

Federal Trade Commission Withdraws Healthcare Enforcement Policy Statements

The Federal Trade Commission announced today the withdrawal of certain antitrust statements related to enforcement in healthcare markets: *Statements of Antitrust Enforcement Policy in Health Care* (Aug. 1, 1996); and *Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program* (Oct. 20, 2011) [hereafter “the Statements”].¹

The Commission has determined that the withdrawal of the Statements is the best course of action for promoting fair competition. Much of the Statements are outdated, reflecting market realities that are no longer extant. Moreover, the Statements may be overly permissive on certain subjects, such as information sharing. In particular, companies have sometimes used the safety zone for information exchanges in contexts and industries that were never contemplated by the agencies, including to share competitively sensitive wage and benefit information with other employers.²

Rather than continue to rely on such outdated guidance, the Commission will rely on general principles of antitrust enforcement and competition policy for all markets, including markets related to the provision of healthcare products and services. Given the profound changes in these markets over the last thirty years, the statements no longer serve their intended purpose of providing accurate guidance to market participants. Rather, the Commission’s extensive record of enforcement actions, policy statements, and competition advocacy in healthcare provide more up-to-date guidance to the public. We will continue our enforcement by evaluating on a case-by-case basis mergers and conduct in healthcare markets that affect so many Americans.³

Guidance documents are non-binding and do not create legal rights or obligations. Antitrust enforcement and competition advocacy in healthcare remain important parts of the FTC mission, and the Commission will continue to vigorously enforce the antitrust laws in the healthcare industry.

¹ The U.S. Department of Justice previously [announced](#) its withdrawal of the Statements on February 3, 2023.

² Doha Mekki, Principal Deputy Assistant Attorney General, Dep’t of Justice, Antitrust Div., Remarks at GCR Live: Law Leaders Global 2023 III. 1. (Feb. 2, 2023), <https://www.justice.gov/opa/speech/principal-deputy-assistant-attorney-general-doha-mekki-antitrust-division-delivers-0>.

³ The FTC maintains a working relationship with the Center for Medicare Studies (CMS) with respect to CMS’ review of Accountable Care Organization (“ACO”) applications as well as discussion of new ACO program ideas and other regulatory reforms involving the Medicare and Medicaid programs that CMS is considering. These consultations help CMS ensure that its plans and regulations will not have unintended consequences that could harm competition or inadvertently cause healthcare providers who participate in those programs to run afoul of the antitrust laws. Withdrawal of the Statements here does not in any way affect this ongoing relationship, which the Commission intends to continue.