Biden Executive Order Seeks to Tackle Healthcare Consolidation and Boost Competition

In an encouraging boost to efforts to promote healthcare competition and price transparency, President Biden signed a sweeping executive order that targets consolidation and lack of competition in the healthcare industry, among others. As part of the Executive Order on Promoting Competition in the American Economy released on July 9th, the President targeted specific market players in the healthcare sector, including hospitals, health insurers, and prescription drug manufacturers. The Executive Order affirms the policy of the Biden Administration "to enforce the antitrust laws to combat the excessive concentration of industry, the abuses of market power, and the harmful effects of monopoly and monopsony."

As outlined in the White House Fact Sheet, significant consolidation in the insurance, hospital, and prescription drug markets results in a lack of competition and contributes to high healthcare prices. Specifically, in the provider market, the ten largest hospital systems control a quarter of the market "thanks to unchecked mergers," allowing hospitals in those more consolidated markets to charge higher prices than in markets with more competition. Likewise, consolidation in the health insurance industry leaves consumers with few choices for health plans, particularly amidst the lack of price transparency. In the pharmaceutical industry, the largest brand name drug companies limit competition by using "pay for delay" agreements that pay generic competitors to delay entering the market with cheaper generic versions of the drugs, increasing prices by $3.5 billion per year with the resulting market power.

The Executive Order seeks to address the effects of such consolidation and lack of competition by calling on federal agencies, including the Federal Trade Commission (FTC), Department of Justice (DOJ), and Department of Health and Human Services (HHS) to strengthen their antitrust guidance and to create and enforce new rules. Additionally, the Order created the White House Competition Council to coordinate

and facilitate federal government efforts to implement administrative actions as necessary according to the Order.

The Source compiled the expansive list of initiatives affecting healthcare price and competition as directed by the Executive Order by key policy issues in an at-a-glance chart below:

	Healthcare Entities Targeted	**Enforcement Agency**	**Executive Order Directive**
Market Competition and Consolidation	Hospitals	FTC and DOJ	• Vigorously enforce antitrust laws specific to healthcare • Review and revise merger review guidelines • Challenge previously consummated mergers that were unchallenged
	Health insurers	HHS	• Standardize plan options on ACA exchanges to facilitate comparison shopping
Anticompetitive Contract Clauses	Hospitals and physicians	FTC	• Ban or limit non-compete agreements
Price Transparency	Hospitals	HHS	• Support federal rule requiring hospitals to post payer-negotiated rates
	Hospitals and health insurers	HHS	• Implement surprise billing legislation “No Surprises Act”

Prescription Drug Pricing	Brand-name drug manufacturers	FTC	• Ban “pay for delay” tactics
	All drug manufacturers	FDA and states	• Work together to facilitate drug importation from Canada
	All drug manufacturers	HHS	• Encourage generic and biosimilar drugs • Create a plan to limit price gouging and lower drug prices