

Five Healthcare Antitrust Topics to Watch at the Upcoming Health Care Transactions Conference in Nashville

A photograph of a modern building with a curved glass facade, showing multiple floors and windows, set against a light blue sky.

3 MIN READ

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Each May, the American Health Law Association holds its Health Care Transactions Conference in Nashville, Tennessee. In addition to panels covering a wide variety of non-antitrust transactions issues (Stark Law, anyone?), we are looking forward to engaging with regulators and experts on some of these top-of-mind healthcare antitrust topics:

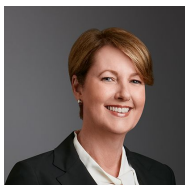
- 1. Antitrust enforcement in healthcare under the Trump Administration.** Although there is new antitrust leadership under the Trump Administration, healthcare remains in the spotlight. President Trump has already issued two Executive Orders on healthcare and pharmaceutical drug pricing, and the Federal Trade Commission (FTC) is continuing with its enforcement agenda in relation to Pharmacy Benefit Managers and insulin pricing. In the FTC's first merger challenge of the new administration, the agency sued to block the proposed merger between two manufacturers of medical device coatings, "stepping in to protect patients[" For its part, the Department of Justice Antitrust Division is continuing its challenge to UnitedHealth Group's proposed acquisition of home health company Amedisys, initiated under the Biden administration.
- 2. Impact of the 2023 Merger Guidelines on healthcare deals.** Another thing that is not changing under the Trump administration is the application of the Biden-era 2023 Merger Guidelines. The Guidelines lowered thresholds for deeming horizontal transactions presumptively anticompetitive to transactions with a combined market share of only 30%

and a change in concentration of only 100 HHI (Herfindahl-Hirschman Index) points. The Guidelines also set out a wide range of other theories, such as potential competition, non-horizontal deals and potential labor-market impacts. Earlier this year, the new Chair of the FTC, Andrew Ferguson, announced his intention to keep in effect the new Merger Guidelines, but it remains to be seen how the new administration will approach enforcement based on some of the less traditional theories.

3. **New HSR and state transaction notification rules.** New HSR rules took effect in February of this year, requiring substantially more information from filing parties up front. Such information includes narrative descriptions of any overlaps or vertical relationships, as well as regularly prepared ordinary course documents. And in addition to new laws in some states requiring submission of copies of HSR filings, several states have passed laws requiring “baby HSR” filings for select healthcare transactions. These rules could have significant influence on the complexity of agency review and deal timing in the healthcare industry.
4. **Antitrust implications of Private Equity investment in the healthcare sector.** Private Equity (PE) investment came under close antitrust scrutiny under the Biden Administration, which took enforcement actions and opened several investigations into PE transactions. Key issues identified in the 2023 Merger Guidelines also include serial acquisitions and minority investments, which are common among PE buyers. But the new Trump administration has been less quick to condemn PE investment. Several programs at this year’s conference will address PE’s challenges from both antitrust and commercial perspectives.
5. **Antitrust review of hospital joint ventures.** Joint ventures (JV) are becoming an attractive vehicle for healthcare dealmaking, based in part on increased government scrutiny in the sector. Popular models include clinical co-management arrangements, JV management of hospital outpatient departments, and ambulatory surgical centers. These structures raise interesting antitrust implications, particularly since the federal antitrust agencies withdrew the Competitor Collaboration Guidelines, which established a framework for assessing the procompetitive and anticompetitive effects of a JV.



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