



May 1, 2026

U.S. Department of Justice  
Antitrust Division  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

*Sent electronically*

Re: Joint Public Inquiry - Guidance on Collaborations Among Competitors; Docket No. ATR-2026-0001

Dear Sir or Madam:

On behalf of our more than 5,300 nonprofit and mission-driven aging services providers, LeadingAge is pleased to provide feedback to the Department of Justice, Antitrust Division and the Federal Trade Commission (the Agencies), in response to your public inquiry regarding potential additional guidance on collaborations among competitors. Our members serve older adults across the country and along a full spectrum of services and supports, such as affordable senior housing, assisted living and memory care, skilled nursing, home health, and hospice, and life plan communities that offer a continuum of housing and services to their residents.

In December 2024, DOJ and FTC jointly withdrew the 2000 [Antitrust Guidelines for Collaborations Among Competitors](#), which followed the withdrawal in 2023 of the joint 1996 [Statements of Antitrust Enforcement Policy in Health Care](#). For many years the Agencies' joint guidelines offered a critical framework for assessing the legality of competitor collaborations, including joint ventures and information sharing, and provided valuable "safety zones" that helped organizations more confidently navigate antitrust laws. LeadingAge strongly supports reintroducing antitrust guidance built on these prior guidelines and offers the following specific areas we would like to see included and addressed in response to the public inquiry.

***What topics would benefit from additional guidance – for example, joint licensing arrangements? Conditional dealing with competitors? Other topics?***

The health care market differs from most other industries. Access to providers, care and services must be available when consumers need it, which often is not predictable. To effectively treat a patient, various providers must collaborate and confer to identify the best course of treatment for all the relevant health concerns someone has. At the same time, federal and state policymakers are encouraging providers—including competitors—to collaborate in the delivery of care and services for a patient, with the goals of improving outcomes while lowering costs. Effective collaboration often requires participants to understand one another's costs and the ways in which services are reimbursed.

Simultaneously, health care providers still must compete for business to achieve a positive operating margin. In addition, in most cases, the consumer is not the direct payer for services; instead, payment is made by an insurer or a government program. These payers have outsized influence on providers' viability.

For these reasons, we believe health care warrants tailored antitrust guidance, including carefully defined flexibilities to facilitate pro-competitive collaboration and clear guardrails to prevent abuse. Updated guidance should address when referrals and patient steering are permissible (e.g., whether a physician may refer a patient to an ambulatory surgery center in which the physician has an ownership interest; whether a nursing facility may refer exclusively to an affiliated or owned home health agency; and whether a managed care plan that owns a home health agency may dispatch its own agency to initiate care for an enrollee even if the enrollee was referred to another covered agency). It should also specify what transparency and patient notice are required for such arrangements.

Additionally, part of the core work of organizations, such as LeadingAge, is to collect and aggregate our provider members' data for the purposes of advocacy and in informing and educating our members' work. In order to effectively advocate for policies that would benefit not only our members but also the older Americans that they serve, it is critical for LeadingAge to be able to collect and analyze information from our members. One such use case involves payment or reimbursement rates they receive from their payers. This is especially important as there is no current public source of data for the rates Medicare Advantage organizations (MAOs) pay providers. This makes it impossible to determine the adequacy of those rates beyond anecdotes and compare them to traditional Medicare reimbursement and Medicaid reimbursement. Absent this data, Congressional leaders have been reluctant to take policy actions related to the rates MAOs pay providers. Previously, we would have been comfortable undertaking such an effort under the safe harbor within the Agencies' [Statements of Antitrust Enforcement Policy in Health Care](#), which offered detailed steps that must be followed. However, since its rescission in 2023, we are wary of running afoul of antitrust laws and rules, and our path is less clear for completing this work.

Specifically, we are unclear whether we, as a third party, can still undertake such an effort to collect, aggregate, and report findings related to our providers' payment data. Further, we would like some guidance to offer us certainty about what level of information we can share back to our provider members who are contributing the data. While a specific opinion could be sought with DOJ, it would be more efficient if there were detailed guidance to cover routine situations such as this. As in the Agencies' Statements of Antitrust Enforcement Policy in Health Care, such guidance should spell out the process for data collection, including who is authorized to collect the data, the data thresholds that must be met in order to report any findings either to those businesses providing the data and/or the public,

and how recent the data collected can be for such a purpose. DOJ opinions should be reserved for unique circumstances. In our example, we, ideally, would like to provide our members with an analysis of what the data shows, including the average or range of rates offered within a state and/or region, broken down by each Medicare Advantage plan. This information would allow our individual members to see how their rates stack up to the regional average or range by plan. This information would be aggregated by LeadingAge and may be analyzed further for regional trends for purposes of advocating for payment adequacy under the Medicare Advantage and other payers.

