# Anti-Trust Laws

Anti-trust laws are actually a collection of different state and federal laws that govern the business methods of organizations. The laws were put in place to allow for fair competition. Some of the laws seek to prevent monopolies from forming. An organization that becomes a monopoly could push out all competitors, create a niche, and then raise prices. The idea behind competition is the ideal of keeping costs low and creating consumer choice.

Anti-trust laws do affect front line clinicians, too. Smaller organizations may find unfair contracting with health plans, for example. Larger organizations may be able to provide care at a lesser rate than a smaller one. Unfavorable health plan negotiations could cause a smaller organization to close.

Some clinicians are independent contractors or perhaps work per diem jobs. These types of jobs may also create anti-trust issues where contracting companies seek to be sole providers to specific facilities. While a much smaller scale, anti-trust laws are often brought in to stop unfair methods of blocking competition.

Anti-trust laws go back to the 1800s. Read the Federal Trade Commission fact sheet/infographic for the historical perspective. Throughout recorded history, there have always been people who wish to take advantage of others. Civilized nations seek to bring forward legislation to protect people from being taken advantage of. There are a series of anti-trust laws. Some of the more salient are:

**The Sherman Act** is the nation's oldest anti-trust law. It was passed in 1890 to make it illegal for competitors to price fix or try to destroy competition. This law makes it illegal for one entity to have a monopoly over all others. This act has been challenged many times including by the telephone companies when the Bell Telephone Company was forced to break up its monopoly and allow many smaller "baby Bells" to exist. The Sherman Act is often seen coming into force when large hospital organizations or health plans are merging and creating organizations that could be deemed "too big to fail." This act is tested often in the health care environment with pharmaceutical companies and patents on expensive drugs that have no generics.

**The Clayton Act** came after the Sherman Act. As businesses were settling into ethical practices, mergers became a way of becoming more powerful. The Sherman Act seeks to curtail specific efforts to form monopolies that would basically quash any chance of competition.

In 1914, the Federal Trade Commission **(FTC**) was created to manage the antitrust laws. As part of the FTC, there are other features such as price fixing. Price fixing is considered a violation of antitrust laws. Price fixing happens when competitors get together to come up with a single price that all will use to sell a service or a product. Price fixing seeks to crush competition based on pricing models. Health care organizations are often wary about the issue of price fixing. As Health Maintenance Organizations (HMOs) and other health plans seek to set the price they are willing to pay for services, the idea of price fixing arises frequently. This continues to be a contentious part of antitrust laws that health care organization often cite in contract negotiations.

Some of the most heated discussions that deal with anti-trust in health care include mergers and acquisitions. There is legislation that tries to protect anyone health care entity from becoming too large and thereby creating a monopoly. Following are examples of merger cases that included anti-trust issues.

**Recent Antitrust Enforcement in Health Care – Case Studies**

Two cases from Dykema Case Studies 2016 provide nice examples of how Anti-Trust laws have been used recently in health care. The first case investigates a marketing scheme that was deemed to be a violation of state and federal laws. The second case examines how health plan contracting created an unfavorable business environment.

**The Department of Justice (DOJ) Sues Hospitals for Agreements That Limit Advertising**

The DOJ sued two West Virginia hospitals, alleging they agreed not to advertise on billboards or in print in the county in which the other hospital was located. The DOJ alleged the agreement disrupted the competitive process by depriving patients of information about their healthcare choices and by denying physicians the opportunity to advertise their services. Both hospitals settled the case by agreeing not to reach any agreement with a competitor to limit marketing, not to communicate with each other regarding marketing, and to appoint a compliance monitor that will send regular reports to the DOJ. This case followed a similar case brought by the DOJ last year, in which the DOJ alleged four Michigan hospitals had multiple agreements limiting advertising of certain services near the other hospitals. Three of the Michigan hospitals settled under terms similar to those in the West Virginia case; one hospital continues to fight the claims in court. DOJ Challenges Anti-Steering Clauses in Managed-Care Contracts The DOJ sued the largest hospital system in the Charlotte, North Carolina, area, alleging the system used its market power to force insurers to agree to contract clauses aimed at preventing the insurers from incentivizing patients to use lower-priced, competing providers. According to the DOJ, these "anti-steering clauses" prevent

insurers from offering tiered network products that include competitors of the dominant hospital system in the top tier and from offering narrow-network products consisting solely of the dominant hospital's competitors. The DOJ claims these provisions restrain competition by limiting or eliminating products that would steer patients to lower-cost providers and thereby put more competitive pressure on the dominant hospital system. This ongoing case illustrates another avenue by which the DOJ can use antitrust laws in an attempt to control rising health care costs. In addition to government enforcement, payors and competitors may file private lawsuits that can be as costly and time-consuming as government investigations. Therefore, it is important for providers, particularly those with large market shares, to understand the antitrust risks when contemplating arrangements that may adversely impact or disadvantage competing providers.

Anti-trust laws have far reaching jurisdiction. Any activity that seeks to limit competition or attempts to put a competitor out of business is seen as a possible violation. You could see this occur as some hospital corporations are aggressively merging, buying up, or creating exclusive networks in some geographic areas. As a clinician, there is often concern about salaries when organizations become too large and are the only health care employer in the area. Wages could stagnant and benefits plateau. Anti-trust laws are in place to protect the consumer. That consumer could be you.