

Takeaways from the Consero Healthcare General Counsel Forum

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

5 MIN READ

October 16, 2026, 12:10 PM

By: Lisl J. Dunlop, Jeny M. Maier, Leslie C. Overton

Axinn attorneys [Lisl Dunlop](#), [Jeny Maier](#) and [Leslie Overton](#) attended the Consero Healthcare General Counsel Forum, held October 11-13 in San Antonio. The invitation-only forum brings together general counsel and senior legal leaders from hospitals and health systems across the country for candid discussion of the issues they face. Three themes came up repeatedly in the Forum panels and in our conversations with participants: the financial and legal stakes of the 340B drug discount/rebate program; the changing rules on physician non-competes and recruitment; and the expanding reach of state healthcare transaction review laws. A common thread ran through all three: antitrust and competition issues are no longer confined to merger review, and they increasingly shape how health systems manage their finances, compete for talent and plan for growth. We summarize the key takeaways below.

340B Changes

- **340B's financial stakes are front and center.** Nonprofit health system GCs are focused on the federal government's revised 340B rebate program, which would replace upfront discounts with after-the-fact rebates for certain drugs, subject to claims validation. Its potential effects on cash flow, administrative costs and resources available for patient care make implementation a significant concern for participating health systems.

- **The fight over 340B is far from over.** Just before the conference, the American Hospital Association (AHA), the Maine Hospital Association and four safety-net hospitals sued in federal court in Maine to block the rebate program, arguing that it could impose more than \$1 billion a year in administrative costs on participating hospitals. The suit builds on the AHA's ongoing advocacy. With the program set to take effect January 1, 2027, health systems should closely monitor the litigation and lobbying battles, which could materially affect their finances and operations.
- **340B is increasingly an antitrust issue, too.** Providers are bringing antitrust claims over 340B, with mixed results. In *Mosaic Health v. Sanofi-Aventis*, the Second Circuit revived claims by two health centers that four diabetes drug manufacturers conspired to restrict 340B discounts through contract pharmacies. The court held that the manufacturers' policies did not need to be identical to count as parallel conduct. The case is moving forward while the manufacturers seek Supreme Court review. By contrast, in *Brandywine Hospital v. CVS Health*, a federal court dismissed claims that CVS illegally tied access to its retail pharmacy network to its own 340B third-party administrator (TPA) service, Wellpartner, rejecting the plaintiff hospitals' antitrust allegations that a single brand's network (CVS pharmacies) could constitute a distinct, legally valid product market. These cases show that antitrust law is becoming a significant part of the debate over the program's future.

Physician Recruitment and Non-Competes

GCs repeatedly raised the tension between physician mobility and protecting their investment in recruiting physicians and building their practices.

- **Physician non-competes are now a state-by-state patchwork.** State legislatures are rapidly limiting restrictive covenants in physician contracts. Eighteen states now generally ban or void physician non-competes, and ten states plus D.C. allow them only with significant restrictions. At least six states, including Virginia, Tennessee, Utah and Maine, enacted new restrictions or bans in 2026. For multistate systems, this complicates contract templates and requires a rethink of how to protect recruitment investments, with greater emphasis on retention incentives, repayment provisions and other tools.
- **The FTC has dropped its non-compete rule, but not its focus on health care.** The FTC abandoned its nationwide non-compete ban, but in September 2025 it sent warning letters to several large health care employers and staffing firms urging them to make sure their non-competes are reasonably tailored. The agency is now pursuing case-by-case enforcement and may also scrutinize non-disclosure and non-solicitation clauses that function as non-competes. Health systems should audit their physician employment agreements, even in states that still permit non-competes.
- **How hospitals compete for physicians is under scrutiny, too.** Agreements between competing hospitals not to recruit each other's clinicians carry real exposure. Last year, Geisinger and Evangelical Community Hospital agreed to pay a combined \$28.5 million to settle claims by about 12,000 health care workers that the two Pennsylvania hospitals had agreed not to poach each other's doctors and nurses. The DOJ has also brought criminal wage-fixing and no-poach cases in health care. In 2025 it won its first jury conviction in such a case, against a home health staffing executive who conspired to fix nurses' wages.

State Transaction Review Laws

- **State transaction reviews are reshaping deal timelines.** GCs are tracking the spread of state “mini-HSR” and health care-specific transaction review laws, which impose their own notice periods and review processes, often on top of federal antitrust review. These laws can add closing conditions and extend deal timelines. For example, California requires parties to notify the Office of Health Care Affordability at least 90 days before closing a material change transaction, and as of January 2026 the requirement extends to upstream owners and entities that own management services organizations. And timelines can be extended if it takes time for the authorities to accept a filing as fully compliant.
- **Reviews look beyond competition.** State regimes increasingly focus on cost of care, access to care, and consolidation, not just traditional antitrust market analysis. Oregon, for example, assesses each transaction’s likely effect on healthcare cost, access, and quality, as well as health equity. It often approves deals with conditions and conducts follow-up reviews after closing. Connecticut, Minnesota and Pennsylvania have also recently approved transactions with conditions. As a result, even a deal with little antitrust risk can face extended review, conditions on approval, and years of post-closing reporting.
- **Getting a deal done requires a multidisciplinary team.** Federal antitrust review, state notice and review laws, certificate-of-need requirements, attorney general oversight of nonprofit conversions and public comment periods often run at the same time, so no single function can manage the process alone. GCs are assembling teams early that include antitrust and regulatory counsel, economists, finance and strategy leaders, clinical and operations leaders, and communications and government relations staff. The goal is to present a consistent account of the deal’s benefits for patients and communities, anticipate regulators’ questions, and build realistic regulatory timelines and conditions into the transaction from the start.



Related People

Lisl J. Dunlop
Jeny M. Maier
Leslie C. Overton

Related Services

Antitrust

To subscribe to our publications, [click here](#).

News & Insights

- Concurrences New Frontiers of Antitrust Conference 2026
SPONSORSHIP ANTITRUST
- Stakeholders 26th Annual CYOC Conference
EVENT ANTITRUST
- ALFDP 20th Anniversary Annual Conference
EVENT ANTITRUST
- GCR Live: Women in Antitrust 2026
SPONSORSHIP ANTITRUST
- GICLI Annual Meeting 2026
SPONSORSHIP ANTITRUST
- Informa CompLaw Advanced EU Conference 2026
SPONSORSHIP ANTITRUST
- Wild Tomorrow 2026 Annual Gala
SPONSORSHIP ANTITRUST

- NAPABA Annual Convention 2026
SPONSORSHIP ANTITRUST
- Law.com General Counsel Conference East 2026
SPONSORSHIP ANTITRUST
- Economist Enterprise's 1st Annual Antitrust Summit US
SPONSORSHIP ANTITRUST

© 2026 Axinn LLP. All Rights Reserved