needed?

# Model: Medical Informed Consent

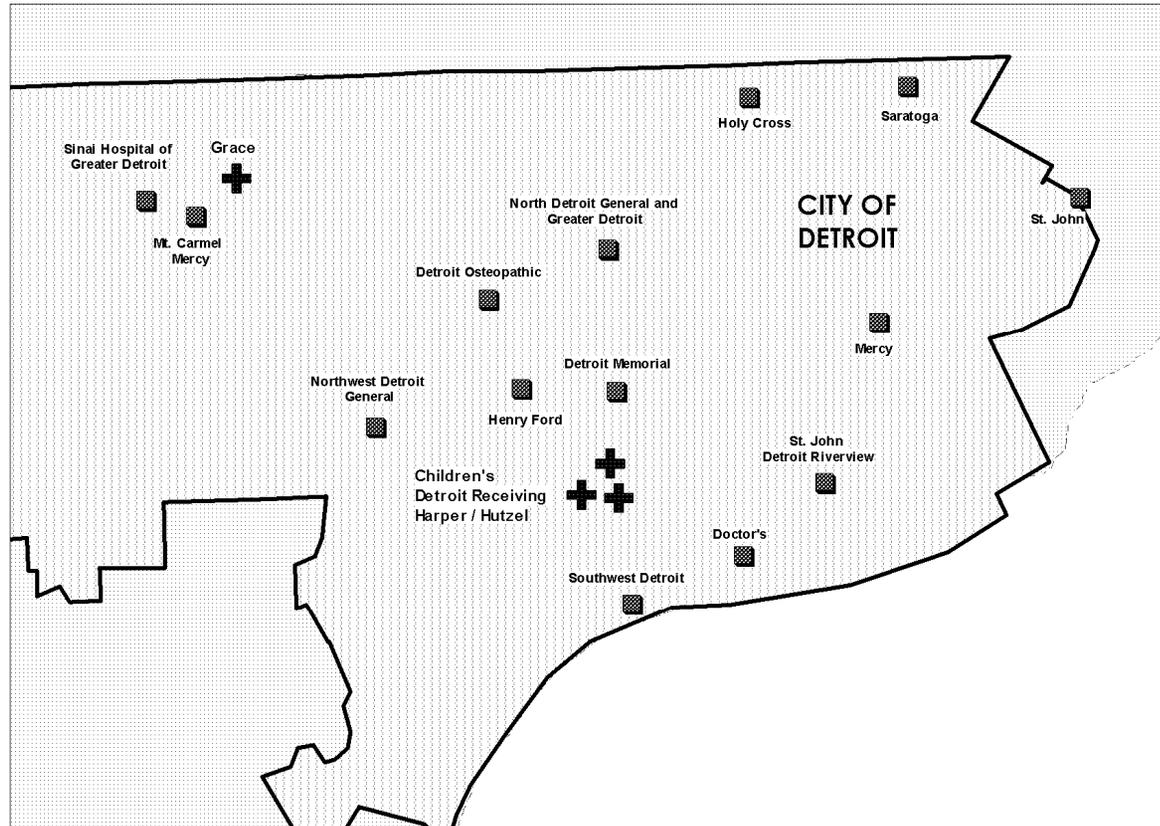
- AMA: Physician must disclose
  - The patient's diagnosis
  - The nature and purpose of the proposed treatment
  - The risks and benefits of the proposed treatment
  - Alternatives (regardless of their cost or the extent to which the treatment options are covered by health insurance)
  - The risks and benefits of the alternative treatment
  - The risks and benefits of not receiving treatment
- Policy Analogue: Comparative Institutional Analysis

# Diagnosing Detroit's Problems – Exodus of Hospitals

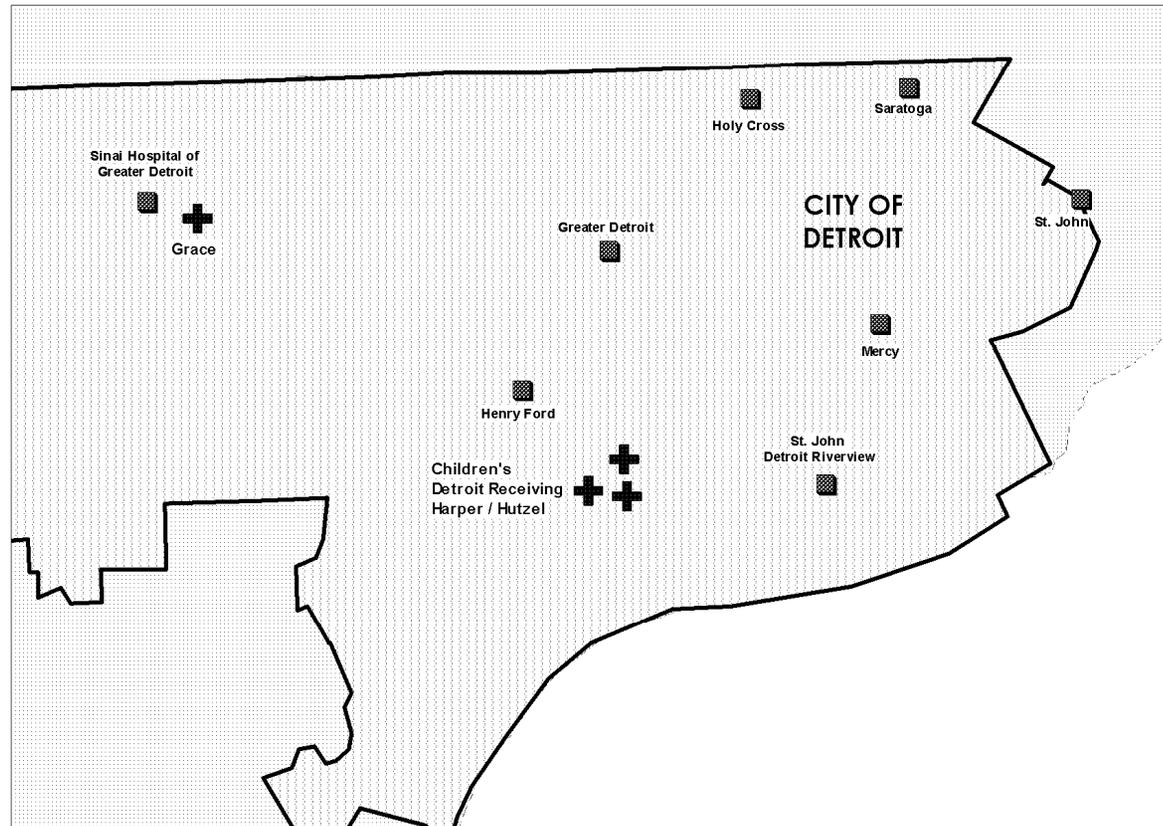
- There has been a serious exodus of hospitals from Detroit in the past 25 years
- Next three slides are taken from DMC-Vanguard PowerPoint presentation to State Attorney General's Office
- “A New Partnership for Detroit”