Under the Agencies' [Statements of Antitrust Enforcement Policy in Health Care](#), which was rescinded in 2023, this type of activity likely would be covered by the Antitrust Safety Zone for providers' collective provision of fee-related information. LeadingAge believes that this Antitrust Safety Zone should be reintroduced in any new guidance that the Agencies undertake and that other organizations would also benefit by a clear safe harbor for these purposes. By having the guidance, it would eliminate the need for the Agencies to assess individual, routine situations, thereby reducing costs and allowing the Agencies to focus on more profound anti-trust enforcement issues.

***What new technologies and business models would benefit from additional guidance – for example, algorithmic pricing, information and data sharing, or labor collaborations?***

Given policymakers interest in incentivizing and encouraging collaborations among providers to lower health care costs and improve the outcomes for patients, we recommend re-establishing the 2000 [Antitrust Guidelines for Collaborations Among Competitors](#) safety zone that has permitted collaborative arrangements among competitors as long as the participants do not exceed 20% of market share. We contend this is an important safety zone to reinstate to support clinically integrated provider networks in which a group of providers work together to achieve clinical and financial integration. These networks can achieve economies of scale through their collaboration as well as implement co-created, evidence-based clinical protocols and best practices that improve health for older adults. Clinically integrated networks are a valuable part of the healthcare landscape, serving the universal goals of reducing health care costs and improving health outcomes, through shared infrastructure, supports and tools, while retaining their individual organizational structures to preserve choice of providers within the market. Within these networks, the individual provider organizations continue to compete for patients, hospital referrals, and market share, preserving choice for beneficiaries. Many aging services providers around the country have formed or joined such networks, and many more would welcome the opportunity to join their ranks.

***What significant legal, economic, or technological developments should be considered in any revisions to the prior competitor collaboration guidelines?***

Artificial intelligence (AI) and algorithmic logic are exponentially evolving and permeating every aspect of American business life including health care and affordable housing programs and practices. We continue to believe that AI demonstrates considerable potential for all of us in health care to work more efficiently. Regulators consistently stress that existing antitrust laws apply fully to AI, but that guidance must evolve to account for how algorithms, data, and shared vendors can change competitive dynamics.

Guidance would be particularly useful in addressing situations where competitors utilize the same AI tools that rely on algorithmic logic for pricing, prior authorizations and other uses, which could result,

for example, in maintaining artificially high rents or in inappropriately restricting access to needed care. In this type of situation, there may not be a direct agreement between the competitors, but their collective use of these AI tools may very well result in anticompetitive harm. Although widespread use of these tools can boost efficiency and consistent application of best practices, AI systems that rely on inadequate data or flawed logic—especially when deployed across multiple competitors—can pose significant risks and cause considerable harm. Therefore, we respectfully urge the Agencies to thoughtfully consider the integration and impact of AI in their revisions to the competitor collaboration guidelines. It is essential to strike an appropriate balance between fostering innovation and addressing potential risks such as algorithmic collusion. Furthermore, we recommend that the Agencies assess whether tailored guidance regarding the use of these advanced tools in the health care sector is necessary to ensure fair competition, consumer protection and transparency.

We respectfully urge the DOJ and FTC to reissue updated antitrust guidelines that reflect current market dynamics while restoring clarity and consistency in enforcement expectations. Transparent guidance will support lawful innovation, cooperation, and competition across sectors, and offer aging services providers flexibility to pursue strategic opportunities and partnerships, as they strive to innovate and strengthen access to high-quality, cost-effective care and services.

Sincerely,



Nicole O. Fallon

Vice President, Integrated Services & Managed Care

LeadingAge

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**About LeadingAge:** We represent more than 5,300 nonprofit and mission-driven aging services providers serving older adults and touching millions of lives every day. From our national headquarters in Washington, DC, and in collaboration with our state partners representing members active in 50 states, the District of Columbia, and Puerto Rico, we use advocacy, education, applied research, and community-building to make America a better place to grow old. Our membership encompasses the entire continuum of aging services, including skilled nursing, assisted living, memory care, affordable housing, retirement communities, adult day programs, hospice, Programs of All-Inclusive Care for the Elderly (PACE), and home-based care. We bring together the most inventive minds in the field to lead and innovate solutions that support older adults wherever they call home. For more information, visit [leadingage.org](http://leadingage.org).