

Michigan Hospitals Settle with DOJ/State AG Over Scheme Not to Compete

At the end of last month, the Antitrust Division of the Justice Department and the Michigan Attorney General's Office filed a civil [complaint](#) against four Michigan hospitals, alleging the providers had agreed not to compete with one another in violation of Sherman Act §1 and Michigan state law. DOJ and the Michigan AGO filed a [proposed settlement](#) (in the form of a proposed final judgment) simultaneously with that complaint, which means that the parties had reached a settlement before either document was filed. This is common practice for the government in negotiating settlements. The defendants are Hillsdale Community Health Center, W.A. Foote Memorial Hospital, d/b/a Allegiance Health Community Health Center of Branch County, and ProMedica Health System, Inc. Not all of the defendants are included in the proposed settlement|W.A. Foote is not a "settling defendant" in the proposed order.

The complaint alleges that the defendant hospitals, which provide many of the same hospital and physician services to patients in south-central Michigan, agreed with one another not to market those services to certain patients to avoid competing. Ideally, the hospitals would compete on price, quality, and other factors to sell their services to patients, employers, and insurance companies. Instead, the hospitals entered agreements whereby they would avoid marketing overlapping services so that one provider would be shielded from competition in a given area. The marketing tools that were curtailed subject to the defendants' agreements include: (1) advertisements through mailings and media such as local newspapers, radio, television, and billboards|(2) the provision of free medical services, such as health screenings,

physician seminars, and health fairs|(3) educational and relationship-building meetings that provide physicians with information about quality and range of services|and (4) marketing activities with employers.

The settlement enjoins the hospitals from further marketing agreements or territorial allocations. In addition, it requires each settling defendant to appoint an Antitrust Compliance Officer, whose duties are to include obtaining compliance certifications from officers, directors, and marketing managers, to ensure ongoing compliance education, and to oversee the reporting of future violations to DOJ and the Michigan AGO. The settling defendants also have to promise to cooperate fully with future investigations and litigation related to marketing restrictions in south-central Michigan, as well as to consent to periodic compliance inspections.

Who knew that, in addition to a lack of transparency about their prices, hospitals might be engaging in an intentional lack of transparency about their services and quality (the good kind that they should be touting)? This settlement goes to show that the enforcement entities must continue to be vigilant to ensure information flow to consumers and to encourage honest competition.

For more information on the case, see the DOJ's press release [here](#).