

Musgrove, Lang in Law360 on Concerns When Hospitals Form a Drug Company

February 21, 2018

PRACTICES Antitrust and Competition

Law360 quoted Haynes Boone Washington, D.C., Partners Kyle Musgrove and Thomas Lang on the implications of several U.S. health systems forming their own drug company.

A group of hospital systems recently decided to address rising prices and shortages of generic medications by forming a nonprofit drug company, but industry attorneys warn that land mines like unfamiliar regulations and fraud concerns could trip the members up as they execute this novel plan, *Law360* [reported](#).

Intermountain Healthcare, Ascension, SSM Health and Trinity Health have announced little about their new project, which is also backed by the U.S. Department of Veterans Affairs, but both health and life sciences attorneys are closely watching the unique move to see how the group will handle an array of legal and compliance issues that have historically been kept separate. ...

Law360 cited Haynes Boone Partner Kyle Musgrove as noting that the upfront costs alone of setting up a manufacturing facility, or perhaps contracting with one, will be quite high. ...

Experts didn't seem worried that drug companies would be mad that providers were stepping into their territory, noting that the hospitals' targets will likely be off-patent drugs that already have healthy competition. But Haynes Boone Partner Thomas Lang said there are still antitrust concerns at play if any of these hospitals' markets overlap.

At the moment, federal authorities will probably see the deal as clean, and more akin to hospitals agreeing to split the costs of a helicopter or MRI equipment. However, if more hospitals join in or the scope of the agreement grows, there could be issues, Lang said.

"It may get to the point where the government says, 'I understand it costs a lot to buy and operate a generic drug facility,' but typically the government doesn't want more participants than are necessary in the collaboration for it to be effective," he said.

The concerns double if the hospitals start talking about how much they want to charge for the drugs, Lang said. He told *Law360* that while they're clear to decide on a price for a drug, regulators and lawsuits could swoop in if the collaborating hospital systems collectively decide how much their patients should be charged for a drug. ...

Excerpted from *Law360*. To read the full article, click [here](#). (Subscription required)