

At JP Morgan conference, health care investors gear up for transformative legal developments

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As one of the world's largest and most heavily attended health care conferences, the 43rd annual JP Morgan Healthcare Conference (JPM) will gather industry leaders to discuss health care trends and explore new investment opportunities in the sector. Not only does the conference, which will be held in San Francisco from Jan. 13 to 16, serve as a platform for companies to present their business plans, but it also facilitates new partnerships and collaborations.

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Below are key market and legal developments impacting health care delivery that will be top of mind for investors at the conference.

2025 health care investment and development predictions

While health care investments have generally slowed since 2022, the market is showing positive signs indicating a gradual rebound for more dealmaking in 2025. Recent interest rate cuts, speculation that the incoming Trump administration will foster a more deal-friendly environment, and dry powder held by U.S. private equity investors reaching an all-time high all add fuel to the M&A fire.

Investments in health care technology services, artificial intelligence (AI) and data-driven models are expected to be strong in 2025. In our increasingly digital world, data is a hot commodity.

According to a 2022 analysis, a one-dollar investment in data across multiple sectors — including health — generates an average economic return of 32 dollars, making it no question why health care investors are setting their sights on data platforms and analytics, digital health, and AI innovation in 2025. Dalberg & Global Partnership for Sustainable Development Data, "Multiplying progress through data ecosystems" (2022).

There also remains a continued focus on investments and growth in post-acute care, behavioral health, chronic disease management, telehealth and remote monitoring, and specialty medical practice models. The ever-increasing emphasis on value-based risk-sharing and other unique payment models may also influence growth opportunities for the provider sector in 2025.

Regulatory considerations for 2025 and beyond

With increased investment and growth in health care come additional considerations of emerging regulatory and enforcement trends that may impact how businesses are valued and assessed for risk.

Throughout 2024, federal and state regulators have continued to take steps to address concerns about investments in health care and innovation, including:

Federal scrutiny and oversight of health care investments.

Through workshops, requests for public comment, and other oversight efforts, the Federal Trade Commission (FTC), the Department of Justice (DOJ), and the Department of Health and Human Services (HHS) focused efforts throughout 2024 on how investments — especially investments by private equity — affect health care competition, quality of care, and affordability.

The FTC has specifically expressed concerns regarding roll-up acquisitions resulting in consolidation in the market through a series of smaller transactions and what it has termed "flip and strip" approaches where private equity firms use large amounts of debt to acquire companies with the perceived goal of quickly increasing profits to resell.

The FTC and DOJ new Merger Guidelines released last December expand the number and types of transactions subject to antitrust challenge and allow the FTC to evaluate the cumulative impact of these acquisitions.

On Sept. 21, 2023, the FTC filed suit in the Southern District of Texas against U.S. Anesthesia Partners (USAP) and its private equity minority owner Welsh, Carson, Anderson & Stowe (Welsh Carson) over an alleged decade-long "roll-up" strategy to consolidate anesthesiology practices in Texas. The FTC's complaint sought a permanent injunction and "structural relief" to remedy what

it claimed were antitrust law violations. In May 2024, the court granted Welsh Carson's motion to dismiss, signaling FTC overreach due to the particular facts of the case, including Welsh Carson being a minority shareholder in USAP.

As to USAP, the district court denied its motion to dismiss, including USAP's argument the FTC failed to allege plausible antitrust claims. The 5th U.S. Circuit Court of Appeals later dismissed USAP's appeal of the district court's denial in September 2024 and ruled that USAP would have to appeal any district court findings after a final judgment.

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USAP contends, in part, that the FTC does not have the statutory authority to challenge long-past acquisitions or USAP's administrative services and other agreements with other Texas providers, health insurers continue to have the leverage to prevent USAP from exercising any alleged power it has, the FTC's market definition fails to take into consideration non-hospital-based anesthesiology services, and USAP has not engaged in the requisite exclusionary conduct.

FTC Chair Lina M. Khan has remarked that the "FTC will continue to scrutinize and challenge serial acquisitions, roll-ups, and other stealth consolidation schemes." (See FTC press release, Sept. 21, 2023.) It remains to be seen how the incoming Trump administration will influence FTC and DOJ enforcement priorities with regard to antitrust scrutiny of these investments.

