

Legal Risks and Challenges for Private Equity in Healthcare Acquisitions



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Private Equity (PE) firms continue to be significant players in U.S. healthcare, acquiring assets across various sectors such as physician practices, home health, behavioral health, and urgent care. However, recent legal developments and enforcement trends over the last five years underscore the increasing regulatory scrutiny and legal risks associated with these investments.

ANTITRUST ENFORCEMENT IS RAMPING UP

The Federal Trade Commission (FTC) and U.S. Department of Justice (DOJ) have intensified their focus on serial acquisitions and roll-up strategies. Recent enforcement actions suggest that smaller deals may still trigger antitrust reviews, especially when a PE firm accumulates significant market power through multiple transactions that fall below traditional Hart-Scott-Rodino (HSR) thresholds.

For example, in *FTC v. U.S. Anesthesia Partners, Inc.* (USAP),¹ the FTC alleged that a PE firm orchestrated a decade-long “roll-up” strategy to consolidate anesthesiology practices in Texas, potentially driving up service prices. While the court dismissed the PE firm from the lawsuit, it denied the motion to dismiss for USAP, alleging that these acquisitions significantly reduced competition and amounted to illegal monopolistic conduct.

In May 2025, the FTC approved a final consent order² with USAP. This final consent order imposes several restrictions including notification, compliance and reporting requirements. Viewed alongside other enforcement actions, it becomes clear that the current administration is taking a hard line with PE and is unlikely to extend the benefit of the doubt. This order serves as a timely reminder for PE firms to seek antitrust counsel when pursuing strategic acquisitions and roll-up transactions, particularly in the healthcare sector.

Takeaway for Deal Terms: Integrate Antitrust Review Early in the Deal Process

Even sub-HSR-threshold deals can attract FTC or state scrutiny, particularly in roll-up strategies. Engage counsel early to assess cumulative acquisition activity and avoid post-closing surprises.

STATE OVERSIGHT IS EXPANDING

States are enacting laws requiring pre-transaction notice or approval for healthcare mergers and acquisitions — even for non-reportable deals. For example, in New York, certain healthcare facilities, including hospitals and nursing homes, must obtain a Certificate of Need or prior approval from the New York State Department of Health (NYSDOH) before completing a merger or acquisition. Under Public Health Law § 2801-d, the NYSDOH reviews proposed transactions to evaluate their impact on the quality, accessibility, and cost of healthcare services in the community. This process can involve a detailed application, public notice, and opportunities for community input. Failure to obtain necessary approvals can result in enforcement actions or delays.

Beyond hospitals and nursing homes, other healthcare entities may be subject to pre-transaction notification or review under various state laws or contractual obligations. For example, transactions involving managed care organizations (MCOs) or provider networks could trigger review by the New York State Department of Financial Services or the Attorney General's Office under antitrust and consumer protection laws.

While New Jersey does not have any such notification requirement, many other states, including Massachusetts, Vermont, Rhode Island, and Connecticut have similar legislation.

Takeaway for Deal Terms: Conduct Jurisdiction-Specific Regulatory Diligence

State laws vary significantly, especially around pre-transaction notice requirements, corporate practice of medicine (CPOM) rules, and facility licensing.

Including counsel early on to conduct diligence to identify red flags and structural risks can help with compliance and reduce post-signing to closing periods.

CPOM DOCTRINE STILL A BARRIER

The CPOM doctrine remains a significant structural hurdle for PE firms investing in healthcare providers, particularly in states like New Jersey and New York, where enforcement of CPOM restrictions is active and nuanced. Both states generally prohibit non-physicians — including business entities such as PE firms — from owning or exercising control over medical practices. In New Jersey, the Board of Medical Examiners enforces this prohibition by restricting the ownership of professional medical corporations and limiting management agreements that may encroach upon clinical decision-making. Similarly, New York prohibits the ownership of medical practices by unlicensed individuals or entities under the Education Law and related regulations, and scrutinizes management service arrangements to ensure they do not amount to de facto control over professional judgment or fee-splitting.

