

PUBLICATION

Health Care Entities Take Notice: DOJ Antitrust Division and HHS-OIG Look to Cooperate More on Antitrust Enforcement in Health Care

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On December 9, 2022, the U.S. Department of Justice's Antitrust Division and the Office of Inspector General of the U.S. Department of Health and Human Services (HHS-OIG) entered into a Memorandum of Understanding (MOU) signaling their intention to improve coordination, increase enforcement efforts, and improve information-sharing, which will undoubtedly lead to more investigations of health care entities.

The MOU reflects the Antitrust Division's intention to increase its scrutiny of competitive practices of health care entities and puts health care entities on notice that HHS-OIG and the Antitrust Division will be on the lookout for conduct that could trigger an investigation by the other agency. This formal cooperation is likely to lead to increased agency scrutiny, more inter-agency referrals, and enforcement efforts such as Civil Investigative Demands.

Overview of the MOU

The MOU states that the agencies intend to strengthen their enforcement coordination and information-sharing in five ways.

1. **Designated Agency Liaisons.** Each agency will designate at least one point of contact to meet, at least quarterly, to discuss enforcement-related topics of mutual interest.
2. **Coordinated Enforcement Activities.** The agencies will seek to regularly consult and coordinate with each other on their investigations and enforcement actions.
3. **Information-Sharing.** The agencies plan to share complaints, data, investigative files, reports, data, and guidance related to policy and enforcement matters.
4. **Referrals.** Each agency intends to make referrals to the other agency when an investigation reveals potential misconduct that falls under the subject-matter jurisdiction of the other agency.
5. **Training, Education, and Public Outreach.** The agencies may provide training and technical assistance to each other's staff to help them identify cases and issues that may arise under the other agency's jurisdiction. The agencies may also conduct public outreach to increase understanding and awareness of the laws the agencies are tasked with enforcing.

Takeaways

The MOU demonstrates the Biden administration's continued focus on competition in the health care industry. Health care entities should be mindful of this increased scrutiny, including the additional enforcement risks associated with providing information and documents to these agencies. As a result of the MOU, each agency's staff will be better trained in how to spot and refer potentially unlawful conduct that falls within the purview of the other agency. Increased referrals are likely to lead to increased agency scrutiny and enforcement.

With the likelihood of increased and coordinated enforcement by the DOJ across departments, health care entities should review and update their compliance programs to include antitrust risk factors. Although a compliance program is not a defense to prosecution of corporate misconduct, it is the DOJ's policy, as articulated in the "[Monaco Memo](#)," that an effective and robust compliance program can have a direct and significant impact on the terms of a corporation's potential resolution with the Department.

If you have questions about this alert, please contact [Ty Kelly](#), [Katherine I. Funk](#), [Alex S. Lewis](#), or a member of Baker Donelson's [Health Law](#) Group.