***Regulatory Oversight* Podcast**
12 Days of Regulatory Insights: Day 2 – How State AGs Are Shaping Health Care Markets
Speakers: Chris Carlson, Lauren Fincher, Barry Boise
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Chris Carlson (00:04):

Welcome back to the special holiday edition of our *Regulatory Oversight* podcast, the 12 Days of Regulatory Insights. This 12-episode series is focused on key highlights and trends from this past year in various areas and designed to keep our listeners informed and engaged during the holiday season. I'm Chris Carlson, a partner in our rise practice, and a member of our state attorneys general team. Before we get started today, I want to remind all our listeners to visit and subscribe to our blog *Regulatory Oversight*.com so that you can stay up to date on developments and changes in the regulatory landscape. Today I'm joined by two of my colleagues, Lauren Fincher and Barry Boise to discuss what AGs have been doing in the healthcare sector during 2025 and to anticipate emerging trends for the upcoming year. Lauren is a partner in our rise practice and part of our state AG team. She sits in Austin and has extensive experience with state AG investigations, regulatory compliance and litigation. Barry is a partner in the firm's healthcare and life sciences litigation practice, bringing decades of experience in guiding health sciences clients through complex challenges. He sits in Philly and joins us today due to his extensive background in defending the healthcare industry and state AG investigations and litigation. Thank you both for joining me today. Thanks, Chris.

Lauren Fincher (01:22):

Happy to be here.

Chris Carlson (01:23):

Let's set the table here. How have AGs historically regulated and taken enforcement actions regarding the healthcare sector?

Barry Boise (01:29):

Well, historically, attorney generals in the healthcare sector have focused on pharmaceutical and medical device companies often and almost exclusively using private contingency outside counsel to bring those lawsuits. The allegations there are often focused on an alleged overstatement of efficacy or downplaying of a safety risk of a particular product. In addition, along the healthcare continuum, AGs have also gone after nursing homes claiming that there is quality of care concerns based on allegations or suspicion that cost cutting causes less than optimal care. More recently, these areas have greatly expanded well beyond manufacturers of pharmaceuticals or medical device manufacturers really going after the entire healthcare ecosystem. So it's not only manufacturers of devices and drugs, it is PBMs, it's pharmacies, it's consultants of those entities. It is private equity that owns some of those entities. So really

anywhere where there is a suspicion by a state attorney general that an activity could increase drug costs, they are now interested and trying to find a seat at the table

Chris Carlson (02:49):

And with that desire to have an expanded seat at the table, what are the issues that they really are prioritizing?

Barry Boise (02:56):

Well, drug pricing is really the biggest issue right now. Trying to find a seat at the table and claim some sort of effort to decrease drug costs, that is certainly a very important area. Another area also tied to costs is whether there's too much consolidation in the market, so there's an antitrust, any competitive focus to it, and then also the role of PBMs as it relates to drug pricing. So that really seems to be a critical focus

Chris Carlson (03:25):

And understanding that you have this novel context where we really are expanding the scope of scrutiny, not just to the pharmaceutical manufacturer, not just to a hospital. What are the tools that are being utilized, Lauren, to really get to the end goals here?

Lauren Fincher (03:45):

Yeah, I think it's a great question, Chris. I think there are a set of tools that are sort of in the regular playbook for state attorneys general that they have at their disposal in order to effectuate their enforcement priorities with respect to what I would call more traditional or run of the mill fraud and abuse issues. The tried and true AG mechanism is the state UDAP law, unfair deceptive abusive acts or practices here in Texas. We affectionately call that the DTPA. Various states have their own versions. State AGs have also utilized the Medicaid fraud statutes and anti-kickback statutes, particularly within the Medicaid fraud control units operating within various state attorneys general offices to pursue fraud and abuse claims tied to improper government payments, improper inducements for referrals. As Barry mentioned on the anti-competitive side of things, state AGs have certainly flexed their state antitrust enforcement and authority with an eye toward challenging large healthcare mergers that threaten to reduce competition and also utilizing some state public nuisance laws as support for AG claims. And just a flag here, the interesting point is that while there are statutory tools that have been historically available to state AGs, I think we are also observing in real time state attorneys general testing through litigation where there may be gaps in their statutory authority learning from those litigation matters. And then I would say getting creative about how to regulate in areas, particularly in healthcare that may be considered outside the scope of their historical domain. And really, I think being proactive in thinking through various mechanisms to obtain and utilize that authority.

