

Market Allocation = Antitrust Consequences

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The U.S. Department of Justice and the State of Michigan recently initiated a civil antitrust action to enjoin certain marketing agreements between four south-central Michigan hospital systems alleging that the agreements unlawfully allocate territories for the marketing of health care services, thereby limiting competition among the hospitals. In *United States v. Hillsdale Community Health Center*, Hillsdale and each of its three co-defendants, Allegiance Health, Community Health Center of Branch County, and ProMedica Health System, operate general acute-care hospitals in adjacent Michigan counties. Although all four defendants historically competed with each other to provide health care services to the residents of the surrounding area, Hillsdale developed "gentlemen's agreements" with each of the other three hospitals to restrict the marketing of competing health care services. The senior executives of the defendant hospitals created and enforced these agreements for several years. In the words of one ProMedica communications specialist: "The agreement is that they stay [out] of our market and we stay out of theirs unless we decide to collaborate with them on a particular project." The Government characterized the hospitals' agreements as "naked restraints of trade that are *per se* unlawful under Section 1 of the Sherman Act" as well as state antitrust law. With the complaint, the Government filed a stipulation and proposed final judgment as to Hillsdale, Branch, and ProMedica. The final judgment enjoins the settling defendants from (1) agreeing with any health care provider to prohibit or limit marketing or to allocate geographic markets or territories, and (2) communicating with any other defendant about any defendant's marketing in its or the other defendant's county. The proposed settlement also requires each defendant to appoint an antitrust compliance officer within 30 days of the entry of final judgment. The action will continue against Allegiance, which declined the Government's settlement offer and issued a statement maintaining that "regulators have misinterpreted Allegiance's conduct." This case is an important reminder that antitrust authorities may vigorously prosecute marketing agreements that disrupt the competitive process. Because marketing is a key component of competition between rival health systems, hospitals and other health care providers must be vigilant to avoid conduct that could be perceived as market allocation.

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