# How the non-profit hospital model has failed the city of Detroit

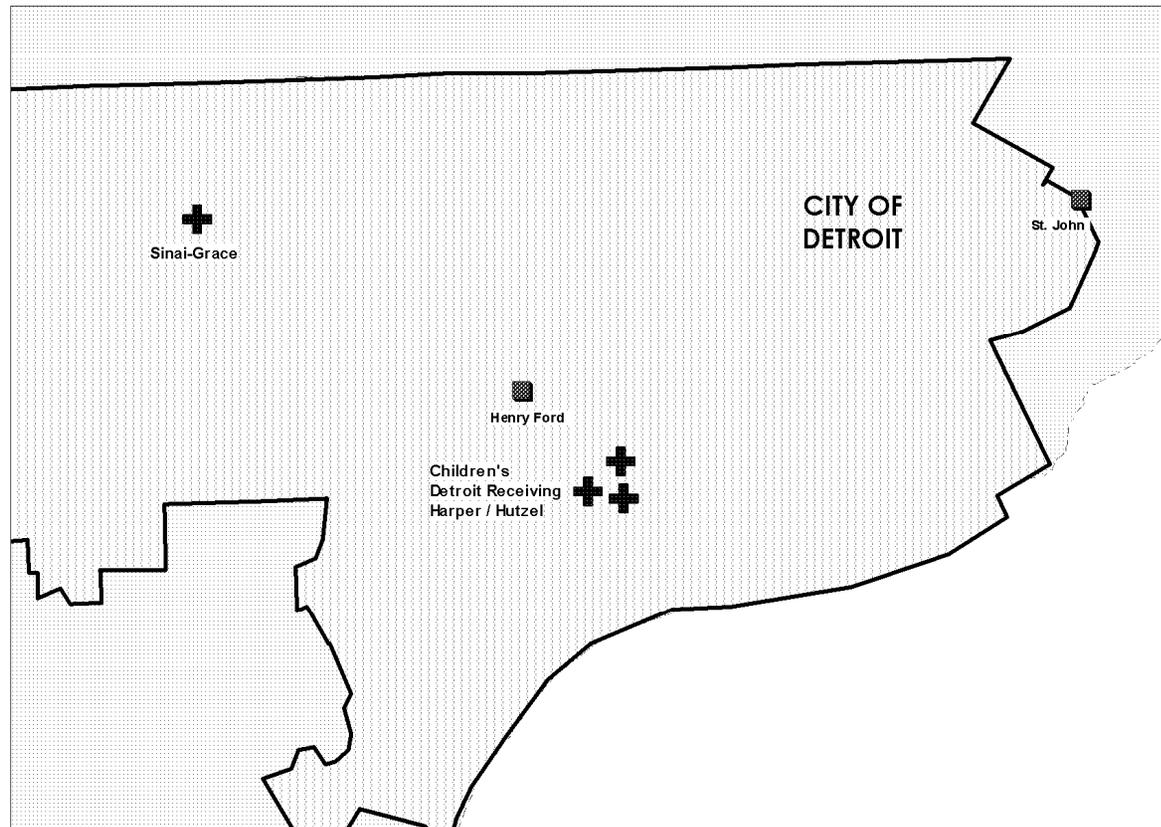
## 1987: 19 Hospitals in City Safety Net

