

ANTITRUST SERVICES

Enforcement of federal antitrust laws in the health care industry is steadily becoming a more significant area of focus for both the Antitrust Division of the Department of Justice (DOJ) and the Federal Trade Commission (FTC). The increasing emphasis on day-to-day antitrust compliance for health care companies and scrutiny of the competitive impact of health care transactions has heightened the need for *proper planning* and *consultation* with antitrust counsel when evaluating potential transactions, relationships, activities among competitors and contracting with payors and employees.

Early involvement of antitrust counsel can prove crucial in mitigating risk and avoiding unnecessary pitfalls. Hall Render's team of antitrust attorneys are prepared to assist in every aspect of antitrust law.

The Hall Render antitrust team's extensive experience with both federal and state antitrust laws is bolstered by the firm's specific focus on the health care industry. The singular focus allows us to understand the nuanced ways that antitrust compliance issues may arise in all manners of health care transactions and the day-to-day operations of health care companies. From managed care contracting, clinical integration and ACOs, to labor, wage and pricing activities.

THE HALL RENDER ADVANTAGE

We routinely advise and assist clients with a broad array of antitrust concerns, including:

- **Managed Care Contracting.** Advising health care clients on day-to-day antitrust compliance issues related to managed care contracting, including provider networks, PHO and IPA contracting strategies, clinical integration, ACOs, dominant firms, anti-tiering/anti-steering provision, "all or nothing" contracting strategies and other potentially exclusionary provisions.
- **Mergers & Acquisitions.** Counseling clients on antitrust compliance issues that arise in the context of M&A and joint ventures, including substantive antitrust risk, antitrust strategy related to the DOJ and FTC and exchanges of competitively sensitive information during the due diligence and integration planning processes.
- **HSR Premerger Filings.** Applying for and obtaining clearance under the Hart-Scott-Rodino (HSR) Premerger Notification Reports.
- **Federal and State Investigations.** Counseling and defending hospitals, health systems, physicians and other health care providers in federal and state antitrust enforcement agency investigations, and managing the complex procedural issues, such as large-scale electronic discovery, that may accompany government investigation.
- **Labor Markets.** Advising health care clients on day-to-day antitrust compliance issues related to labor markets, including wage fixing, no-poach agreements, recruitment arrangements, non-competition provisions, non-solicitation provisions and wage and benefit surveys.
- **Antitrust Compliance Plans.** Developing and implementing compliance plans with specific reference to compliance with state and federal antitrust laws, and serving as formal compliance monitors in antitrust agency settlement orders.
- **Antitrust Litigation.** Defending clients involved in federal, state and private antitrust investigations or litigation.

CONNECT WITH US



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Prior to joining the Antitrust team at Hall Render, many of our attorneys gained valuable experience working for both the DOJ and the FTC, and use that experience to expertly advise and guide clients through interactions with either agency.

REPRESENTATIVE EXPERIENCE

Antitrust Litigation

- Obtained dismissal for a general acute care hospital in a suit alleging federal antitrust claims based on exclusive payor contracting and revoking the privileges of physician-investors in a specialty hospital. Represented the general acute care hospital during discovery and on briefing on motion to dismiss, on appeal, and before the Supreme Court.
- Obtained summary judgment for professional association after extensive discovery in an antitrust action alleging federal antitrust action alleging standard setting to exclude plaintiff's product.
- Obtained a judgment and injunctive relief after a six week trial and multi-year discovery against a dominant medical supply manufacturer involving its exclusive contracting with distributors that foreclosed competing suppliers.
- Represented numerous third-party health systems in responding to federal antitrust enforcer subpoenas for documents and depositions in multiple litigation challenging the mergers of multiple large payors.
- Represented third-party health system in responding to federal antitrust enforcer, state antitrust enforcer and private plaintiff subpoenas for documents and depositions in investigation and litigation alleging antitrust violations resulting from defendant's use of exclusionary provisions in payor contracts.

M&A and CINs

- Represented a large national health system during the FTC's investigation into its acquisition of another national health system. Our work included counseling the parties on potential antitrust risks, working with an economist, preparing the premerger HSR filings, responding to further information requests from the FTC and eventually obtaining FTC clearance for the transaction.
- Represented a regional health system in its acquisition of an academic medical practice group, one of the largest single market physician practice acquisitions in the last twenty years, engaging with the FTC early to secure transaction approval within the initial thirty- day waiting period.
- Represented a national health system in an FTC "Second Request" investigation into the system's divestiture of an ancillary service line to a large, national competitor. We negotiated with the FTC to narrow the Second Request, provided advocacy to the agency and secured FTC clearance to the transaction.
- Represented a large regional health system during its acquisition of a regional air ambulance company. We counseled the system on antitrust considerations early in the transaction, including horizontal and vertical theories, and worked with the FTC to answer questions and ultimately obtain clearance to proceed with the transaction.
- Represented a community hospital in its divestiture to a large regional health system. Our work included preparing an initial antitrust risk assessment with a detailed market analysis and preparing the premerger HSR filings.
- Represented a national health system during the FTC's investigation into its affiliated regional health system's creation of a clinically integrated network.
- Represented a clinically integrated hospital network in the state AG's investigation of its formation, structure and subsequent operation, including responding to document requests, preparing narrative responses and negotiating a termination of the investigation.
- Represented a clinically integrated network during its formation and subsequent operation. Our work included working closely with senior management and the board to create an antitrust compliant network.

LET'S GET STARTED

Contact Hall Render to discuss how your organization can benefit from a partnership with our health care attorneys.

