

Blog Post

FTC Brings First Hospital Merger Challenge Since 2016

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The Federal Trade Commission (FTC) announced on February 27 that it has filed an administrative complaint challenging the proposed merger of Jefferson Health (Jefferson) and Albert Einstein Healthcare Network (Einstein), two Philadelphia-area hospital systems. The action is the FTC's first hospital merger challenge since late 2016, when the agency successfully challenged the Hershey/Pinnacle Health transaction, also in Pennsylvania.

In this new action, the FTC alleges that Jefferson and Einstein are currently two of the leading providers of inpatient general acute care hospital services and inpatient acute rehabilitation services in Philadelphia County and Montgomery County, Pennsylvania, and that "the proposed merger would eliminate the robust competition" between them. The complaint also alleges that patients currently "benefit from the direct competition in the quality and services that [the systems] offer," and that this competition would be lost by the merger.

In support of the FTC's challenge, their administrative complaint alleges that the two hospital systems, if combined, would have 1,000 more beds than the next largest system in the area. The complaint also alleges that the parties would "control at least 60 percent of the inpatient general acute care market, as measured by commercially

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insured patient admissions” in Northern Philadelphia and “at least 45 percent of the inpatient general acute care market” in Montgomery County. The FTC also contends that post-transaction the merged entity would control “over 70 percent” of the rehabilitation services market.

As further alleged in the complaint, the combined share of the merging parties in each of the effected markets, as measured by the Herfindahl-Hirschman Index (HHI), would be above 2,500 points, with an increase of over 200 points, which, under the 2010 FTC/DOJ Horizontal Merger Guidelines, makes the transaction “presumptively unlawful.” Specifically, the FTC alleges that the inpatient general acute care market in Northern Philadelphia would see an increase in HHI of 1,200 points (up to 4,500) and an increase in the HHI level in Montgomery County of 700 points (up to 3,500). In the rehabilitation services market, the complaint alleges the HHI would increase over 2,500 points, to at least 5,950.

Finally, as is customary, the FTC also announced that it has filed a companion case in the United States District Court for the Eastern District of Pennsylvania, seeking to prevent the merger from closing until the FTC’s administrative complaint can be heard later this year. The FTC also noted that the Pennsylvania Attorney General’s office will be a party to the federal case, and noted that “throughout [the] investigation, we have benefited from close cooperation with our partners in the Office of the Attorney General of Pennsylvania.” Stay tuned.

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