To navigate these restrictions, PE firms commonly rely on management services organization (MSO) models, whereby a non-clinical entity provides administrative services under contract with a physician-owned PC. However, both New Jersey and New York regulators closely examine MSO arrangements for signs of indirect control, such as influence over staffing, compensation, or treatment protocols. If deemed to cross the line, these arrangements can trigger enforcement actions, regulatory penalties, or invalidate the structure entirely—jeopardizing the investment.

Takeaway for Deal Terms: Reassess MSO Structure and CPOM

Improperly structured MSO arrangements may expose both the portfolio company and the PE sponsor to CPOM violations or fee-splitting allegations. It is important to engage counsel early on to

ensure MSO models are well-documented and preserve clinical autonomy.

INCREASED FOCUS ON BILLING AND COMPLIANCE

PE-backed healthcare entities have faced whistleblower suits and False Claims Act (FCA) investigations tied to aggressive revenue strategies and alleged upcoding. Regulators are increasingly scrutinizing whether financial incentives tied to PE ownership result in overutilization of services or unnecessary procedures. While scrutiny of PE remains elevated, it is largely concentrated on the degree of control and influence exerted over portfolio companies — especially in cases tied to FCA liability.

In *U.S. ex rel. Mandalapu v. Alliance Family of Companies LLC*,³ the DOJ announced a \$15.3 million settlement resolving claims that Alliance submitted false claims to federal healthcare programs for EEG tests that were incorrectly coded to increase reimbursement. The settlement also involved allegations against a PE firm that had invested in Alliance, highlighting the importance of robust billing and compliance practices.

Takeaway for Deal Terms: Understand the Sponsor's "Line of Sight"

FCA enforcement trends suggest the DOJ may examine the sponsor's involvement in operational decisions. Some ways to mitigate these risks include clarifying the sponsor's role in governance versus operations and maintaining board-level oversight while avoiding involvement in day-to-day patient care decisions or billing practices that could trigger liability. Counsel can help provide a clear governance boundary to avoid allegations of direct control over clinical or billing practices.

PUBLIC AND LEGISLATIVE CRITICISM

Government officials have vocalized that PE ownership may prioritize profits over

patient care. This has led to congressional hearings and public investigations into PE's role in nursing homes, hospice care, and emergency room staffing.

For example, Prospect Medical Holdings, a PE-backed firm, faced bankruptcy proceedings after acquiring Eastern Connecticut Health Network and Waterbury Hospital. Accusations against Prospect included prioritizing profits over patient care and failing to invest in hospital infrastructure. These issues led to widespread criticism and scrutiny from local officials, emphasizing the reputational risks associated with PE ownership in healthcare.

Takeaway for Deal Terms: Monitor Portfolio Company Risk Post-Closing

It is important to establish post-acquisition compliance audits and consider board-level compliance reporting. Risks don't end at closing, and ongoing oversight helps prevent problems from escalating into government investigations.

CONCLUSION

PE investment in healthcare continues to offer compelling returns, but the legal and regulatory environment is growing more complex. Proactive legal planning is essential to avoid pitfalls and protect long-term value.

Endnotes

1. Available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/2010031-us-anesthesia-partners-inc-ftc-v>.
2. FTC, "FTC Approves Final Consent Order with Welsh Carson" (May 20, 2025), available at <https://www.ftc.gov/news-events/news/press-releases/2025/05/ftc-approves-final-order-welsh-carson>.
3. U.S. Department of Justice, "EEG Testing and Private Investment Companies Pay \$15.3 Million to Resolve Kickback and False Billing Allegations" (July 21, 2021), available at <https://www.justice.gov/archives/opa/pr/eeg-testing-and-private-investment-companies-pay-153-million-resolve-kickback-and-false>.

Reprinted from Journal of Health Care Compliance, Volume 27, Number 4, July–August 2025,
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