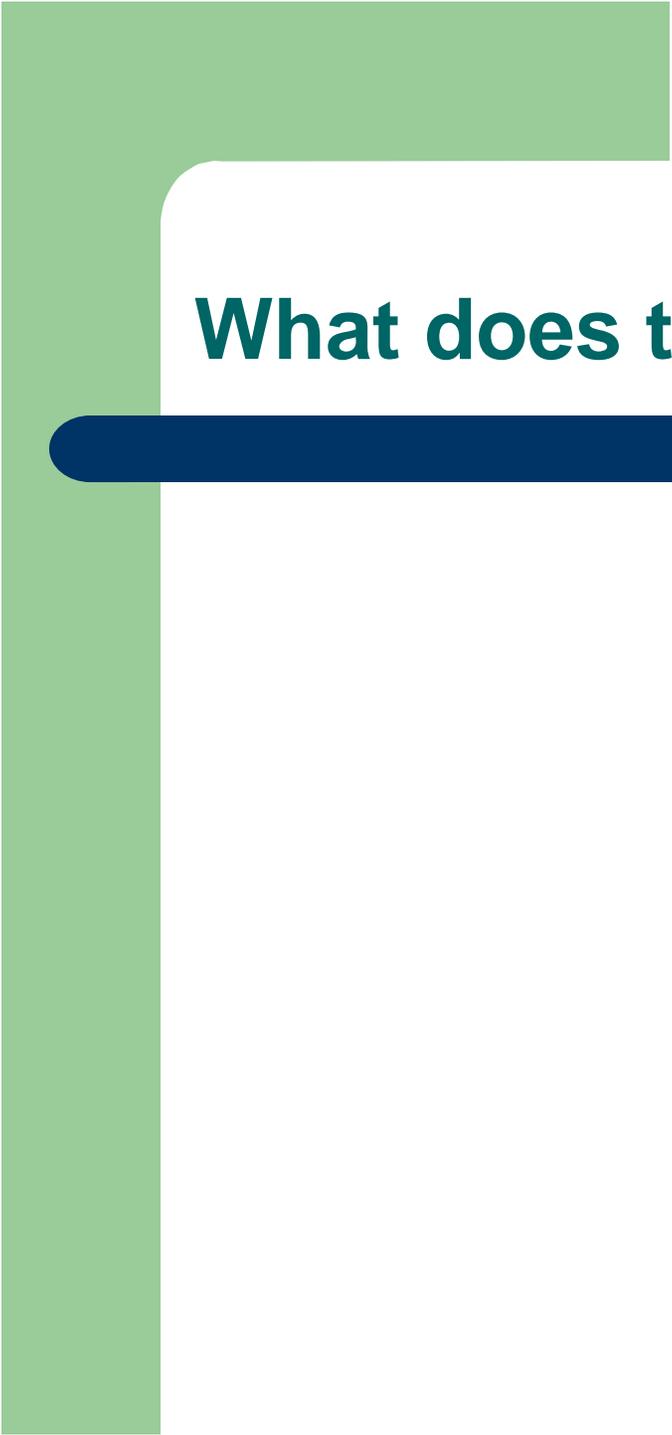


**1995**  
**12 Safety Net Hospitals in Detroit**  
**4 Run by DMC**



2009  
6 Safety Net Hospitals in Detroit  
4 Run by DMC



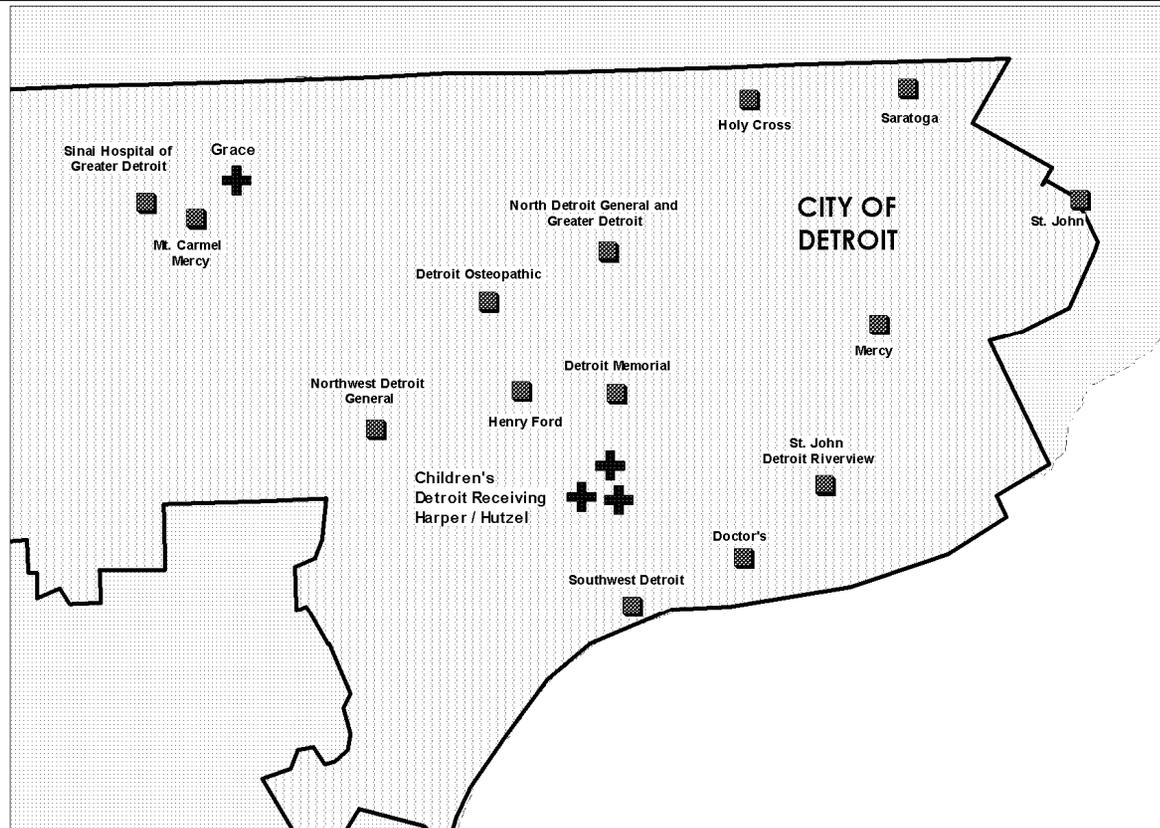


**What does this exodus demonstrate?**



# How the non-profit hospital model has failed the city of Detroit

## 1987: 19 Hospitals in City Safety Net

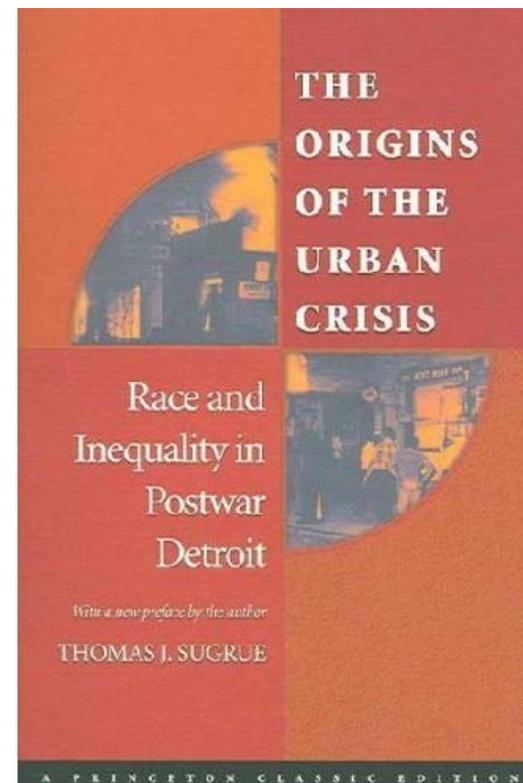


# What does this exodus demonstrate?

- DMC-Vanguard Claim:
  - “How the Non-Profit Hospital Model has Failed the City of Detroit”
- Blaming non-profits is a **false narrative**
- Exodus proves that markets work
  - hospital follow the money \$\$\$\$
  - non-profits mimic for-profits (with a lag)
- Public policy must be guided by true narratives
  - need better understandings of Detroit’s social and economic problems

# Hospital exodus is linked to deeper social and economic forces

- Thomas Sugrue
  - Urban deindustrialization
  - Employment discrimination
  - Housing segregation
- Need to avoid overly simplistic explanations



