

HealthyCompetition.gov Portal Seeks Public Input on Healthcare Industry Practices

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

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Expanding the range of ways they can identify and investigate potential competition concerns in healthcare, DOJ, FTC, and HHS recently announced the introduction of [HealthyCompetition.gov](https://www.healthycompetition.gov), a new portal through which the public can submit complaints.

The collaboration among HHS, the DOJ, and FTC builds on the Biden administration's "whole of government" approach to antitrust enforcement and the December 2023 White House announcement of government investigations into "corporate greed in healthcare." The initiative invites public complaints about a wide range of potentially anticompetitive practices. These include not only traditional concerns about consolidation or collusive conduct, but also other concepts that have become a focus of antitrust enforcement in healthcare: actions impacting healthcare worker wages, provisions in payor/provider contracts, price transparency concerns, potentially anticompetitive uses of data, and burdens on healthcare providers such as recertification or accreditation requirements.

Many of the practices identified in the portal have been the subject of enforcement actions or state and federal legislation and regulation. Of particular note:

- In addition to conduct that has been a recent focus of agency enforcement actions such as no-poach and wage-fixing agreements, the list of practices relating to employees includes non-competes affecting all types of healthcare employees. This is a hot-button issue given

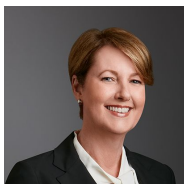
the FTC’s recent non-compete rulemaking and its statements about its potential application to nonprofit organizations, a category into which many healthcare organizations fall.

- Various contract terms that could potentially be anticompetitive - agreements on the tier in which a provider will appear in a particular health plan, exclusives for certain services, parity provisions - have been subject of settlements with DOJ (Atrium) and the California Attorney General (Sutter). The blanket descriptions do not address the nuances of payor contracting and when negotiations over discounts and plan design can benefit consumers.
- Information sharing has been a focus of the federal antitrust agencies, exemplified by their recent repeal of the safe harbors in the 1996 Health Care Statements. In the healthcare context, however, concerns about the sharing of reimbursement rates in the contract terms section seem at odds with price transparency laws and the portal’s invitation to complain about conduct that limits price transparency. If the public gets the information, then surely competitors will also.

The FTC’s experience with public comment on its proposals over the last few years suggests that the portal will be deluged with a wide range of complaints from consumers and healthcare industry participants. HHS, DOJ, and FTC will have a very full agenda for investigation and potential enforcement going forward.



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