

# Too Much or Not Enough? Healthcare Organizations Comment on the New HSR Form

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

6 MIN READ

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In February 2025, the FTC and DOJ announced that a new HSR form was in effect, requiring enhanced disclosures that the agencies claimed would allow them to more effectively evaluate reportable transactions. A year later, in February 2026, the new HSR form was struck down by the United States District Court for the Eastern District of Texas, which the FTC immediately appealed to the U.S. Court of Appeals for the Fifth Circuit.

Following the district court's ruling, in March 2026, the agencies requested public comment to better understand the effectiveness of the now-stricken new form, burdens on notifying parties, and potential areas of improvement. The public comment period closed this May. In May 2026, the U.S. Court of Appeals for the Fifth Circuit also granted FTC's motion to hold the appeal in abeyance until December 31, 2026, to allow the FTC and DOJ time to promulgate an updated HSR Form based on the public comment process.

What did commenters say about the benefits and the burdens of the new HSR form in the healthcare industry? Here's what you need to know.

## Diverging Views on the Effect of Healthcare Mergers

Across the board, commenters offered different perspectives on the need for enhanced scrutiny of healthcare transactions to curb the rate of healthcare mergers. Connected Health

Initiative (“CHI”), an advocacy organization for digital health innovation, highlighted the benefits of healthcare mergers, including improved health outcomes and access to healthcare, as well as reduced costs. The American Hospital Association (“AHA”) emphasized that mergers are especially vital to healthcare organizations given current financial pressures such as tariffs, the expiration of enhanced premium tax credits, and the reduction of federal spending on Medicaid and Medicare. It expressed concerns that increased HSR reporting requirements might have a chilling effect on procompetitive transactions that would mitigate financial pressures on healthcare organizations. The AHA also emphasized its view that the HSR form “worked perfectly well in the hospital context” and urged the agencies to “exclude hospital mergers from any revisions to the HSR form.”

Conversely, Blood Cancer United (“BCU”), a patient advocacy organization, and the American Medical Association (“AMA”) shared concerns about the potential harm of healthcare consolidation, including higher prices, lower quality of care, closures of physician practices, and greater leverage by payors.

### **Healthcare Labor Market Effects Continue to Be Under the Spotlight**

The debate around disclosure regarding labor market effects continues. The FTC had initially proposed additional labor-related reporting obligations, but they were not included in the 2025 HSR form. In the public comments, proponents of heightened disclosure requirements, such as BCU and AMA, argued that consolidation has been associated with reduced clinical autonomy, decreased professional mobility, accelerated burnout, and lower wages for healthcare workers. These organizations therefore favored requiring more labor-related data and information in HSR filings.

On the other hand, opponents such as CHI explained that healthcare mergers improve competition in labor markets, suggesting that additional information on labor market effects has limited probative value at the HSR stage. Similarly, AHA re-submitted its September 2023 comment on a previous set of proposed changes to the HSR form. This comment noted that the agencies’ prior merger challenge in LifeSpan/CNE shows that regulators had no trouble identifying merger-related labor concerns under the existing HSR notification regime. AHA also suggested that any labor competition issues in the healthcare industry would reflect in downstream anticompetitive effects, so the labor market need not be singled out for increased attention in the HSR form.

### **Enhanced State Review and Call for Greater Coordination with Federal Enforcers**

Attorneys General (“AGs”) representing four states — California, Connecticut, Rhode Island, and Washington — and the District of Columbia submitted a joint comment that supported the new HSR form’s increased reporting requirements and also called for narrower exemptions from HSR reporting requirements more generally. The AGs highlighted concerns that parties can evade antitrust review by engaging in so-called “serial” acquisitions and “acquihires” in the healthcare space, which they stated would lead to diminished healthcare access, increased prices, and worsened quality of care. We note, however, that proposals to change the scope of reportability of transactions may go beyond the changes to the HSR form and may require amendment of the Hart-Scott-Rodino Act itself.

The AMA and BCU, for their part, commented that federal agencies should share HSR filing information with state AGs to improve coordination in antitrust enforcement between federal and state enforcers. We note that over the last year several states have enacted a uniform law requiring provision of HSR filings to the state, and more may do so in the future.

## **Debate Over Prior Acquisition Disclosure Requirements**

Many commenters discussed whether new reporting requirements should include disclosures of information related to prior acquisitions. BCU and AMA wrote in favor of these requirements, citing such acquisitions by private equity firms, large health systems, and integrated conglomerates, and arguing that the disclosures would better enable agencies to identify anticompetitive transactions. They noted that serial transactions within one medical specialty could lead to “roll-ups” and market concentration. These commenters viewed the collection of serial acquisition information during premerger reporting as a preventative measure.

Other commenters suggested that increased reporting related to prior acquisitions is unnecessarily burdensome. In its re-submitted 2023 comment, AHA explained that such requirements would impose burdensome engagement with company personnel and garner excessive information, such as irrelevant past acquisitions of healthcare providers in other geographic markets. CHI advocated more limited requirements based on a materiality threshold in the same or directly adjacent markets.

## **Greater Reporting of “Non-Traditional” Deals or No?**

In their comment, the State AGs argued that some anticompetitive transactions in the healthcare industry have evaded pre-merger notification through “non-traditional” deals such as “acquihires.” The State AGs therefore recommended that federal agencies use broad disclosure requirements of prior acquisitions to better identify firms with a past history of systematic evasion. Additionally, they urged the federal agencies to clarify the “solely-for-the-purpose-of-investment” exemption to identify transactions that may seem passive but actually result in *de facto* control. They explained that, without increased reporting requirements, state enforcers must undergo a burdensome process to identify any problematic transactions involving minority investors or REITs in healthcare.

On the other hand, some healthcare organizations asserted that there is no basis for additional scrutiny of traditionally nonreportable deals, especially when they boost innovation in healthcare. For example, CHI stated that the “solely-for-the-purpose-of-investment” exemption protects the routine participation of minority investors in early-stage digital healthcare businesses. CHI argued that, if the agencies insist on further scrutinizing traditionally nonreportable deals, the HSR form should include a safe harbor for certain, likely procompetitive combinations such as interoperability integrations in digital healthcare.

## **How Much Narrative Description and Documentation is Needed?**

Not much, according to comments from AHA, CHI, and the Partnership for the U.S. Life Science Ecosystem (“PULSE”), an advocacy organization for life sciences innovation. They argued that enhanced disclosures related to horizontal overlaps and supply relationships significantly increase compliance costs without rendering additional probative value due to the vast catalog

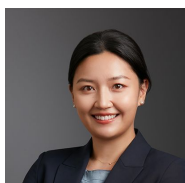
of products and services that healthcare organizations offer. Further, because the new HSR form required disclosure of not only existing horizontal overlaps but also horizontal overlaps that could arise in the future, AHA contended that such disclosures would muddy the premerger notification process with parties' subjective predictions. PULSE warned that such predictions would be unhelpfully speculative in the life sciences industry, where the identification of future horizontal overlaps can be challenging given the highly dynamic nature of the drug research and development process. In response, CHI advocated for a materiality threshold for disclosures and document production, as well as a reduced-information track for transactions below certain values or where the horizontal overlaps are between products or services that are pre-market and have zero revenues.

Other healthcare organizations favored the new HSR form's increased collection of narrative descriptions and documents related to horizontal overlaps and supply relationships. Specifically, AMA maintained that these enhanced disclosures are essential for capturing anticompetitive vertical mergers, a recent focus of the agencies' litigation efforts.



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