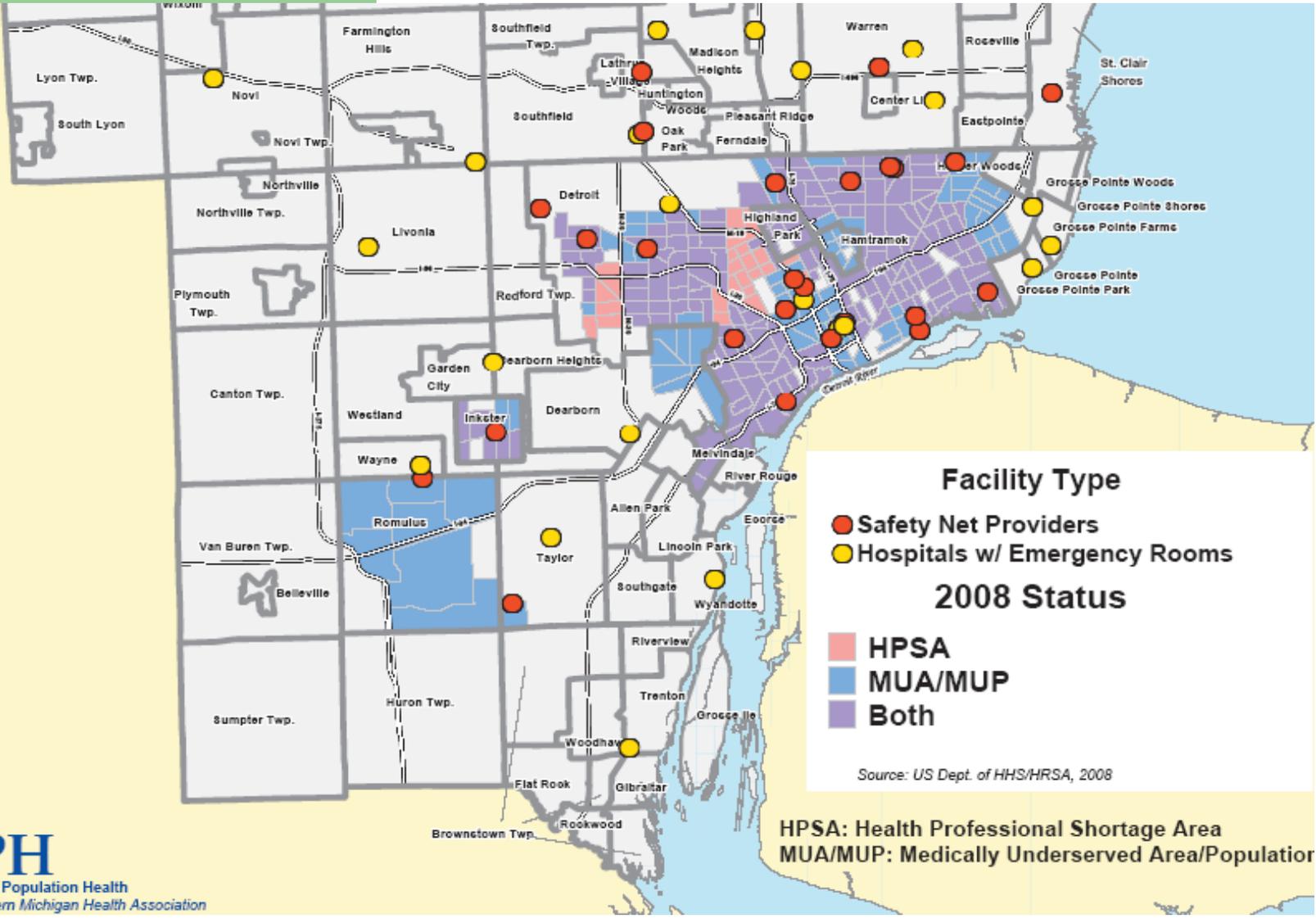
# DMC problems in social context

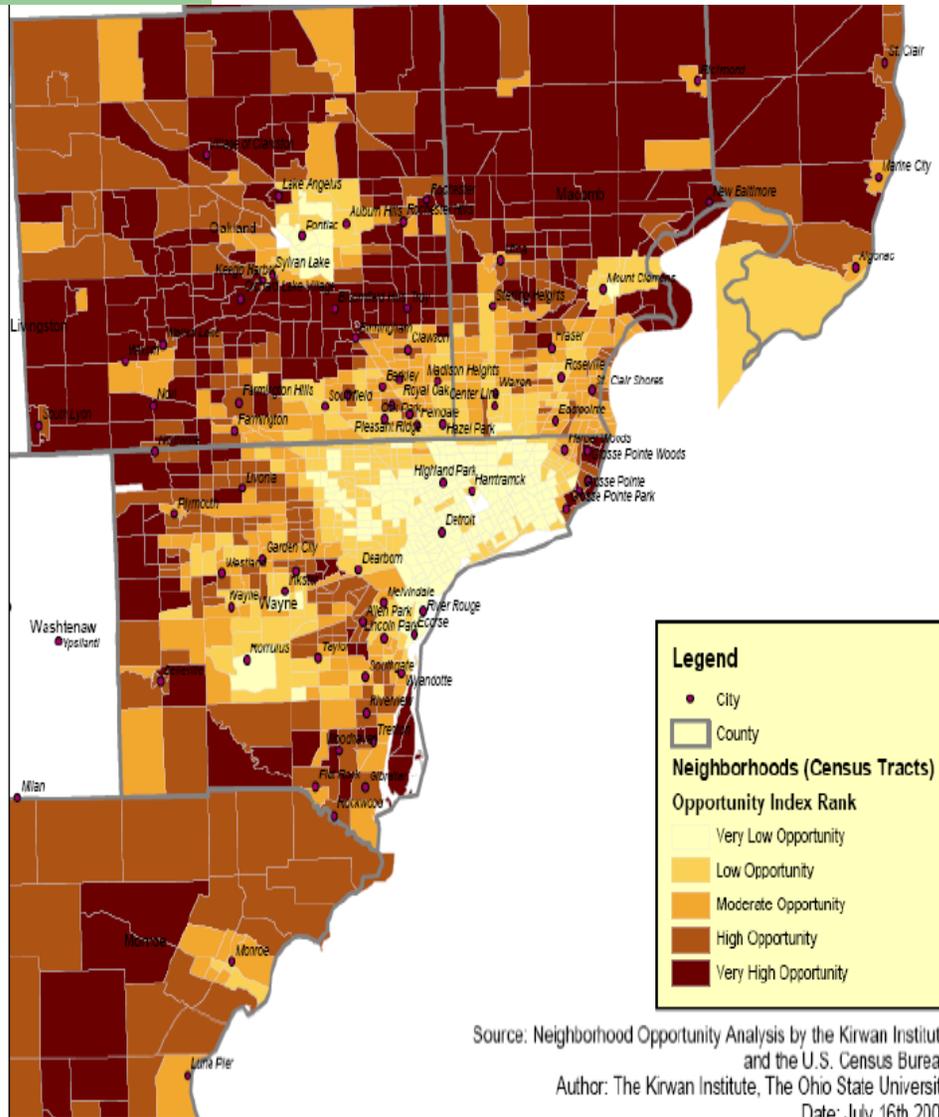
- Problems at DMC

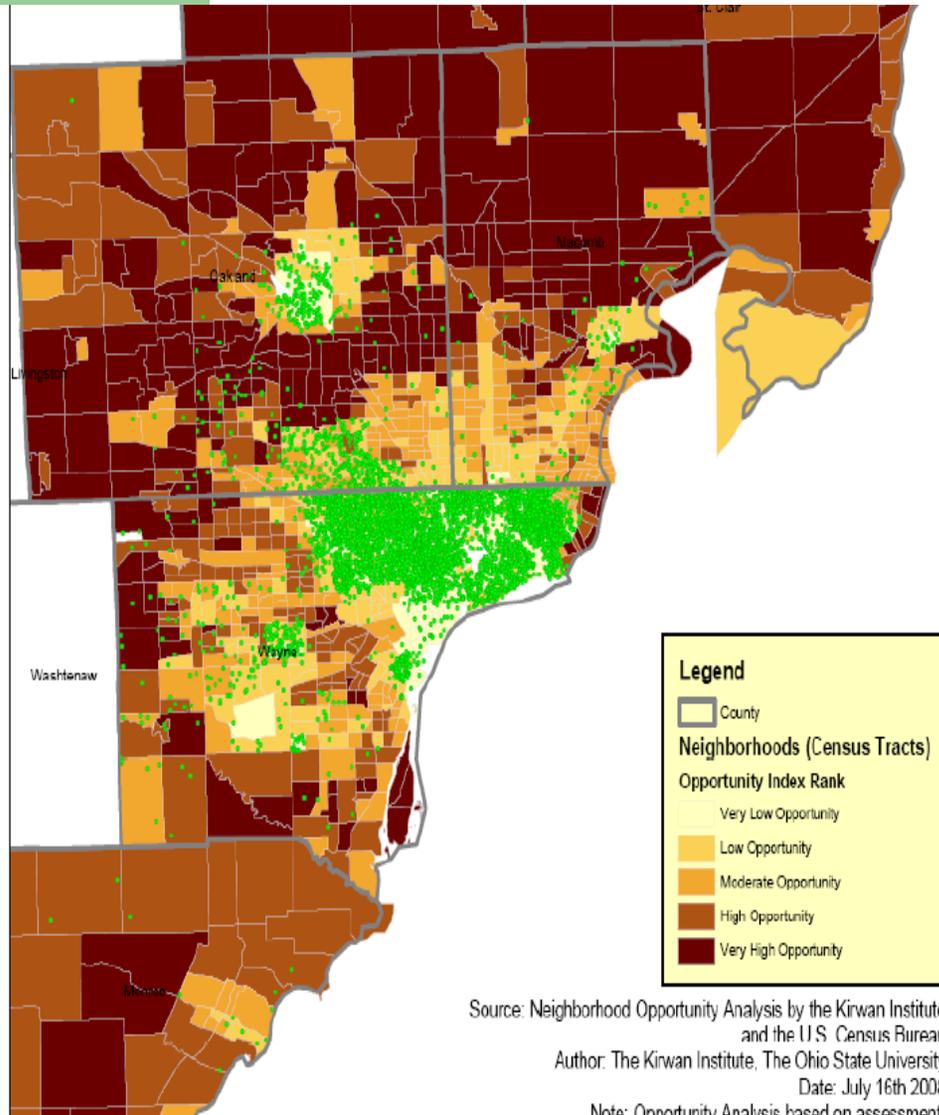
