

## **U.S. Department of Justice Initiates Home Care Antitrust Investigation**

The U.S. Department of Justice (DoJ), along with the Federal Trade Commission, has initiated an investigation under federal antitrust laws into the business of home care services in the state of Vermont. It appears this investigation was triggered by complaints from a home care provider that expressed concern that certain home health agencies (HHAs) had abused their market position as Medicare-participating agencies.

DoJ has contacted several HHAs in the state seeking information regarding their business practices. In addition, DoJ officials have met with the National Association for Home Care & Hospice to obtain background information about home health services, Medicare costs, and Medicaid payment rates.

Under federal law, a state has the authority to implement a "Certificate of Need" (CoN) process that acts as a restraint on entry into a particular business without violating federal antitrust law. Through such a CoN process, Vermont has sanctioned limitations on the number and geographic territories of home health agencies.

Presently, 12 home health agencies have CoNs in the state. The DoJ investigation seems to be focusing more on non-Medicare home care business rather than on Medicare home health services. While DoJ is looking at the CoN process, it appears that the central focus of the department's attention will be whether CoN-authorized home health agencies are improperly using their market position to garner control of the non-Medicare home care market as well.

This investigation represents one of the rare instances where the government has initiated an antitrust law evaluation affecting home care. Only one other instance of similar DoJ involvement is known to have occurred in the past; in that case, home care was only one component of a multi-pronged investigation. There have been some limited instances where state attorneys general have looked at home care as well. Specifically, more than a decade ago, the Pennsylvania attorney general's office evaluated some hospitals and home health agencies relative to inpatient discharges to home care.

At this point, it is impossible to speculate on the outcome of the investigation, or even its overall timeline.