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BLOG

Health System Targeted in Class Action for Alleged Anticompetitive Conduct

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Overview of the Suit

A putative class of Connecticut citizens is alleging that Hartford HealthCare has amassed monopoly power to "extract higher prices from insurers, employers, and patients." The suit, filed in Connecticut state court, alleges Hartford HealthCare (HHC) has illegally monopolized the markets for inpatient hospital services and outpatient medical services in multiple geographic locations throughout Connecticut. Plaintiffs sue for violations of the Connecticut Antitrust Act and the Connecticut Unfair Trade Practices Act.

The plaintiff class argues that HHC has acquired numerous hospitals throughout the state, garnering sufficient market power to impose anti-competitive contract provisions onto insurance companies—including "all-or-nothing" contracts (requiring insurers to include in their networks *all* of the system's hospitals—including more-expensive ones in competitive areas—or none of them) and "anti-steering" and "anti-tiering" terms (prohibiting insurers from encouraging patients to receive care at rival facilities).

HHC, on the other hand, claims that these allegations misrepresent the many ways in which it is working to transform health care, "building a system of care that is more accessible, has lower-cost options, is a champion for equity, and both attracts and deliver excellence."

The complaint comes just a month after another lawsuit was filed against HHC by rival hospital system Saint Francis Hospital and Medical Center, alleging similar anticompetitive tactics. Lawyers for Saint Francis alleged HHC is attempting to create a monopoly by acquiring physician practices and demanding they refer patients exclusively to HHC facilities.

Increased Scrutiny of Hospital Consolidation

There continues to be growing scrutiny of market concentration among hospitals, health care systems, physician groups, and other health care industry participants. It is a key area of focus under both the Biden Administration and Congress, with the Senate conducting hearings into the issue in May 2021, as we covered in a prior post. The FTC

remains vigilant in enforcing the antitrust laws in the health care sector, and private plaintiffs appear to be poised to following the enforcer's lead.

The federal government, state governments, and class action plaintiffs are increasingly focused on health care systems' contracts with health insurers. The all-or-nothing contracts and anti-steering provisions at issue in the HHC suit are not new, even to the health care landscape. But as consolidation in the health care markets continues to grow, these provisions have become the subject of recent antitrust attention. For larger health systems, if they command sufficient market power, such provisions are perceived to create anticompetitive obstacles to patients' options and abilities in terms of choosing their health care providers.

Navigating this thicket of regulatory and civil liability risks presents significant challenges to health systems. Hospitals are increasingly under financial strain, owing in part to the consolidation of health insurers that command significant bargaining leverage. Consolidation is, thus, under the right circumstances, a path necessary to compete financially and in terms of delivering quality health care. That makes it all the more important for health systems wishing to merge or acquire to prepare early for the regulatory and civil fight that inevitably lies ahead. This means quantifying and documenting, at an early stage, the tangible benefits to patients and health system employees that consolidation can provide, such as lower costs, improved continuum of care, better access to providers, and increased investment in technology and equipment.

Takeaway

In light of the trend towards increased concentration and heightened government attention to the antitrust consequences of this trend for insurance companies, health care providers, and patients, this class action against Hartford HealthCare may not be the last lawsuit of its kind. While not all consolidation is necessarily bound, in and of itself, to raise serious antitrust red flags, "inefficient" consolidation that produces high prices with no commensurate quality-of-care gains may open up hospital networks to scrutiny by both government and consumer class plaintiffs. Hospital networks should take care not only in their merger conduct, but in their contracting practices (e.g., with insurers) to ensure that consolidation toward highly concentrated markets does not combine with controversial contracting provisions to paint a picture of systematic monopoly-seeking and anticompetitive behavior.
3 Min Read

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