- Exodus of hospitals
- Exodus physicians
- Exodus paying patients
- Large share of uncompensated care
- Small economic margins
- Difficulties accessing credit

- Broader Detroit context

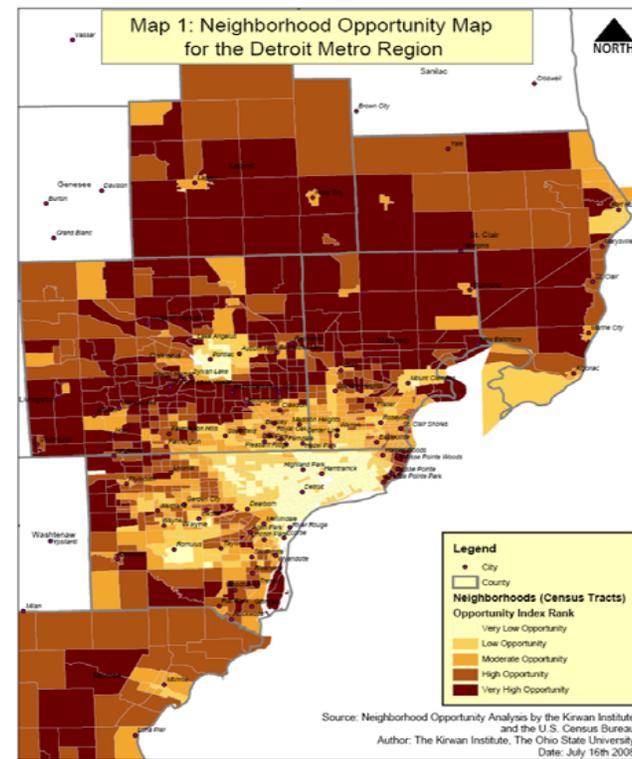
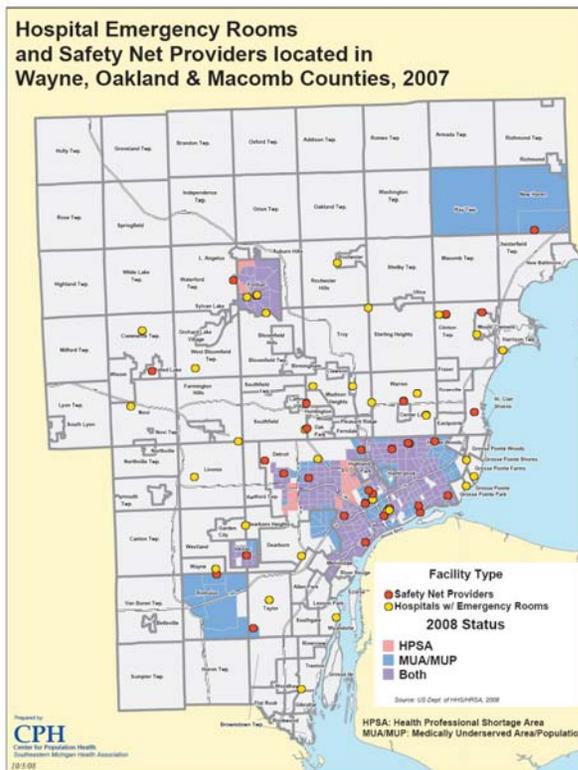
- Poverty
- Limited economic opportunity
- Racial inequality
- Segregation
- Health disparities







