

# Shifting Trends in Healthcare Antitrust Enforcement: Navigating the Evolving Landscape

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

8 MIN READ

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By: Richard B. Dagen, Tejaswini Gupta

The healthcare industry has long been under the microscope of antitrust regulators, with a focus on preserving cost-effectiveness, improving access, and ensuring high-quality care. The Trump administration is putting on its own stamp, marked by significant policy changes and notable cases. These developments signal a shift in how the government views mergers, acquisitions, and market behaviors within the healthcare sector.

## Revocation of Biden Competition Executive Order Represents a Sea Change

In August 2025,<sup>[1]</sup> the Trump administration revoked Executive Order 14036, Promoting Competition in America, a Biden-era directive that broadly promoted competition across the economy and encouraged aggressive antitrust enforcement. Its revocation marks a symbolic and practical shift away from the prior administration's confrontational posture toward consolidation. Rather than pursuing litigation to block deals outright, the FTC and DOJ under Trump have shown greater openness to resolving mergers through structural remedies, such as divestitures, and conduct-based conditions.

## Enforcement Trends in Healthcare

As the regulatory landscape changes, several key enforcement trends are emerging, with significant implications for the healthcare sector:

## 1. Structural Remedies over Deal Blocking

The Trump administration has modified its approach to merger enforcement in healthcare (as well as in other areas). Under FTC Chair Lina Khan and DOJ Antitrust Chief Jonathan Kanter, the government's preference was to block a proposed deal outright, rather than seek to fix it. Following through on earlier promises,<sup>[2]</sup> the Trump DOJ and FTC are much more willing to entertain structural remedies.

The UnitedHealth/Amedisys merger exemplifies the Trump DOJ's return to the pre-Biden policy of accepting structural remedies in appropriate circumstances. The Complaint challenging the deal was filed in November 2024, under the Biden administration. That Complaint reflects the Biden administration's skepticism toward structural relief:

*Patients and nurses should not bear the risk of harm from the proposed merger. Nor should they have to accept the gamble that an unproven and struggling divestiture partner can replace the competition that the merger would eliminate.*<sup>[3]</sup>

The Trump administration clearly sees the risks/rewards from structural relief differently than under Biden. The transaction was approved August 7, 2025 with significant divestitures of home health care and hospice locations across the country.

## 2. HSR Compliance Continues to Be a Priority

DOJ also obtained a significant (\$1.1 million) fine from Amedisys for a long list of violations of the HSR filing requirements. The Biden-era complaint listed many omitted documents, including “a text message from an Amedisys executive discussing how UnitedHealth is ‘[l]ocking up the home health and hospice market in many locations ....’<sup>[4]</sup> Thus, even while being more favorably inclined toward structural remedies, the Trump DOJ and FTC will continue to enforce procedural rules strictly. This action highlights the critical need for complete document and data productions in order accurately to certify compliance, as well as the increased risk of enforcement action for procedural violations.

## 3. Labor Market Focus

The Trump administration has continued to scrutinize labor markets in healthcare, with some actions continuing Biden-era practices, and some reversing or modifying them.

**Non-Competes.** The Trump administration has ceased defending a broad proposed rule issued in January 2023 by the Biden-era FTC that sought to ban almost all non-compete agreements nationwide.<sup>[5] [6]</sup> The rule would have eliminated most non-competes in the healthcare space. But this decision to abandon the rule does not signal a wholesale retreat. Instead, the Trump FTC activity is largely based on case-by-case enforcement. For example, in the *Gateway Services Inc.* matter, the FTC consent order states that Gateway must immediately stop enforcing all existing non-compete agreements.<sup>[7]</sup> And in the healthcare sector, Chair Ferguson has sent letters to “several large healthcare employers and staffing firms urging them to conduct a comprehensive review of their employment agreements—including any noncompetes or other restrictive agreements—to ensure they are appropriately tailored and comply with the law.”<sup>[8]</sup>

To further support this shift, the FTC issued a public Request for Information (RFI) in September 2025 seeking input on the use of non-compete agreements in specific sectors, reflecting the agency's intent to regulate through targeted enforcement rather than sweeping bans.<sup>[9]</sup>

