

DOJ Sues Four Michigan Hospitals for Secret Agreements Not to Compete

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Late last week, the United States Department of Justice (DOJ) and the ***Michigan Attorney General (AG)*** filed suit against four southern Michigan hospitals, alleging that they secretly agreed not to compete with each other in violation of Section 1 of the Sherman Act and Section 2 of the Michigan Antitrust Reform Act. The complaint alleged that defendants Hillsdale Community Health Center (“Hillsdale”), W.A. Foote Memorial Hospital, d/b/a Allegiance Health (“Allegiance”), Community Health Center of Branch County (“Branch”), and ProMedica Health System, Inc. (“ProMedica”) agreed not to market in each other’s territories for competing health care services, excluded each other from marketing campaigns, and regularly communicated to monitor any violations of the agreement.

According to the complaint, the four hospitals directly compete with each other to provide many of the same hospital and physician services. The complaint alleged that in the absence of the unlawful agreement, defendant hospitals would compete to attract patients by advertising, direct mailings to patients, outreach to physicians and employers, conducting health fairs and offering free health screenings. Beginning in 1999, however, the complaint alleged that Hillsdale began orchestrating agreements with competitor hospitals to limit such marketing. This included advertising in newspapers, television, radio, and on billboards.

The DOJ and Michigan AG argued that defendants’ agreements to allocate territories for marketing are per se illegal under federal and state antitrust law and that they “disrupted the competitive process and harmed patients, physicians, and employers,” by depriving them of important information needed to make health care decisions. As Assistant Attorney General Bill Baer of the DOJ’s Antitrust Division noted in a statement, “Instead of putting patients first, these hospitals secretly agreed not to compete.”

Three of the four hospitals—Hillsdale, Branch and ProMedica—have already reached settlements with the DOJ and Michigan AG, prohibiting them from agreeing to divide up geographic markets and communicating with one another about their marketing efforts. The hospitals also agreed to appoint an antitrust compliance officer to enforce the agencies’ conditions of the settlement for five years. Allegiance, the non-settling hospital defendant, expressed disappointment at the suit despite its cooperation with the agencies, and plans to pursue its claims in court.

This case is an important reminder that the antitrust enforcement authorities will vigorously prosecute as per se unlawful, naked restraints of trade such as price-fixing and market allocation agreements that are not reasonably necessary to further a procompetitive purpose.

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