

What's on Antitrust Enforcers' Minds? Federal and State Enforcer Perspectives on Health Care Transactions

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

4 MIN READ

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On April 13-15, Axinn partners Lisl Dunlop and Leslie Overton and counsel Carol Liu attended the Health Care Transactions Conference hosted by the American Health Law Association (AHLA). In several panels throughout the conference, health care enforcers from the Federal Trade Commission (FTC) and State Attorneys General Offices shared their perspectives on health care antitrust enforcement.

Key Points Discussed

- **Health Care Remains an FTC Enforcement Priority.** Although the current FTC and DOJ have adopted a more “business friendly” approach to merger review, FTC’s Deputy Assistant Director for Mergers IV (the division responsible for reviewing health care provider transactions), Karen Hunt, commented during one panel that “not much has changed” in FTC’s health care enforcement. If anything, Ms. Hunt observed, leadership has “doubled down” on health care enforcement, particularly on issues impacting cost and access to care. According to Ms. Hunt, the lack of enforcement litigation over health care transactions (thus far) under the current Administration does not mean enforcement is lax.
- **State Enforcement “Filling In the Gaps.”** Where federal enforcement nevertheless may be perceived by some as relaxed, state enforcers seem to be intensifying their efforts. To date, 15 states have enacted health care transaction notice requirements. Ms. Hunt also

noted that state enforcers are increasingly reaching out to federal enforcers proactively to collaborate on health care enforcement.

It is important to keep in mind that, even though federal and state enforcers frequently collaborate, enforcement at the federal and state levels may be guided by different political and policy goals. For example, states may be more attuned to the concerns of their local constituents, and be more inclined to pursue behavioral remedies that address real-life implications for local communities, as seen in Connecticut's and New York's pursuit of service line expansion commitments in Nuvance/Northwell, and the commitments to limit reimbursement rate increases and waive certain physician non-competes in Hartford HealthCare/Prospect Medical.

- **Enforcement Based on Entrenchment Theory Expected in the Near Term.** Perhaps one of the most notable changes in the 2023 Merger Guidelines is the inclusion of the “entrenchment theory” – the theory that acquisitions by a dominant firm can harm competition by, as the Guidelines put it, reinforcing its dominant position “through exclusionary conduct, weakening competitive constraints, or otherwise harming the competitive process.” Ms. Hunt commented that the entrenchment theory is “alive and well” in health care, and that we can expect enforcement actions based on this theory in the near term.
- **State Scrutiny of Private Equity Deals Continues.** Private equity (PE) transactions in health care are not subject to special treatment at the federal level, but some state officials continue to view PE transactions skeptically. At the conference, state enforcers from Colorado (Bryn Williams) and Minnesota (Elizabeth Odette) discussed their approach to PE transactions. They explained that, although there is nothing inherently anticompetitive about PE transactions, enforcers reviewing such transactions in their states will examine the rationale for PE-backed deals, including the history of the fund, and whether deals are driven by short-term gain and/or obtaining monopoly profits. Ms. Odette also commented that Minnesota enforcers are on the alert for PE deals in part because of an increased volume of complaints from local constituencies. In addition, we note that some states have also enacted or are considering legislation to increase reporting obligations for PE-backed health care transactions (for example, Massachusetts), or to restrict PE decision-making power or ownership in health care entities (for example, Oregon and Maine).

Indeed, there have been several state-level enforcement actions against PE transactions. In 2024, during FTC's ongoing lawsuit against U.S. Anesthesia Partners (USAP) and Welsh Carson, USAP's PE owner, the Colorado Attorney General reached a settlement with USAP relating to its acquisitions in Colorado, resulting in divestitures, prior notice requirements on future transactions and monetary fines. In March 2026, the Oregon Health Authority investigated the PE fund Aether's proposed acquisition of SuperCare, a medical equipment and pharmacy supplier, leading to commitments by SuperCare to continue its participation in the Oregon Medicaid program and to refrain from closing retail locations.

Practical Tips For Health Care Transactions

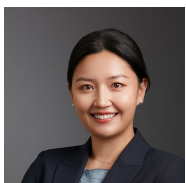
- **Develop and document procompetitive deal rationale.** Health care transactions continue to be under the antitrust microscope. Parties engaging in health care transactions should

take care to elaborate on deal rationales and procompetitive benefits, including on issues impacting health care access and affordability.

- **Consider state filings and timing implications early.** States with transaction notice requirements vary greatly on their mandated processes. The review time frame can vary from 30 days to up to 180 days. In addition, there could be ambiguities regarding the precise filing thresholds. Engage with counsel early to analyze state filing obligations and incorporate state review into deal strategy and timeline.
- **Develop a streamlined deal strategy incorporating federal and state considerations.** In light of the increasing state-level scrutiny on health care transactions, it is important to be cognizant of potential divergent priorities and perspectives at the federal and state levels. Dealmakers in the health care space should develop a coordinated deal clearance strategy that addresses both federal and state level concerns.



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