To guide this more tailored enforcement strategy, FTC Commissioner Meador outlined a proposed framework for evaluating whether a non-compete is legally and competitively acceptable. That framework, which incorporates many traditional factors, includes<sup>[10]</sup>:

- Reasonable Scope and Duration: The clause should be no broader in geographic scope, duration, and field of employment than necessary to protect its legitimate interests.
- Legitimate Business Justification: Restrictions should protect investment in training, confidential information, or proprietary know-how.
- Contextual Factors: Restrictions on low-wage or non-specialized workers are less likely to be justified. In healthcare specifically, the FTC has warned that such clauses may restrict patient access in underserved areas and suppress labor mobility.
- Evidence of Harm: The FTC continues to gather real-world evidence on the economic impact of non-competes, particularly where they limit worker mobility or discourage small business formation.

A recent survey shows that more than half of U.S. healthcare workers are actively seeking new opportunities, highlighting the pressure on an already strained system.<sup>[11]</sup> Without a nationwide non-compete ban, healthcare employers may continue relying on the agreements provided they are not presumptively anticompetitive, adding uncertainty for both providers and workers amid an already volatile labor market.<sup>[12]</sup>

**Healthcare mergers.** In addition to challenging the transaction based on horizontal overlaps, as mentioned above, the DOJ's *UnitedHealthcare/Amedisys* Complaint alleged violations in the market for labor of home health and hospice nurses in hundreds of local markets. As one example of the potential for increased concentration, "in Maryland's Eastern Shore, after the transaction, UnitedHealth would employ more than 70% of both home health RNs and LPN/LVNs."<sup>[13]</sup> The complaint further alleged that "[u]nder any plausible geographic market definition, the presumptively unlawful labor markets would impact at least 8,000 nurses." Upon acceptance of the consent, Trump's Assistant Attorney General Abigail Slater stated, "This settlement protects quality and price competition for hundreds of thousands of vulnerable patients and wage competition for thousands of nurses."<sup>[14]</sup> This continues the Biden administration's focus on labor markets as part of merger review.

More recently, the FTC under the Trump administration issued a Second Request for the proposed merger between travel nurse agencies Aya Healthcare and Cross Country Healthcare, to investigate the impact on the market for travel nurses, clinical services, and nonclinical services (such as schools and homes) as well as the Managed Service Provider (MSP) segment.<sup>[15]</sup>

**4. New Action on Board Interlocks in Healthcare:** The FTC has targeted enforcement on board interlocks. In a September 2025 action, the FTC welcomed the “voluntary” resignation of three directors from Sevita’s board due to interlocking directorates with a competing provider (Beacon). Both these companies “provide services, including residential facilities, to individuals with intellectual and developmental disabilities.”<sup>[16]</sup>

## Key Takeaways for Healthcare Entities

Healthcare antitrust enforcement under the Trump administration reflects a notable shift: regulators are emphasizing structural remedies and procedural compliance over blocking mergers and aggressive rulemaking. Blanket bans have been rolled back, but targeted scrutiny remains, particularly where labor restrictions, board control, or procedural lapses are involved. Healthcare entities should take a proactive, tailored approach to compliance.

- **Deal Structuring:** Identify potential overlaps early — across services, geography, and labor markets. Because divestiture remedies are increasingly expected where concerns arise, be prepared to suggest potential divestitures or behavioral conditions as part of the regulatory review process.
- **Labor - Non-Competes:** With the broad FTC ban abandoned, companies should assess non-compete agreements under the FTC’s proposed framework. Overbroad or routinely imposed non-competes may still attract enforcement, even in the absence of a federal ban. State laws will once again become highly relevant.<sup>[17]</sup>
- **Labor - Mergers/Monopsony:** Carefully review the potential increase in labor market concentration in local markets.
- **HSR Compliance:** Ensure robust compliance with HSR Act requirements to avoid penalties and delays.
- **Board Interlocks:** Ensure corporate governance structures do not create prohibited interlocking directorates, especially where entities compete in overlapping healthcare markets.

