

**NOVEMBER 30, 2018**

For more information,
contact:

Norm Armstrong, Jr.
+1 202 626 8979
narmstrong@kslaw.com

Jeff Spigel
+1 202 626 2626
jspigel@kslaw.com

John Carroll
+1 202 626 2993
jdcarrroll@kslaw.com

King & Spalding

Washington, D.C.
1700 Pennsylvania Avenue, NW
Washington, D.C. 20006-4707
Tel: +1 202 737 0500

FTC Closes Its Investigation Into Hospital Merger After Massachusetts Attorney General Settlement

The Federal Trade Commission voted unanimously to close its investigation into the proposed merger of two health systems in eastern Massachusetts. The proposed transaction would bring together the Care Group, Inc., the parent company of Beth Israel Deaconess Medical Center, Mount Auburn Hospital, and New England Baptist Hospital with the Lahey Health System, Inc., Seacoast Regional Health System, and BIDCO Hospital, LLC.

The parties negotiated a settlement with the Massachusetts Attorney General's Office that would cap prices for seven years, mandate participation in the state's Medicaid and Children's Health Insurance Program MassHealth, and require \$71.6 million in investments supporting healthcare services for low-income and underserved communities in Massachusetts. The \$71 million investment includes \$41 million to fund and support affiliated community health centers and safety net hospitals, \$8.8 million in additional financial support for affiliated community health centers, \$5 million to expand access to health care for communities of color and low-income communities and \$16.9 million to improve access to mental health and substance use disorder treatment. The parties must also engage a monitor to ensure compliance with the settlement.

The FTC issued a statement explaining its reasons for closing its investigation, noting that the decision "whether to take an enforcement action was a close call" but that the "Commission does not typically pursue behavioral remedies in merger cases." Interestingly, the Commission noted that this transaction may provide a good opportunity for a retrospective study of merger effects, including the effects of efficiencies suggesting that it may keep a close eye on this market.



TAKEAWAYS

Hospital providers should note that even if the FTC decides not to pursue an enforcement action, a transaction may still be subject to state antitrust action. In addition, state antitrust concerns may be able to be addressed through behavioral remedies rather than divestiture in contrast to the federal antitrust agencies who will generally seek structural relief to address antitrust concerns arising from hospital system consolidation. The FTC in particular has been reluctant to accept behavioral remedies to resolve competitive concerns in mergers because such remedies can be difficult to structure and hard to oversee since the Commission lacks the resources to monitor such arrangement effectively. The Antitrust Division of the Department of Justice historically has been more willing to accept such remedies but more recently has stated that the division will cut back on behavioral commitments and rely more on structural relief to remedy merger concerns.

ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,000 lawyers in 20 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising."

ABU DHABI	CHICAGO	HOUSTON	NEW YORK	SILICON VALLEY
ATLANTA	DUBAI	LONDON	PARIS	SINGAPORE
AUSTIN	FRANKFURT	LOS ANGELES	RIYADH	TOKYO
CHARLOTTE	GENEVA	MOSCOW	SAN FRANCISCO	WASHINGTON, D.C.