Chris Carlson (05:51):

And I think it's been fascinating in the drug pricing area that you see two different approaches. You mentioned you really have regulation by enforcement, which is let's use an undefined UDAP statute or another statute to just take action and communicate your policy priorities through a lawsuit. The flip side on drug pricing, we've seen a number of states try to pass statutory or regulatory and regulations that are intending to deal with drug pricing. Rhode Island, for instance, is using their UAP authority. They have a notice in common and ability to pass rules to seek to evaluate how potential drug pricing could be implicated in healthcare. And even diving a little deeper into ai, how do we regulate AI in a way that everyone right now is left guessing? And so it's interesting how different states are approaching, what are perceived problems, how do we get to them? Barry, getting to that, I mean, talk me through your historical background. How are AGs looking at issues different than private counsel and how are their different lenses looking to what is the right way to take

Barry Boise (07:01):

Action? All this reference on history, Chris, you make me sound really old, but I think really to bring it more current, you have attorney generals that wear different hats, right? I mean, we think of them often as the top law enforcement officer of a particular jurisdiction, and that's certainly true, but they have other policy responsibilities and ways to really help shape legislation. I think you referenced a few ways in which they're doing it now. So for example, in Kentucky Interpreting Laws Attorney General most recently interpreted a law to be enforceable that would prevent PBMs from steering work to affiliated pharmacies. Bipartisan attorney generals in a bipartisan effort are writing Congress and seeking additional laws and ability to prevent PBMs from steering work towards affiliated pharmacies as well. So it really is not only an interpretation of their broad unfair trade practice laws, it's also seeking legislative action both at the federal and state level or interpreting their own laws in a way to suggest that they can have a seat at the table and enforce laws against really this entire healthcare ecosystem.

Chris Carlson (08:16):

And Barry, earlier you touched on just the broader focus of state AG is not limited to the typical manufacturer. One area we're seeing a lot of focus is in the private equity space. Lauren, will you touch on that area of scrutiny and how you've seen that develop?

Lauren Fincher (08:34):

Sure. So over the past few years, we've certainly seen increased attorney general activity in addressing the role of private equity in healthcare. I think particularly as it pertains to some of the statutory tools that are available to state AGs, we have seen a lot of AG involvement in the process of scrutinizing the impact of consolidation in healthcare transactions and also considering the nature of corporate ownership of healthcare entities and how that impacts healthcare delivery, specifically with respect to investigating anti-competitive practices, and as Barry mentioned earlier, really focusing on the impact of increased costs that may result from some of those transactions. I think big picture, it's also important to note that some of the more recent AG activity has not only been examining the overall competitive effect of a transaction, but also utilizing state laws, some of which are brand new or being proposed currently in various

states like Massachusetts, California, Indiana, and Pennsylvania, that actually insert the Attorney General into the approval process for transactions.

We're seeing state laws that require advanced notice of certain healthcare mergers or transactions and really put the AGs front and center in that process, or at least collaborating with other entities that are giving information to the attorney general so that they can exercise a fairly broad discretion in terms of evaluating whether those healthcare transactions should be stopped or stalled in any fashion. So again, I think the activity has been there for a couple of years in the private equity space, but it's really, I think, getting refined in terms of the potential AG powers and roles in that review. And I think that's been a very notable trend, especially this year in 2025.

Chris Carlson (10:44):

It is almost similar to outside of healthcare sector, but data breach notifications. But taking that next step, and not only is private equity being required to provide notice in the first instance, but now you need the approval of an attorney general, which putting them inside of this regulatory structure obviously gives them more authority. How do you see that playing out in different states that it may have different incentives?

Lauren Fincher (11:11):

I think it really is going to depend on the individual states and the individual state priorities there. I think it's still early in terms of identifying trends and how each state's going to respond to that role or that increased power and say so in terms of approving these healthcare deals. But certainly we have seen trends with some of the state attorneys general particularly who are focused again on mergers particularly of big provider systems and hospital systems, and really evaluating whether that is going to have a direct implication on pricing and healthcare cost. And I think that's really what we'll continue to see, especially on some of the provider facing transactions.

