

# The Government Adds Another Arrow in Its Quiver to Target Competition Concerns in Healthcare

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PRACTICES Antitrust and Competition

On May 9, 2024, the Department of Justice's ("DOJ") Antitrust Division [announced](#) the formation of a new "Health Care Monopolies and Collusion" taskforce (the "HCMC")—yet another move signaling the government's increased focus on antitrust enforcement in the healthcare industry.

The HCMC's aim will be to "identify and root out monopolies and collusive practices that increase costs, decrease quality, and create single points of failure in the health care industry." In particular, the taskforce "will consider widespread competition concerns shared by patients, health care professionals, businesses and entrepreneurs, including issues regarding payer-provider consolidation, serial acquisitions, labor and quality of care, medical billing, health care IT services, access to and misuse of health care data, and more." The taskforce will be led by Katrina Rouse, a longtime DOJ antitrust prosecutor, and will be composed of "civil and criminal prosecutors, economists, health care industry experts, technologists, data scientists, investigators, and policy advisors" from multiple DOJ groups.

Competition in healthcare has been an area of government enforcement since 1975, when the U.S. Supreme Court held in [Goldfarb v. Virginia State Bar Ass'n](#) that "learned professions" like the practices of law and medicine qualified as "trade or commerce" within the meaning of the Sherman Act. In subsequent decades, DOJ and the Federal Trade Commission ("FTC") brought actions to challenge boycotts, mergers, monopolies, price-fixing, and other anticompetitive conduct involving providers and healthcare companies. The frequency and success of those actions, however, varied over time. But the current administration is clearly doubling down on targeting competition concerns in healthcare.

For example, President Biden [issued an executive order](#) in July 2021 that, among other things, encouraged DOJ and FTC to review and revise hospital merger guidelines and directed the Department of Health & Human Services ("HHS") to take actions to address rising hospital prices as well as consolidation in the health insurance industry. In June 2022, Deputy Assistant Attorney General Andrew Forman [delivered the keynote speech](#) at the American Bar Association's *Antitrust in Healthcare* Conference, and he emphasized that "[p]rotecting competition in healthcare is among the highest priorities of the Antitrust Division [of DOJ]." Then in February 2023, DOJ [withdrew three antitrust policy statements](#) related to enforcement in healthcare markets, claiming the statements were "overly permissive on certain subjects, such as information sharing" and DOJ would instead be pursuing "a case-by-case enforcement approach."

Additionally, in December 2023, the Biden administration [announced](#) several actions to promote competition in healthcare, stop anticompetitive mergers and practices, and lower healthcare costs and prescription drug prices. Those actions included HHS [appointing](#) a Chief Competition Officer; DOJ and FTC creating "Counsel for Health Care" positions to spearhead inter-agency and policy initiatives regarding healthcare competition; and all three agencies issuing a [joint request for information](#) to seek public input on how private equity and other corporate transactions may impact participants in the healthcare market. Finally, on April 18, 2024, DOJ and FTC launched an [online](#)

[portal](#) where members of the public can share their experiences and submit healthcare competition complaints.

These multifaceted efforts focusing on competition in healthcare, combined with the likelihood the HCMC will initiate more investigations and enforcement actions, underscore the mounting importance for healthcare companies and market participants to engage counsel well versed in antitrust laws. Haynes Boone attorneys have substantial experience in helping companies craft robust compliance programs, evaluating conduct in light of the government's enforcement approach to competition concerns, securing merger approvals, and avoiding or defeating challenges from both the government and private litigants. Please contact a member of Haynes Boone's Government Enforcement and Litigation team or [Antitrust and Competition](#) team for assistance in any of those matters.