

Blog Post

DOJ Settles “Anti-Steering” Antitrust Case Against Atrium Health

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The United States Department of Justice Antitrust Division announced on November 15 that it was settling its antitrust lawsuit against Atrium Health (formerly known as Carolinas Health System). The action, *United States v. Atrium Health*, filed in the United States District Court for the Western District of North Carolina, challenged Atrium’s use of restrictions in its contracts with commercial insurers that the Antitrust Division contended had anticompetitive effects, preventing health insurers from promoting more cost-effective healthcare services for consumers in and around Charlotte, North Carolina.

Atrium is the largest healthcare system in North Carolina, and operates nine general acute-care hospitals in Charlotte, North Carolina. In 2016, the Antitrust Division, together with the North Carolina Attorney General’s Office, filed a suit against Atrium, contending that Atrium had used its dominant market position in Charlotte to force insurers to refrain from engaging in practices that might “steer” members to lower cost providers (principally through the creation of narrow networks and/or tiered networks that would not have included Atrium, absent the contractual prohibition). The Antitrust Division also alleged that Atrium’s contracts constrained insurers from providing consumers and employers with information

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regarding the cost and quality of alternative health benefit plans.

Pursuant to the terms of the proposed settlement, the “anti-steering” provisions in Atrium’s current contracts with the commercial insurers in the region are declared void, and the settlement also bars Atrium from seeking contract terms or taking actions in the future that would prohibit, prevent or penalize insurers for engaging in steering of its members to other providers. The terms and conditions of Atrium’s contracts with health insurers will also be subject to Antitrust Division oversight for the next ten years.

In announcing the proposed settlement, Assistant Attorney General Makan Delrahim (who leads the Antitrust Division) stated that “By eliminating restrictions that . . .interfere with competition among healthcare providers, today’s resolution of our antitrust action allows consumers in the Charlotte area to benefit from competition when making critically important healthcare choices.” Atrium, which also issued a press release announcing the proposed settlement, stated that “the language in question is from contracts created as long ago as 2001, and was originally added to ensure Atrium Health was provided an equal opportunity to compete for patients.” Atrium also stated that “there is no admission on the part of Atrium Health of wrongdoing in this settlement agreement, and Atrium Health did not violate the law.” The settlement also includes no payment of penalties or fines by Atrium.

Pursuant to the Tunney Act, the proposed settlement will be reviewed by the District Court, to determine whether it is in the public interest. Accordingly, final approval is not likely to be granted until early next year. In the interim, Atrium still faces a private party class action proceeding based upon the same alleged conduct in the North Carolina state court – *DiCesare v. The Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Health System*. Notably, however,

Atrium has filed a motion seeking to have that case dismissed, contending that it is immune from suit under North Carolina law because it is a quasi-governmental entity. A hearing on that motion is currently scheduled for early December. Stay tuned.

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