

FTC Says State Oversight Cannot Effectively Displace Competition Among Health Care Providers

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In two recently issued statements, the Federal Trade Commission (FTC) reiterated its long-held view that states are not in a position to effectively displace competition with regulatory oversight.

On June 13, 2023, the FTC issued a [press release](#) congratulating the State of Maine for repealing its Certificate of Public Advantage (COPA) law. In its press release, the FTC stated that “[w]e have found that COPAs can be difficult for states to implement and monitor over time, and are often unsuccessful in mitigating merger-related price and quality harms.”

Earlier this month the FTC sent a [letter](#) to the North Carolina General Assembly opposing a bill that would provide a state action defense to antitrust challenges of certain health care transactions. In voicing its opposition, the FTC stated that the bill appeared to be based “on two fundamentally flawed premises: that beneficial collaborations among otherwise independent healthcare providers are prohibited under the antitrust laws, and that the state action defense is necessary to enable such collaborations.” Although the FTC recognized North Carolina’s interest “in weighing values other than competition and determining when those values should govern,” the FTC nevertheless believes that the lack of appropriate state oversight in North Carolina may have already led to an increase in commercial inpatient prices and harm to health care patients and workers.

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