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<sup>[1]</sup> *Revocation of Executive Order on Competition*, The White House (Aug. 13, 2025), <https://www.whitehouse.gov/presidential-actions/2025/08/revocation-of-executive-order-on-competition/> (last visited Oct. 8, 2025).

<sup>[2]</sup> Questions for the Record: Ms. Abigail Slater, U.S. Senate Judiciary Committee (Feb. 12, 2025), [https://www.judiciary.senate.gov/imo/media/doc/2025-02-12\\_-\\_qfr\\_responses\\_-\\_slater.pdf](https://www.judiciary.senate.gov/imo/media/doc/2025-02-12_-_qfr_responses_-_slater.pdf) (last visited Oct. 8, 2025) (“I expect this Administration will be more open to settlements in merger cases when effective and robust structural remedies can be implemented without excessively burdening the Antitrust Division’s resources.”);

<sup>[3]</sup> *Complaint*, United States v. UnitedHealth Grp. Inc., No. 1:24-cv-03057 (D.D.C. Nov. 15, 2024) (¶ 17).

[4] *Id.* at ¶ 87.

[5] *FTC Announces Rule Banning Noncompetes* (Apr. 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes>

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[6] James W. Attridge & Daniel K. Oakes, *FTC Drops Its Non-Compete Ban, but Vows Continued Enforcement*, Axinn, Veltrop & Harkrider (Sept. 8, 2025), <https://www.axinn.com/en/insights/axinn-viewpoints/ftc-drops-its-non-compete-ban-but-vows-continued-enforcement?id=102147r>.

[7] *FTC Takes Action to Protect Workers: Noncompete Agreements* (Sept. 4, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/09/ftc-takes-action-protect-workers-noncompete-agreements>.

[8] Dave Muoio, *FTC Warns Healthcare Employers, Staffing Firms to Review Noncompetes*, *FierceHealthcare* (Sept. 10, 2025), <https://www.fiercehealthcare.com/regulatory/ftc-asks-public-weigh-case-case-regulation-employers-noncompetes>

[9] Press Release, Fed. Trade Comm'n, *FTC Issues Request for Information on Employee Noncompete Agreements* (Sept. 4, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/09/federal-trade-commission-issues-request-information-employee-noncompete-agreements>

[10] Mark R. Meador, *Concurring Statement: In the Matter of Non-Compete Clauses* (last visited Oct. 8, 2025).

[11] Over Half of U.S. Healthcare Workers Plan to Switch Jobs by Next Year, Survey Finds, *Apple News* (2025), [https://stocks.apple.com/AuXTNzpxGTK6p\\_UANX8ld6g](https://stocks.apple.com/AuXTNzpxGTK6p_UANX8ld6g) (last visited Oct. 8, 2025).

[12] Muoio, *supra* note 8.

[13] *Complaint*, United States v. UnitedHealth Grp. Inc., No. 1:24-cv-03267 (D. Md. Nov. 12, 2024).

[14] Press Release, U.S. Dep't of Justice, *Justice Department Requires Broad Divestitures to Resolve Challenge to UnitedHealth's Acquisition of Amedisys* (Aug. 7, 2025), <https://www.justice.gov/opa/pr/justice-department-requires-broad-divestitures-resolve-challenge-unitedhealths-acquisition>.

[15] *Why the FTC Issued a Second Request on the Aya–Cross Country Merger*, BlueSky (Sept. 10, 2025), <https://www.whatisbluesky.com/blog/why-the-ftc-issued-a-second-request-on-the-aya-cross-country-merger/> (last visited Oct. 10, 2025).

[16] *Three Directors Resign from Sevita Board of Directors in Response to the FTC's Ongoing Enforcement Efforts Against Interlocking Directorates*, FTC Press Release (Sept. 15,

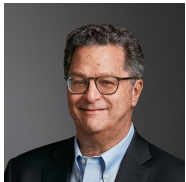
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[17] *Federal Trade Commission Non-Compete Crackdown Shifts to Targeted Enforcement*, GRC Times (Oct. 4, 2025), <https://grctimes.com/federal-trade-commission-non-compete-crackdown-shifts-to-targeted-enforcement/> (last visited Oct. 8, 2025).



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