# Different problems – same patterns



# Poverty: Michigan v Detroit

Resident income below the poverty level 2007:

Detroit: 33.8%

Whole state: 14.0%

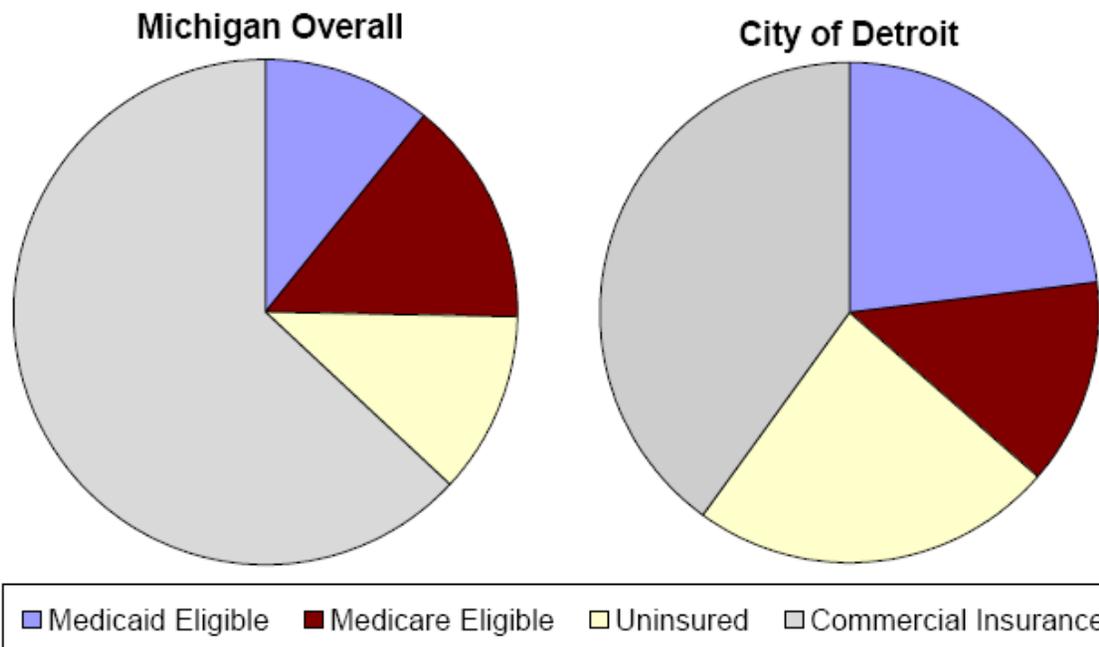
Residents income below 50% poverty level 2007:

Detroit: 18.6%

Whole state: 6.5%

# Payer Mix: Michigan v Detroit

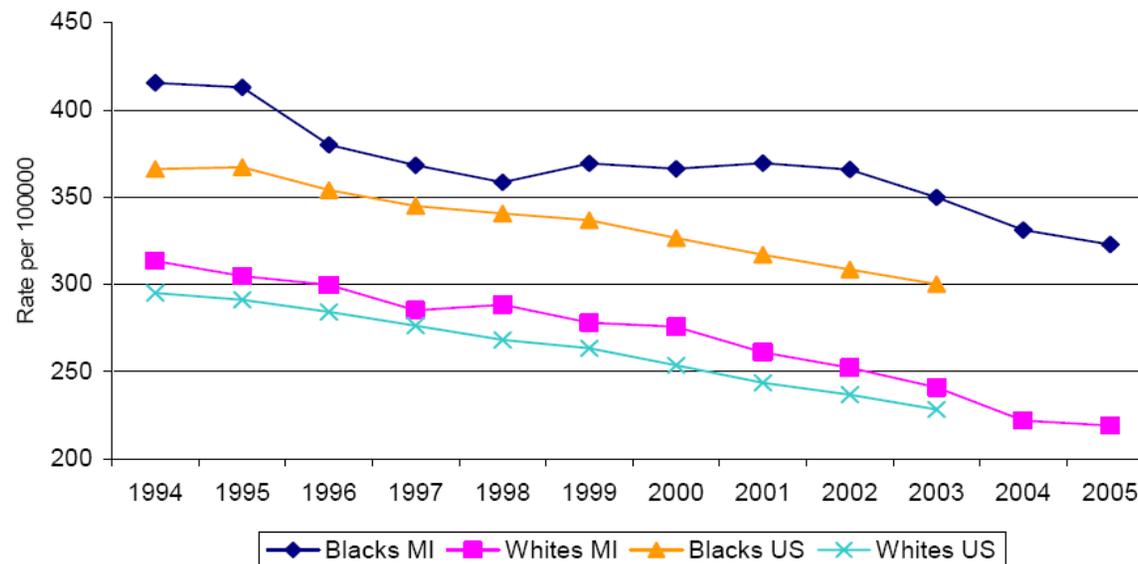
Figure 3. Insurance Coverage Breakdown for Michigan and the City of Detroit.



# Racial Disparities Heart Disease



Heart Disease Death Rates, Blacks and Whites, MI vs U.S. 1994-2005



# Infant Mortality by City in Michigan

Pontiac, Detroit, Saginaw and Flint had the highest rates relative to their counties, while Battle Creek, Wyoming, Ann Arbor and Warren outperformed their counties.