Chris Carlson (12:01):

Barry, let's touch on the enforcement actions that have happened in 2025 and how you think that they may inform 2026 and moving forward. Lauren, you touched on individual state priorities. So often state AGs move as a group and there's been a multi-state process. Have you seen there be a shift, Barry, from the typical multi-state action to individual actions?

Barry Boise (12:25):

We've really seen that across the board in the healthcare space and well beyond the healthcare space. Certainly in the healthcare space, individual states are making their own name, applying their own law, and their laws are unique to each state in order to take enforcement action, whether it's against PBMs, whether it's against manufacturers claiming some form of conspiracy in pricing or whether it has to do with manufacturers and sales reps and claims of kickbacks or other improper inducements. We're seeing individual states bringing lawsuits often without any

investigation in advance, but simply just bringing the lawsuit on behalf of the state and acting by itself.

Chris Carlson (13:11):

I think a key theme we've been all talking about is how states see a problem or plural problems in the healthcare space and are also identifying that what they perceive to be their tools are inadequate to backfill and looking for other opportunities for which to regulate the healthcare space. Understanding this environment, let's look into the crystal ball. What do you see coming in 2026? And maybe one of you guys can touch on just the role of public nuisance laws?

Barry Boise (13:44):

Yeah, I'll take the first shot at that because I think it really dovetails over the last question that you asked and which is multi-state, were common historically, we're seeing individual state action. We're seeing application of individual state law more often, and as it relates to public nuisance, that has really been brought into sharp focus in 2025, and we can really certainly expect there to be more debate litigation decisions concerning what is the proper scope of public nuisance in the opioids case, we have split of authority. We have West Virginia law being predicted by the Fourth Circuit to suggest that, well, a public nuisance could include a lawfully manufacturing produced product. In that case, opioids where you have the highest court in Oklahoma saying No public nuisance has to be tied to real property. You have Ohio interpreting its own law saying opioids is not the appropriate public nuisance vehicle because the product liability Act bars such a claim.

So really sharp focus on individual law and certainly the priorities of the attorney general and how to apply that law is something that we're seeing coming to greater focus. I think public nuisance will still be a tool that will be used and try to be expanded upon in states in which it can be permitted to be used, and other states would not be surprised to see legislative activity to expand the use of public nuisance. We've seen that outside the healthcare space in a number of different states where state law would not allow public nuisance, so there was a statutory fix to that as well. And Lauren,

Lauren Fincher (15:23):

Building off of what I mentioned earlier, I do suspect that in 2026 we will see increased utilization and implementation of the state laws regarding the private equity transaction approval process and pre notice process. I think that it'll be interesting to see how many states, again, individually decide to pass such laws, and then how is the attorney general going to implement those laws. Another item that I'm watching for 2026 is state attorney general inquiry and involvement in the Make America Healthy again initiative. I think we've started to see at the tail end of 2025, some state AG enforcement and lawsuits in this area, and it'll be very interesting to see how many other AGs join in that effort in 2026. Again, what we've seen this year is really a focus on enforcement and inquiries related to consumer issues around household products or other items, children's health.

So I think it'll be really, really interesting to see that. And then I think finally, another item that I am watching in 2026 again, has to do with private equity and specifically the AG focus the last

couple of years on a concern that private equity is really leading only to cost cutting and profit maximizing efforts. And so I think when you marry up that concern with the introduction of ai, I think that we will see AG inquiry and scrutiny on the use of AI in private equity owned healthcare entities in their operations, and specifically an evaluation of whether such use of AI is impacting care delivery.

Chris Carlson (17:17):

Those are great points. Barry and Lauren, let me put my little crystal ball on too. I think we're going to see a double down on focusing on drug pricing. If insurance premiums really do rise coming at the beginning of the year, and we're talking about what certain politicians are, say 30, 40, 50%, and in terms of insurance costs, I expect states to keep hearing from their constituents. AGs, that's what they hear about often is what we have heard. How do we find a solution to that at the state level? Lauren and Barry, I want to thank you again for joining me today. I know our listeners enjoyed your valuable insights, and I want to thank our audience for tuning into this special holiday series. Tune in for our next episode as we continue our 12 days of regulatory insight series. Please make sure to subscribe to this podcast via Apple Podcast, Google Play, Stitcher, or whatever platform you use, and we look forward to speaking with you next time.

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