

DOJ's Health Care Task Force Brings Holistic Approach to Policy and Enforcement

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The Antitrust Division of the U.S. Department of Justice ("DOJ") last week announced the formation of a new task force to guide its enforcement strategy and policy approach to health care, with an apparent focus on industry consolidation and collusive behavior.

According to the DOJ announcement released on May 9, 2024, the Task Force on Health Care Monopolies and Collusion ("HCMC") will consider "widespread competition concerns shared by patients, health care professionals, businesses and entrepreneurs." Issues to be addressed include payer-provider consolidation, serial acquisitions, labor and quality of care, medical billing, health care information technology services, and access to and use of health care data. The task force will include both civil and criminal enforcement attorneys, as well as economists, industry experts, technologists, data scientists, investigators, and policy advisors from across the Antitrust Division's sections and offices.

The announcement of the HCMC is unsurprising in many respects. The health care industry has long been a major target of antitrust enforcement, and the Biden DOJ has previously signaled its continued focus on health care competition. In December 2022, the Antitrust Division entered into a formal collaboration with the Office of the Inspector General of the Department of Health and Human Services aimed at preventing collusion and promoting competition in health care markets. And just last month, the Antitrust Division launched an online portal for the public to report potentially anticompetitive health care practices.

Moreover, there is precedent for efforts to consolidate antitrust enforcement expertise in complex industries. Last week's announcement is reminiscent of the Federal Trade Commission's 2019 formation of a task force focused on competition in technology markets. Notably, like that task force, the HCMC appears to be drawing on the agency's current resources rather than hiring additional staff, suggesting that the Antitrust Division's focus is on more efficient, and not necessarily broader, enforcement.

In a *National Law Journal* article about the HCMC, Melissa H. Maxman, Washington DC Office Managing Partner, was quoted as noting that there are smaller health care companies that will be relieved to be examined under an enforcement approach that is targeted at their specific factual situations. "Task forces sometimes can be inefficient," she added, "[b]ut if ever there were a need for one, it would be in health care competition." While the impact of the HCMC remains to be seen, the Antitrust Division's approach has the potential to facilitate a better informed and more comprehensive analysis of a market that poses unique regulatory and enforcement challenges.

The Cohen & Gresser antitrust team has extensive experience representing businesses in the health care industry, including physicians, pharmacies, and manufacturers. If you have any questions about potential areas of focus for the HCMC, please contact either of the authors of this article.

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