

What is antitrust and why is it relevant to health care?

Information transparency is desirable because it yields more informed health care providers and consumers, but such transparency can also be used in anti-competitive ways that may violate antitrust laws. Antitrust law rests on the philosophy that the economy functions best when markets thrive and when purchasers, armed with information, are able to make decisions that yield both quality and value. Thus, the overarching aim of antitrust law is to advance free and open markets in which competition can flourish. Antitrust issues arise when competitors jointly use information to attempt to control the price or product within a particular geographic and product market, thus restricting competition.

Federal antitrust laws (i.e., the Sherman Act, the Clayton Act and the Federal Trade Commission Act) exist to safeguard free and open market competition both within geographic regions and in relation to certain types of products or services, including health care services, by eliminating or preventing practices that interfere with free competition. These laws are designed to benefit the consumer by encouraging vigorous competition in an environment in which business entities have the full opportunity to compete for consumers on the basis of quality, service, and price. In the context of health care, Section 1 of the Sherman Act is most relevant.

Section 1 prohibits restraints of trade, which are actions that unreasonably restrain competition. The most common antitrust violations result from “horizontal” arrangements that involve collusive activities by competitors in a given market, either product (such as the market for a specific drug) or geographic (such as the market for hospital care in a certain region). Certain categories of restraints, such as horizontal price-fixing, group boycotts, bid rigging, and market-allocation agreements are considered *per se* illegal. In other cases, activities that are generally legal may violate antitrust law because they have anticompetitive effects.

In general, although antitrust law prohibits conduct among competitors that seeks to restrain trade, it does not proscribe all interactions between competitors in a given market. Forums designed to promote value-based purchasing by providing quality information and technical support to the participants—even if competitors—is perfectly legal under antitrust law, as long as the participants do not collectively set uniform prices, fees, bonus amounts, or other competitively sensitive terms. Indeed, such transparency is likely to encourage competition in the market by giving consumers more information to better evaluate the products or service providers.

For more details of federal antitrust law in the context of health information, see our 2009 brief “The Antitrust Aspects of Health Information Sharing by Public and Private Health Insurers” here:

<http://www.healthinfolaw.org/article/antitrust-aspects-health-information-sharing-public-and-private-health-insurers>. For relevant state laws and other information about antitrust, see <http://www.healthinfolaw.org/topics/90>.

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