

FTC chief gears up for a showdown with private equity

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A recent Federal Trade Commission civil lawsuit accusing one of the nation's largest anesthesiology groups of monopolistic practices that sharply drove up prices is a warning to private equity investors that could

temper their big push to snap up physician groups.

Over the past three years, FTC and Department of Justice officials have signaled they would apply more scrutiny to private equity acquisitions in health care, including roll-up deals in which larger provider groups buy smaller groups in a local market.

Nothing happened until September, when the FTC sued U.S. Anesthesia Partners and the private equity firm Welsh, Carson, Anderson & Stowe in [federal court](#) in Houston, alleging they had rolled up nearly all large anesthesiology practices in Texas.

In the first FTC legal challenge against a private equity purchase of medical practices, the federal agency targeted one of the most aggressive private equity firms involved in building large, market-dominating medical groups.

In an interview, FTC Chair Lina Khan confirmed that her agency wants to send a message with this suit. Welsh Carson and USAP "bought up the largest anesthesiology practices, then jacked up prices and entered into price-setting and market-allocation schemes," said Khan, who was appointed by President Joe Biden in 2021 to head the antitrust enforcement agency, with a mandate to combat [health care](#) consolidation. "This action puts the market on notice that we will scrutinize roll-up schemes."

The large and growing volume of private equity acquisitions of physician groups in recent years has raised mounting concerns about the impact on health costs, quality of care, and providers' clinical autonomy. A *JAMA Internal Medicine* study published last year found that prices charged by anesthesiology groups increased 26% after they were acquired by private equity firms.

"Now we're seeing that scrutiny with this suit," said Ambar La Forgia, an assistant professor of business management at the University of California-Berkeley, who co-authored the *JAMA* article. "This suit will cause companies to be more careful not to create too much [local market](#) power."

The FTC's lawsuit alleges that USAP and Welsh Carson engaged in an anti-competitive scheme to gain market power and drive up prices for hospital anesthesiology services. The FTC also accuses USAP and Welsh Carson—which established the medical group in 2012 and has expanded it to eight states—of cutting deals with competing anesthesiology groups to raise prices and stay out of one another's markets.

USAP now controls 60% of Texas' hospital anesthesia market, and its prices are double the median rates of other anesthesia providers in the state, according to the lawsuit. Learning that USAP would boost rates following one acquisition, a USAP executive wrote, "Awesome! Ch-ching," the civil complaint said.

In a written statement, Welsh Carson, which also holds sizable ownership shares in radiology, orthopedic, and primary care groups, called the FTC lawsuit "without merit in fact or law." It said USAP's commercial rates "have not exceeded the rate of medical cost inflation for close to 10 years."

The New York firm also said its investment in USAP "has allowed independent anesthesiologists to deliver superior clinical outcomes to underserved populations" and that the FTC's action will harm clinicians and patients. Welsh Carson declined a request for interviews with its executives.

"This is a pretty common roll-up strategy, and some of the big private equity companies must be wondering if more FTC complaints are

coming," said Loren Adler, associate director of the Brookings Schaeffer Initiative on Health Policy. "If the FTC is successful in court, it will have a chilling effect."

Since the FTC filed the USAP lawsuit, Khan said, the agency has received information from people in other health fields about roll-ups it should scrutinize. "We have limited resources, but it's an area we are interested in," she said. "We want to focus on where we see the most significant harm."

In physician acquisition deals, PE firms typically use mostly borrowed money to acquire a controlling interest in a large medical group, pay the physician owners a substantial upfront sum in exchange for sharply cutting their future compensation, and install a management team. Then they seek to acquire smaller groups in the same geographic market and bolt them onto the original medical group for more bargaining clout and operating efficiencies.

The PE firm's goal is to garner at least 20% dividends a year and then sell the group to another investor for at least three times the purchase price in three to seven years. Critics say this short-term investment model spurs the investors and medical groups to boost prices and cut staffing to generate large profits as fast as possible.

"Private equity is trying to extract value quickly and sell the company for a profit, so there's a lot more incentive to increase prices quickly and extract higher revenue," La Forgia said.

In the two years after a sale, PE-owned practices in dermatology, gastroenterology, and ophthalmology charged insurers 20% more per claim on average than did practices not owned by private equity, according to a *JAMA* study published last year.

There are similar concerns about hospital systems acquiring physician practices, which also have raised prices. "The evidence shows that both private equity and hospital acquisitions of physician practices are bad for consumers, and scrutiny should be applied to all acquirers," Adler said.

Critics warn that private equity roll-ups of medical groups can jeopardize quality of care, too. Chris Strouse, a Denver anesthesiologist who served on USAP's national board of directors but left the company's Colorado group out of disapproval in 2020, cited patient safety issues arising from short staffing and mismanagement.

He said USAP would schedule shifts so that three or four providers would hand off to each other a single surgical procedure, which he said is risky. In addition, USAP frequently asked anesthesiologists to work the day after working a 24-hour on-call shift, he said. "The literature shows that's outside the safety range," he said. As a result, many providers have left USAP, he added.

The FTC has long been lax in monitoring roll-ups of physician groups, in part because federal law does not require public reporting of these deals unless they exceed \$111.4 million in value, a threshold adjusted over time. Lowering the threshold would require congressional action. As a result, regulators may be unaware of many deals that lead to gradual market concentration, which allows providers to demand higher prices from insurers and employer health plans.

Recognizing that problem, the FTC proposed in June to beef up its reporting requirements for companies planning mergers, in hopes of spotting previous acquisitions of smaller groups that could lead to excessive market power and higher prices. In addition, in a draft of their merger review guidelines, issued in July, the FTC and the Department of Justice said they would consider the cumulative effect of a series of smaller acquisitions.

"The ways PE firms are making serial acquisitions, each individual acquisition is under the radar, but in aggregate they roll up the whole market," Khan said. "Between the merger reporting form and the new merger guidelines, we want to be able to better catch unlawful roll-up schemes. ... This would enable us to stop roll-ups earlier."

But Brian Concklin, a lawyer with the law firm Clifford Chance, whose clients include private equity firms, said the FTC's proposed reporting requirements would hamper many legitimate mergers. "The notion that they need all that information to catch deals that lessen competition seems overblown and false, given that the vast majority of these deals do not lessen competition," he said. "It will be a substantial burden on most if not all clients to comply."

Researchers and employer groups, however, were encouraged by the FTC's action, though they fear it's too little, too late, because consolidation already has reduced competition sharply. Some even say the market has failed and price regulation is needed.

"Providers have been able to extort higher prices on services with no improvement in quality or value or access," said Mike Thompson, CEO of the National Alliance of Healthcare Purchaser Coalitions. "The FTC stepping up its game is a good thing. But this horse is out of the barn. If we don't have better enforcement, we won't have a marketplace."

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