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# What the FTC's Ascension/AmSurg Order Means for Nonprofit Healthcare Deals

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## The Deal

On June 2, 2026, the Federal Trade Commission (FTC) required nonprofit health system Ascension Health Alliance to divest several ambulatory surgery centers (ASCs) as a condition of closing its proposed \$3.9 billion acquisition of AmSurg LLC. The order reflects the FTC's continued focus on competition in local outpatient markets.

Ascension, one of the nation's largest nonprofit health systems, sought to acquire AmSurg, a major ASC operator with more than 250 facilities across 34 states. The transaction also underscores the healthcare industry's continued shift toward outpatient care.

## Why the FTC Intervened

According to the FTC, the transaction would likely lessen competition for certain outpatient surgical services in several metropolitan areas. In those markets, Ascension and AmSurg allegedly compete directly in ASCs offering gastroenterology, ophthalmology, and orthopedic procedures.

The FTC alleged that reduced competition in these local markets could lead to higher prices, lower quality, and less innovation. The proposed order requires seven divestitures and includes transition,

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monitoring, and advance-notice provisions that could affect future deal planning.

## Why It Matters

Ascension/AmSurg shows the FTC's growing focus on outpatient care. Although hospital mergers have long drawn antitrust scrutiny, regulators are increasingly examining ASCs, physician practice acquisitions, and other transactions that shape care delivery outside the hospital setting.

The case is also a reminder that healthcare antitrust analysis remains local. Even when parties operate nationally, the FTC focuses on competition in particular service lines and geographic markets, making targeted divestitures and other tailored remedies a recurring feature of healthcare merger review.

## Nonprofit Status Is Not a Shield

One notable feature of the case is that Ascension is a nonprofit. But nonprofit status does not insulate a transaction from antitrust review.

Although Section 5 of the FTC Act applies to corporations organized for profit, the scope of the nonprofit exemption has long been debated and applied functionally rather than formally.

The FTC and courts generally ask whether an organization is genuinely operated for charitable purposes or instead functions more like a commercial enterprise. Tax-exempt status may be relevant, but it is not dispositive.

In any event, nonprofit organizations remain subject to other federal antitrust laws, including the Clayton Act and Sherman Act, and healthcare transactions involving nonprofit systems remain fully subject to merger review.

## A Familiar Enforcement Theme

The Ascension matter fits within a longstanding pattern of the FTC's antitrust enforcement involving nonprofit healthcare systems. For decades, the FTC has challenged or closely scrutinized nonprofit hospital and health system transactions where it concluded a deal could lessen competition in local markets.

Examples include Evanston Northwestern/Highland Park, ProMedica/St. Luke's, and Penn State Hershey/PinnacleHealth. Nonprofit healthcare mergers have long been subject to federal antitrust scrutiny, and nonprofit status has not prevented FTC enforcement where it identifies competitive concerns.

### Key Takeaways

The FTC's action matters beyond Ascension. Most importantly, it reinforces that nonprofit transactions can face the same antitrust scrutiny as for-profit deals when they raise competitive concerns. Nonprofits considering mergers, acquisitions, affiliations, or joint ventures should assess market concentration, service-line overlap, and local competitive dynamics early.

The case also underscores the risk for nonprofits operating in commercial markets. Hospitals and other tax-exempt organizations that compete with for-profit firms should not assume that nonprofit status will limit regulatory scrutiny, particularly where the transaction affects local outpatient markets.

Finally, nonprofit organizations should be prepared for remedies that can materially reshape transactions, including divestitures, extended review periods, and continuing oversight. For boards and executives, antitrust risk should be treated as an ongoing governance issue, not just a transactional hurdle. Akerman can assist nonprofit organizations in addressing these governance issues, as well as

helping them evaluate antitrust risk when considering transactions of this nature.

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