

U.S. Antitrust Agencies Continue to Target Private Equity Involvement in Healthcare

MARCH 6, 2024

In the latest step in the U.S. antitrust agencies' heightened enforcement against private equity, the Federal Trade Commission held a Workshop on Private Equity in Health Care yesterday with the U.S. Department of Justice and Department of Health and Human Services. The agencies used the workshop as a platform to announce new multiagency collaboration that will put a magnifying glass on private equity involvement in health care, seek to suss out antitrust violations, and collect additional information to inform potential new rulemaking, including potentially requiring additional public "transparency" for health care transactions.

Along with the workshop, the FTC, DOJ, and HHS announced in a joint press release the launch of a cross-government inquiry into the impact of purported "corporate greed" in health care. This inquiry seeks public input to identify private equity transactions—including deals not previously reported to the government under the Hart-Scott-Rodino Act—that have the potential to harm patients' health, compromise workers' safety, affect the quality of care, or reduce affordability in the health care sector. Collectively, the agency heads stated that the public comments they are soliciting "will inform the agencies' identification of enforcement priorities and future action, including new regulations, aimed at promoting and protecting competition in health care markets and ensuring appropriate access to quality, affordable health care items and services."

The press release aligns with the sentiments expressed during the FTC's workshop by the enforcers, reiterating their commitment to increase the heat on private equity in health care. During the workshop, FTC Chair Lina Khan, DOJ Assistant Attorney General Jonathan Kanter, and HHS Inspector General Christi Grimm emphasized concerns that private equity transactions can lead to deteriorating patient care and working conditions. FTC Chair Khan's remarks highlighted her concerns that private equity often involves short-term, high-risk ownership aiming for quick profits based on cost-cutting and extraction of value, rather than investment in enhancing care, and rolling up of competitors through serial acquisitions. The agencies claim that "flip and strip" strategies often led to staffing cuts and compromised patient care, while roll-ups allowed firms to sidestep antitrust review and eliminate meaningful competition.

DOJ AAG Kanter highlighted the Antitrust Division's focus on reinvigorating and modernizing existing enforcement tools, including Section 8 of the Clayton Act, which generally prohibits individuals from serving on the boards or as officers in competing corporations. He reiterated the commitment to challenge common ownership structures and collaborate with other federal agencies. Additionally, like Chair Khan, Kanter expressed apprehension that private

equity strategies may lead to heightened indebtedness, resulting in poor quality care in these facilities if the need to repay debt hampers proper staffing, safety provisions, and time spent with patients.

HHS IG Grimm contributed insights from the HHS perspective, emphasizing the ability of private equity to influence patient care. Grimm discussed the obligations that private equity investments have in supporting well-run managed care plans that both comply with Medicare rules and ensure enrollees have access to cost-effective, high-quality services. Additionally, Grimm pushed the need for transparency in the realm of private equity and health care, arguing that, “understanding who owns a healthcare entity and where money is flowing is key to understanding the incentives that might be driving questionable conduct that can lead to patient safety and quality of care issues.”

Although the enforcement agencies did not provide a clear path forward, the key takeaways from the workshop and press release include:

1. FTC and DOJ intend to actively scrutinize private equity acquisitions in the health care sector that were previously not reportable under the Hart-Scott-Rodino Act, with a specific emphasis on private equity roll-up strategies. The antitrust agencies will also examine alternative investment structures such as acquiring hospital real estate and leasing it back to the hospital.
2. FTC and DOJ will continue to increase enforcement of Section 8 of the Clayton Act’s prohibition of persons from serving on the boards or as officers of competing companies.
3. The agencies will investigate whether private equity transactions violate corporate practice of medicine laws.
4. Additional rulemaking impacting private equity and health care stakeholders is likely to be proposed by the Biden administration.

Given the regulatory focus on private equity in health care, private equity firms should evaluate prospective acquisitions and current activities in light of the U.S. antitrust agencies’ increased enforcement, in particular where firms have engaged in multiple add-on acquisitions or have ownership stakes in competing companies. Winston’s Antitrust/Competition Practice brings together attorneys across practices with years of experience advising on issues at the intersection of antitrust, private equity, and health care who can help clients manage this shifting regulatory landscape.

Stay tuned for more [updates](#) and [insights](#) as the FTC, DOJ, and HHS continue to take action impacting private equity and health care.

4 Min Read

Authors

[Conor Reidy](#)

[Kevin B. Goldstein](#)

[Nasir Hussain](#)

[Kelton E. Anderson](#)

Related Topics

[Antitrust Intelligence](#)

[Department of Justice \(DOJ\)](#)

[FTC](#)

[Health Care Antitrust](#)

[Private Equity](#)

Related Capabilities

[Private Equity](#)

[Antitrust/Competition](#)

[Health Care](#)

Related Professionals



Conor Reidy



Kevin B. Goldstein



Nasir Hussain



Kelton E. Anderson

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.

