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Healthcare and Antitrust Alert

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DOJ, FTC, and HHS launch portal to report anticompetitive practices in the healthcare industry

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The new online portal launched by DOJ, FTC, and HHS allows the public to report potentially unfair and anticompetitive practices in the healthcare industry.



What's the impact?

- The portal identifies examples of practices that the agencies consider to be harmful to competition in healthcare.
- The portal reflects the agencies' continuing emphasis on competition in healthcare as a top priority.

Last week, the Department of Justice (DOJ), Federal Trade Commission (FTC), and Department of Health and Human Services (HHS) launched an online portal, HealthyCompetition.gov, for the public to report healthcare practices that may be anticompetitive. Assistant Attorney General Jonathan Kanter of DOJ's Antitrust Division described the portal as "a one-stop shop to report potential violations of our competition laws to the Justice Department and FTC" that "will allow

the agencies to collaborate early and often, helping to promote economic opportunity and fairness for all.”

Agencies have portals to report anticompetitive practices in some other industries as well. The new portal also does not replace or preclude other options that may be more effective to report complaints about anticompetitive practices.

Examples of anticompetitive conduct

The portal identifies seven broad examples of conduct that “[c]an [h]arm [c]ompetition”:

- / Consolidation, joint ventures, and “roll-ups” of healthcare providers or companies;
- / Limiting choice and fair wages for employees;
- / Collusion or price fixing among competitors;
- / Preventing transparency;
- / Healthcare contract language and other practices that restrict competition;
- / Anticompetitive uses of healthcare data; and
- / Unnecessary healthcare provider recertification or accreditation requirements.

Within each of those categories, the portal identifies more specific examples of practices that the agencies consider to be harmful. However, the portal is not intended for “complaints about failure to pay claims or cover healthcare services, increases in individual insurers’ rates, billing disputes, or general unhappiness about the healthcare system.”

What happens after complaints are submitted?

Complaints submitted through the portal will be reviewed first by FTC and DOJ staff. If a complaint “raises sufficient concern under the antitrust laws or is related to HHS authorities, it will be selected for further investigation by the appropriate agency.” Complaints could trigger formal agency investigations.

How can healthcare businesses minimize risk?

The portal reflects the agencies’ continuing prioritization of efforts to “promote competition in health care markets.” In December 2023, the FTC, DOJ, and HHS announced that they were “partnering on new initiatives” and engaging in “data-sharing to the extent possible” to “promote competition to lower health care costs.” Then, in early March 2024, the agencies hosted an online workshop to discuss the role and impact of private equity investment in healthcare markets. They also issued a joint request for information to seek public input on how

healthcare provider transactions, especially those that involve private equity, are impacting the public.

To minimize risks from potential portal complaints, healthcare businesses should take proactive steps to review current practices and continue to implement effective antitrust compliance programs and training. Many states have also recently passed legislation mandating notice and at least for some, consent processes, facilitating state agency review of healthcare transactions for antitrust and other purposes. Healthcare businesses should also be aware of these state law requirements and seek counsel to assist with this evolving area of potential enforcement activity.

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