

DEPARTMENT OF JUSTICE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
FEDERAL TRADE COMMISSION

Docket No. ATR 102

Request for Information on Consolidation in Health Care Markets

AGENCY: Department of Justice, Department of Health and Human Services, and Federal Trade Commission.

ACTION: Request for Information.

SUMMARY: The United States Department of Justice's Antitrust Division, the Federal Trade

The Department of Justice’s Antitrust Division, the Federal Trade Commission, and the Department of Health and Human Services (collectively, the “agencies”) believe that robust competition in health care markets promotes lower health care costs and improves working conditions, while fostering high quality patient care and driving innovation across the health care system. Given recent trends, we are concerned that some transactions may generate profits for those firms at the expense of patients’ health, workers’ safety, quality of care, and affordable health care for patients and taxpayers. We are issuing this Request for Information to seek public comment regarding the effects of transactions involving health care providers (including providers of home and community based services for people with disabilities facilities, or ancillary products or services² conducted by private equity funds or other alternative asset managers, health systems, or private payers. We are interested in public input regarding the goals or objectives of these transactions, as well as their effects on participants in the health care market including patients, communities, payers, employers, providers, and other health care workers and businesses.

We are particularly interested in information on transactions in the health care market conducted by private equity funds or other alternative asset managers, health systems, and private payers, especially those transactions that would not be noticed to the Department of Justice and the Federal Trade Commission under the ~~Small~~ Rodino Antitrust Improvements Act, 15 USC 184. These transactions could involve dialysis clinics, nursing homes, hospice providers, primary care providers, hospitals, home health agencies, and home based services providers, behavioral health providers, billing and collections services, revenue cycle

² Ancillary services include other services relevant to the provision of health care, but that do not involve providing direct care. These include, but are not limited to, ~~of~~ network billing management, IT services, laboratory staffing services, and other related services.

management services, support for value-based care, data/analytics services, and other types of health care payers, providers, facilities, Pharmacy Benefit Managers (PBMs), Group Purchasing Organizations (GPOs), or ancillary products or services. We are also interested in hearing directly from patients and health care workers about how their experiences in the health care system changed after a facility or other provider where they work or receive treatment or services was acquired or underwent a merger.

Public comments submitted in response to this Request for Information 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. This RFI complements the Centers for Medicare & Medicaid Services' recent RFI on Medicare Advantage³ that seeks public feedback on enhancing Medicare Advantage data capabilities and transparency, including on healthy competition and vertical integration.

There is a large, well-established body of research showing that competition in health care provider and payer markets promotes higher quality, lower cost health care, greater access to care, increased innovation, higher wages, and better benefits for health care workers. The agencies have a long history of working to promote competition in health care markets, including through enforcement and regulatory actions.

Academic research and agency experience in enforcement actions has shown that patients, health care workers, and others may suffer negative consequences as a result of

³ 89 Fed. Reg. 5,907 (Jan. 30, 2024) <https://www.federalregister.gov/documents/2024/01/30/2024-1832/medicare-program-request-for-information-on-medicare-advantage-data>

⁴ Press Release, Fed. Trade Comm'n, DOJ and HHS Work to Lower Health Care and Drug Costs, Promote Competition to Benefit Patients, Health Care Workers (Dec. 7, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/12/ftc-doj-hhs-work-lower-health-care-drug-costs-promote-competition-benefit-patients-health-care>

horizontal and vertical consolidation of a range of different types of providers—including not-for-profit providers.⁵ In this RFI, we request information on the effects of transactions involving health care providers, facilities, or ancillary products or services, conducted by entities where there are concerning trends and recent research indicating these categories of transactions may harm health care quality, access, and/or costs.

- Transactions conducted by private equity funds or other alternative asset managers
The agencies are interested in learning more about the impact of transactions involving health care providers, facilities, or ancillary products or services conducted by private equity funds or other alternative asset managers. Alternative asset investments include private equity funds, private credit funds, and real estate investments. Examples of private equity transactions include a private equity fund's acquisition of a health care provider such as a hospital, nursing home, or specialty service provider. We are interested in transactions where private equity funds make direct acquisitions, as well as transactions structured to facilitate private equity investment, circumventing applicable corporate practice of medicine restrictions. Recent research suggests that transactions conducted by private equity funds have adversely affected patients, health care workers, and other stakeholders in some cases including through worse patient outcomes and higher costs for care. We are also interested in transactions involving other alternative

- Transactions conducted by private payers

health care industry. Please identify, where possible, the question numbers your comments are intended to address.

DO NOT include sensitive or confidential information in the comments including: social security numbers, dates of birth, driver's license numbers or other state identification numbers, financial account information, sensitive health information, or competitively sensitive information. Comments will be posted on the Internet and made available to the public (subject to exceptions such as personal privacy information of persons other than the submitter)

The agencies invite written responses to the following questions:

1. Effects of Consolidation:

compared to urban settings, and differences in areas for marginalized patient populations, including differences by race, ethnicity, gender, sexual orientation, income level, disability, Tribal status, citizenship status.

- ii. Public and private payers e.g., through changes in their reimbursement rates for in-network providers, out-of-network rates and costs to patients, quality of care including the patient's experience, access to and denials of care, utilization of services, medical loss ratio, coding practices, detection of fraudulent billings or claims, coverage and formulary design, referral practices, claims processing, network adequacy, ability to implement innovative payment models, ability to implement value-based care plans, and ability to negotiate with the facility and with competing facilities.
- iii. Providers, health care workers, and support staff, through changes in their take-home pay, workplace safety, compensation model, (from fixed salary to

- iv. Employers who provide health insurance for their employees: e.g., through changes in prices for health insurance coverage, changes in prices for medical care, coverage and formulary design, and/or changes or reductions in choices in facilities or providers for their employees.
2. Claimed Business Objectives for Transactions: What were the claimed business goals and objectives for the transaction, and have these goals and objectives been realized posttransaction? These could include but are not limited to claimed efficiencies from scale, innovation in the organization and delivery of care, investments in care and quality improvements, the claimed or projected reduction in costs of delivering care resulting from these innovations and investments, complementarities between business units, or increased business valuations. Who benefited from the realization of claimed business goals and objectives of the transaction? Did the transaction, for example, require the acquired entity to take on any additional debt or restructure the ownership or leasing of any real estate or physical facilities? To the extent the transaction generated any surplus profits, were those profits used to reinvest in the acquired business, finance additional acquisitions, or paid out to shareholders in the form of dividends?

3. Notable Transactions: Are there particular types of entities, such as private equity funds or other alternative asset managers, health systems, or private payers, most associated with transactions that result in adverse impacts on entities listed in question 1(i)(iv)? Are there particular facilities, providers, payers, and ancillary products or services that are most often the targets of these harmful transactions? Who are these targets?
4. Need for Government Action: What actions should the Department of Health and Human Services, Federal Trade Commission, and United States Department of Justice consider taking to identify and address transactions that, due to market consolidation or corporate control issues, may have major adverse impacts on entities listed in question 1(i)(iv)? Should the agencies promote greater transparency and enhanced availability of information to the public on mergers, acquisitions, and other transactions involving health care facilities, providers, payers, and ancillary products or services, and if so, how?
5. Other Impacts: Have there been other impacts from health care market transactions that you would like to report to the agencies?

These questions are not meant to be exhaustive, and stakeholders are encouraged to address these and/or other related issues and to submit research and data that inform their comments on these topics. Responses to these questions may result in the need for additional proceedings, including workshops or other public engagement, to learn about the identified concerns.

Date