**Infant Mortality Rate**  
1996-2000 and 2000-2004 (Deaths per 1,000 Live Births)

	City 1996-2000	City 2000-2004	Percent Change	County 2000-2004	City vs. County Percent Difference 2000-2004
Ann Arbor	6.5	6.1	-6.2	7.1	-14.1
Battle Creek	6.2	6.0	-3.2	9.6	-37.5
Detroit	15.0	15.4	2.7	10.9	41.3
Flint	15.3	15.0	-2.0	11.7	28.2
Grand Rapids	9.6	10.2	6.3	8.5	20
Kalamazoo	7.9	10.5	32.9	9.2	14.1
Lansing	8.5	7.6	-10.6	7.2	5.6
Muskegon	10.1	10.1	0.0	8.7	16.1
Pontiac	15.2	14.3	-5.9	6.4	123.4
Saginaw	11.7	11.9	1.7	9.1	30.8
Traverse City	6.2	6.1	-1.6	6.2	-1.6
Warren	6.0	5.5	-8.3	5.9	-6.8
Wyoming	6.2	6.2	0.0	8.5	-27.1
Average	12.0	12.1	0.8	8.6	29.0
State	8.1	8.1			

Source: Michigan Department of Community Health

## Difficulties not new at the DMC

- Wayne State Journal of Law in Society 2004 Symposium: Detroit Health Care: Code Blue or New Life?
- Peter J. Hammer, Medical Code Blue or Blue Light Special: Where is the Market for Indigent Care?, 6 J.L. Soc'y 82 (2005)

# DMC 2003 crisis

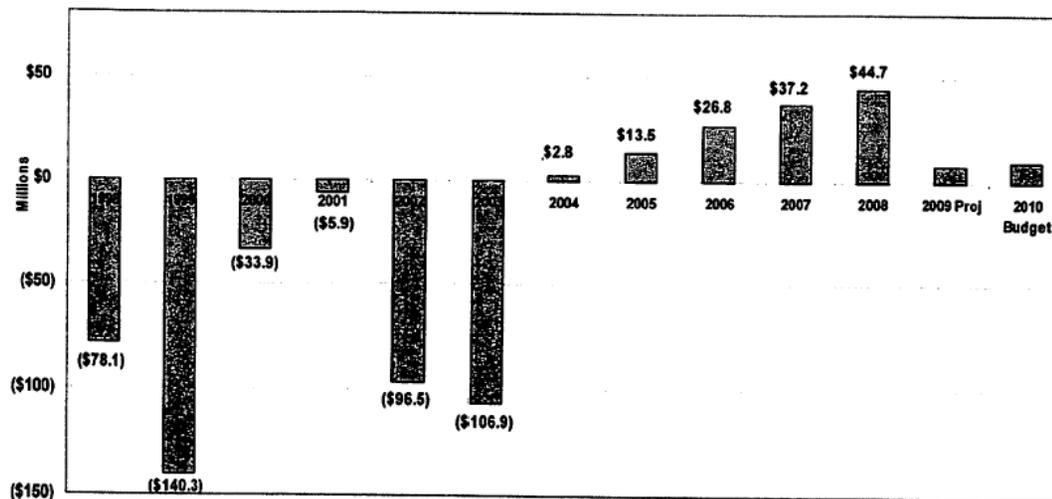
- 2003 Financial Losses - \$113 Million
- 2003 Care for Underserved - \$109 Million
- 2003 Crisis: Closure of Detroit Receiving Hospital & Hutzel Women's Hospital?
- Previous Poor DMC Financial Decisions
  - Information outsourcing to Compuware
  - OmniCare Health Plan (Medicaid Managed Care)

# 2003 Public Rescue of DMC

- \$50 Million Cash Infusion for DMC
  - \$\$\$ from City, County and State
- Detroit Wayne County Health Authority
- New DMC management team

# Relative financial Stability 2004-09

**DMC's Operating Income  
currently running at 0.5% margin**



# Where do we go from here?

## Comparative Institutional Analysis

- Methodology: Side-by-side comparison of the strengths and weaknesses of institutional structures in light of real world imperfections
- Attributes:
  - Empirically not ideologically driven
  - Highlights often sharp policy tradeoffs between competing options
- Compare: Medical informed consent

# Evaluation of non-profits

- Characteristics

- Social (non-market) mission
- Tax exempt
- Bond financing
- Assets tied to mission
- High barriers to exit of assets
- Fiduciary duties, not market discipline
- Cross-subsidies possible

- Strength or Weakness?

- Efficiency?
- Agency failures?
- Access to credit?
- Sustainable?
- Reliability?
- Social needs?

# Evaluation of for-profits

- Characteristics

- Profit driven
- Maximize shareholder value
- Responsive to market changes
- Low barriers to exit of assets
- Capital financing
- Cross-subsidies unlikely

- Strength or Weakness?

- Efficiency?
- Agency failures?
- Access to credit?
- Sustainable?
- Reliability?
- Social needs?

# Important questions to ask

- What is the business case for the transaction?
- Are there alternative sources of financing for non-profits?
- What will be the impact of the transaction on the community?
- How can promises be made binding over time?

## How can promises be made binding over time?

- First Year Contracts: Not all promises are binding
- Even private contracts have limited force: Holmes => only promise to pay damages
- Social contracts politically not legally enforceable (constitutional exception)

## How can promises be made binding over time?

- Social promises intrinsically difficult to enforce in private economic markets
- Non-profit form is, in fact, a mechanism to make binding social promises over time