HHS has also increased attention on health care investments through Medicare provider oversight, particularly with regard to ownership disclosures in Medicare Enrollment applications. For example, the CMS-855A Medicare Enrollment Application now requires providers (i.e., hospitals, home health agencies, hospice providers, skilled nursing facilities and other institutional providers) to disclose whether owners are private equity firms, real estate investment trusts or other investment firms.

Skilled nursing facilities (SNFs) are now required to identify substantially more detailed ownership and control information to Centers for Medicare and Medicaid Services (CMS), and CMS is initiating off-cycle revalidations for all SNFs from October to December 2024 to collect this information.

The DOJ's expectations regarding corporate compliance following M&A transactions. The DOJ's updates to its criminal division's compliance program guidance set forth additional factors for DOJ prosecutors to consider when assessing the corporate compliance program of an organization that is subject to criminal enforcement. The DOJ has provided greater clarity around implementing post-acquisition compliance policies and audits for

newly acquired entities. The DOJ will look at the company's process for integrating the compliance program and risk assessment activities post-acquisition, what oversight is in place for the newly acquired business, how compliance policies are organized, and how newly acquired entities are audited. These updates underscore the importance of robust compliance programs for investors and their portfolio companies in 2025.

State scrutiny and oversight of health care investments. At the state level, some regulators and legislators share the federal government's concerns over health care investments. Certain states have passed laws requiring prior notice or even approval related to material health care transactions. Some state laws focus on hospital or physician practice transactions while other laws more broadly apply to a variety of health care entities. States with current transaction notification laws are California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Massachusetts, Minnesota, Nevada, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington. States like Pennsylvania may introduce new legislation in 2025 targeting health care transactions.

We will continue to see developments from states and expect ongoing dialogue at JPM regarding how this evolving oversight may impact deal trends in 2025. New investments, add-ons, and divestitures may be impacted by such laws, and timing for regulatory review and approvals should be considered when negotiating deal terms and timing of closing.

Corporate practice of medicine. State prohibition on the corporate practice of medicine (CPOM) is a longstanding doctrine impacting health care investments involving medical and dental practices. In states with a CPOM doctrine, it is common for investors to acquire a practice's non-clinical assets with an investor-owned management company providing turnkey management and administrative services in exchange for a management fee, which must comply with any state specific fee-splitting laws. Most state CPOM doctrines are articulated through Medical and Dental Board regulations, sub-regulatory guidance (such as Policy and Position Statements), and case law.

Notably, in 2021 the American Academy of Emergency Medicine filed a lawsuit in California against investor-owned Envision Healthcare and Envision Physician Services arguing that Envision's business model violated California's CPOM doctrine. Rather than pursuing litigation (and potential court scrutiny of Envision's arrangements), the parties reached a settlement in July 2024 whereby Envision will exit the California market.

Responsible AI and data use. States have begun to introduce and enact laws targeting AI, meaning an AI platform in one state may be subject to varying requirements in others. On a federal level, the DOJ has launched its Justice AI Initiative and updated its compliance program guidance to address AI misuse. Health care companies will be expected to assess risks associated with emerging technologies like AI and implement appropriate policies, controls, training, and monitoring of associated risks.

Evolving HIPAA regulations and enforcement trends. Enforcement under HIPAA may also evolve in response to AI and

other technological developments as well as continuous concern over cybersecurity threats to health information. For example, the Office of Civil Rights (OCR) and HHS previously issued a bulletin warning against online tracking technologies that collect information about individuals using webpages and mobile applications of HIPAA-regulated entities.

While a U.S. district court recently vacated a portion of this guidance as overreaching, HHS is still assessing its next steps. OCR also continues to assess the impact of the Change Healthcare data breach that occurred in February 2024, in which hackers gained unauthorized access to the medical, personal, and/or financial information of more than 100 million individuals by means of a ransomware attack.

Conclusion

The 43rd annual JP Morgan Healthcare Conference will highlight the critical intersection of innovation and regulation in the health care sector. The new year will bring exciting opportunities in health care investment, innovation, and care delivery. These opportunities — balanced with emerging regulatory and enforcement trends — will set the stage for 2025.

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