

Hospitals and insurers turn to new partnerships in an effort to better manage the cost of care

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Life Sciences and Health Care Videos

Vertical relationships and changing antitrust enforcement

Vertical relationships may be a viable solution for lowering the burden of health care costs, but large-scale mergers of health care providers, hospitals, and physicians bring a host of new questions around anti-competitive behavior.

With increasing pressure from government payers like Medicare and Medicaid to drive down the overall cost of care, vertical integration arrangements—where health insurance providers, hospitals, and doctors merge into more cohesive entities—are becoming more commonplace. But these large-scale partnerships present new business challenges and have the potential to alter current standards around antitrust enforcement. Leigh Oliver and Bob Leibenluft, partners in Hogan Lovells' Antitrust Practice group, discuss some of the major trends driving vertical relationships, and how an increase in these types of mergers may fundamentally shift attitudes around competition.

Q: At a high level, how are vertical relationships addressing the cost of care?

Oliver: "The biggest benefit of vertical relationships is in aligning incentives. Many companies are making efforts to integrate and coordinate delivery of care for better efficiency, and one of the best ways to do that is through more in-depth, closer relationships with those in the vertical supply chain."

Leibenluft: "Many hospitals are becoming health plans or acquiring health plans, partly because they've been asked by the government to take on more risk and more responsibility for the full range of services, and therefore (must) share more of the overall cost burden."

Q: What sort of business challenges might these partnerships create?

Oliver: "With upward vertical integration, a hospital may become more like a health plan. As a health care provider, its incentivized to provide as many services as possible (in order) to create revenue. But as a health plan, each service (the hospital) provides becomes a cost center, which means it is operating within a completely new incentive structure."

Leibenluft: "We also see a lot of hospital systems integrating downstream by acquiring physician practice groups because they recognize the importance of having a close relationship with them. But getting physicians to do what you want them to do once you employ them isn't simple, and

hospitals often don't have much experience doing it."

Q: Where are you seeing antitrust issues arise as a result of these relationships?

Leibenluft: "Take the example of a hospital acquiring a large physician group. [The hospital] needs to consider how this could prevent other area hospitals from having access to that large physician group and its patient referrals. The problem isn't that the hospital is going to become a stronger competitor, which in the eyes of antitrust agencies is a good thing, but that it's preventing other hospitals from having enough physicians altogether.

Oliver: "Examples of mergers like this one may ultimately put more weight on the complaints of competitors than we're accustomed to seeing. Under current antitrust law, just hurting a competitor may not be unlawful. But if a competitor feels a vertical partnership will mean they're going to have a tougher time competing, they may bring an antitrust suit. As more of these types of deals arise, the State Attorneys General, and the Federal Trade Commission are having to start thinking a little bit differently about the way that healthcare competition works in this country."

Q: What insight about vertical relationships would you share with a client considering this type of merger?

Oliver: "There's no one size fits all when it comes to the antitrust analysis of a particular vertical relationship. So much of antitrust in healthcare is really fact driven. It comes down to who is in the market, what the market landscape looks like, and what part of the country you're in."

Leibenluft: "Dealing with the antitrust enforcers is an ongoing, evolving issue. There aren't any blanket rules that apply to vertical relationships when you're considering potential antitrust litigation – so understanding a deal's unique context becomes very important."

For more insights from Oliver and Leibenluft on vertical relationships and the changing antitrust environment, watch the video above.

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