

DOJ ANTITRUST DIVISION AND THE OFFICE OF INSPECTOR GENERAL AT HHS ANNOUNCE PLANS TO CLOSELY COORDINATE ON HEALTHCARE INVESTIGATIONS

On December 9, 2022, the Department of Justice Antitrust Division ("DOJ" or "Division") and the Office of the Inspector General ("OIG") of the Department of Health and Human Services ("HHS") signed a [memorandum of understanding](#) ("MOU") aimed at increasing coordination in information sharing, enforcement activity, trainings, outreach and education with respect to healthcare entities.¹ The MOU outlines procedures to be followed by both agencies in working together to promote competition in healthcare markets and protect federal healthcare programs. This announcement closely tracks the Biden Administration's encouragement of federal agencies with overlapping jurisdiction to coordinate and cooperate efforts in stopping anticompetitive effects as laid out in the [Executive Order on Promoting Competition in the American Economy](#).² Specifically, the Division and OIG emphasized their interest in protecting federal health care programs and promoting competitive health care markets. The MOU is effective immediately.

¹ Press Release, Dep't of Just., *Justice Department's Antitrust Division and the Office of the Inspector General of the Department of Health and Human Services Announce Partnership to Protect Health Care Markets* (Dec. 9, 2022), available at <https://www.justice.gov/opa/pr/justice-department-s-antitrust-division-and-office-inspector-general-department-health-and>.

² Exec. Order No. 14,036, 85 Fed. Reg. 36,987 (July 9, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-07-14/pdf/2021-15069.pdf>.

In practice, according to the MOU, increased coordination between the Division and the OIG will involve:

- Regular meetings between agency liaisons regarding anticompetitive conduct or deceptive trade practices, exchanges of information, training programs, public outreach, and technical assistance.
- Sharing information or evidence including complaints, investigative files, reports, analyses, or data between the agencies. Requests for information must be made through the agency liaisons.
- Referring potential violations of law observed by one agency but within the other agency's jurisdiction to the appropriate agency.

The impact from this closer coordination is the potential for the OIG or Division to open investigations based on information that was initially disclosed to the other agency in an unrelated matter. For example, in the context of an antitrust investigation into a merger that is before the Division, if documents and information are produced that indicate a potential violation of law under OIG's authority, then the Division could refer that information to the OIG for further investigation.

The MOU and accompanying [press release](#) also emphasize OIG's authority to exclude individuals and entities from federal health care programs for a variety of reasons, including criminal antitrust violations. Those that are excluded are barred from receiving payments under federal health care programs for items or services they furnish, order, or prescribe.

Key Takeaways

- The recently announced MOU between the Division and the OIG is primarily focused on expanding cooperation between the agencies, most notably as it relates to sharing information about potential violations of law within the other's jurisdiction. In other words, parties subject to OIG or the Division investigations should recognize that information disclosed to one agency could be referred to the other agency where that information might indicate a potential violation of law.
- Criminal antitrust convictions are within OIG's exclusion authority. While the MOU simply reiterates OIG's existing authority with respect to mandatory and permissive exclusions, it also reflects an intention to use exclusion more aggressively in connection with criminal antitrust convictions. However, the MOU indicates that if a criminal antitrust investigation is resolved through a plea agreement, deferred prosecution agreement, non-prosecution agreement, or other form of resolution, and the person or entity is subject to OIG's exclusion authority, then the OIG will work to ensure that federal health care program beneficiaries' access to services and products are not affected.

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