

President Orders FTC to Report on Competition in Healthcare Markets

On October 12, 2017, President Donald J. Trump signed an executive order designed to promote choice and competition in healthcare markets. The order was reported as a first step in the administration's effort to undermine the Affordable Care Act. Although the order was focused primarily on promoting association health plans, short-term, limited-duration insurance and health reimbursement arrangements, it also expressed a desire for more competition in healthcare markets. The order states that:

My Administration will also continue to focus on promoting competition in healthcare markets and limiting excessive consolidation throughout the healthcare system. To the extent consistent with law, government rules and guidelines affecting the United States healthcare system should . . .

(ii) re-inject competition into healthcare markets by lowering barriers to entry, limiting excessive consolidation, and preventing abuses of market power; . . .

The Federal Trade Commission was ordered, along with other executive branch agencies, to issue a report detailing the extent to which state and federal laws, regulations and policies fail to conform to the policies set forth in the order, which includes the pro-competition policy quoted above. That report is due within 180 days (by April 10, 2018), and additional reports are due every two years thereafter.

It is unclear what motivated this directive or how the FTC will respond. The commission, along with the U.S. Department of Justice, has periodically held workshops on healthcare competition, most recently in 2015. That [workshop](#) examined accountable care organizations, alternatives to fee-for-service payment models, trends in provider consolidation, and trends in provider network and benefit design strategies. The two agencies have also issued [extensive reports](#) covering a wide number of competition issues in the industry, but most recently did so 13 years ago in 2004.

We will monitor the FTC's response to this executive order and issue updates on what policies it is reviewing and what, if any, actions are likely to be taken in response.

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