



FTC Issues Favorable Advisory Opinion Permitting Competing Providers to Engage in Joint Contracting Where They are Sufficiently "Clinically Integrated"

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On April 13, 2009, the Federal Trade Commission (the "FTC") issued a significant advisory opinion (the "Advisory Opinion") to TriState Health Partners, Inc. ("TriState"), a physician-hospital organization ("PHO") based in Hagerstown, Md. The Advisory Opinion indicates that the FTC has no present intention to challenge TriState's proposed clinical integration program, which would include joint contracting by its members with health plans. In reaching this decision, the FTC concluded that TriState's joint contracting was "reasonably necessary" for TriState to achieve its overarching mission of lowering health care costs and improving the quality of care, and thus the program satisfied the "rule of reason." As such, the Advisory Opinion provides valuable additional guidance on the degree of "clinical integration" required for joint provider contracting with health plans, significantly expanding upon the guidance contained in the 1996 DOJ/FTC Statements of Antitrust Enforcement Policy in Health Care and later discussed in the FTC's 2006 Advisory Opinion to Suburban Health Organization, Inc.

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