



Yale University

Thurman Arnold Project

2026 Student Papers

Paper No. 6.02

Template Complaint- Dialysis Merger

May 2026

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

**STATE OF STATE, ex rel. FIRST M. LAST,
ATTORNEY GENERAL,**

Plaintiff,

v.

FIRM A and FIRM B,

Defendants.

Docket No. _____

COMPLAINT

The State of [Plaintiff State], acting by and through their Office of the Attorney General, brings this civil antitrust suit to enjoin the proposed acquisition of Firm B by Firm A, and to obtain equitable and other relief as appropriate. Plaintiff State alleges as follows:

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I. NATURE OF THE ACTION

1. On [Month DD, YYYY], Firm A proposed an [equity/asset] purchase agreement (“Proposed Transaction”) to acquire Firm B for [transaction amount]. The Proposed Transaction includes Firm B’s dialysis clinic(s) in [relevant geographic market].
2. The Proposed Transaction violates [relevant state authority and, if relevant, Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18] because the effect of such acquisition may be to substantially lessen competition in the market for outpatient dialysis services in [relevant geographic market].
3. The Proposed Transaction will harm patients who rely or may rely on outpatient dialysis clinics for access to high quality, cost-effective healthcare services.
4. If the Proposed Transaction is consummated, patients will experience increased hospitalization and mortality rates, increased costs of care, and fewer choices. To prevent this irreparable harm to patients, the Attorney General requests that this Court block the Proposed Transaction.

II. JURISDICTION AND VENUE

5. Plaintiff State files this Complaint under [relevant state authority or, if relevant, Section 16 of the Clayton Act, 15 U.S.C. § 26] to prevent and restrain Defendants from violating [relevant state authority or, if relevant, Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18]. The State of [Plaintiff State], by and through their Office of the Attorney General, brings this action in its sovereign capacity and as *parens patriae* on behalf of the citizens, general welfare, and economy of the State of [Plaintiff State].
6. The Court has subject-matter jurisdiction over this action pursuant to [relevant state authority and, if relevant, Section 16 of the Clayton Act, 15 U.S.C. § 26, and 28 U.S.C. §§ 1331 and 1337].
7. Venue is proper in this [jurisdiction (e.g., District)] under [relevant state authority and, if relevant, Section 12 of the Clayton Act, 15 U.S.C. § 22 and 28 U.S.C. § 1391(b)(1), (c)].
8. The Court has personal jurisdiction over each Defendant under [relevant state authority and, if relevant, Section 12 of the Clayton Act, 15 U.S.C. § 22] and Federal Rule of Civil Procedure 4.
9. Defendants transact business and are found within the [jurisdiction]. Defendants negotiated the Proposed Transaction in the United States and agreed that any closing of the Proposed Transaction will take place in the [jurisdiction].

10. If the Proposed Transaction is consummated, it will cause substantial harm to dialysis patients in [jurisdiction].

III. THE PARTIES

A. Plaintiff

11. The State of [Plaintiff State] is a sovereign state within the United States. This action is brought by and through its Attorney General – First M. Last – who is the chief law enforcement officer of the state, with the authority to bring this action on behalf of the state pursuant to [relevant state authority and, if relevant, Section 16 of the Clayton Act, 15 U.S.C. § 26]. The State of [Plaintiff State] brings this action in its sovereign capacity and as *parens patriae* on behalf of the citizens, general welfare, and economy of the State of [Plaintiff State]. The Office of the Attorney General for the State of Idaho is headquartered at [address].

B. Defendants

12. Defendant Firm A is a corporation organized, existing, and doing business under and by virtue of the laws of the state of [State], with its executive offices and principal place of business located at [address].
13. Firm A owns and manages outpatient dialysis facilities throughout the [State/United States], including [relevant geographic market].
14. Defendant Firm B is a corporation organized, existing, and doing business under and by virtue of the laws of the state of [State], with its executive offices and principal place of business located at [address].
15. Firm B owns and manages outpatient dialysis facilities throughout the [State/United States], including [relevant geographic market].

IV. INDUSTRY BACKGROUND

A. Introduction to End-Stage Renal Disease

16. In the United States, chronic kidney disease (“CKD”) affects more than 1 in 7 adults. CKD involves progressive damage and loss of function in the kidneys. The final stage of CKD, when the kidneys have lost all or nearly all their function, is called end-stage renal disease (“ESRD”) or kidney failure. Patients with ESRD have insufficient kidney function to keep them alive without medical treatment.

17. Broadly speaking, ESRD patients have two treatment options. The gold standard for ESRD treatment is kidney transplant, which replaces the dysfunctional kidney altogether. For patients on the kidney waiting list or who otherwise opt to forgo transplant, dialysis is the only treatment option.

B. Reimbursement for Outpatient Dialysis Services

18. ESRD patients are Medicare eligible regardless of age. They may choose between traditional Medicare fee-for-service (“Medicare FFS”) coverage and Medicare Advantage (“MA”), which is a Medicare-approved commercial health plan.¹
19. Although the vast majority of ESRD patients opt to use Medicare FFS or MA, some prefer to receive commercial coverage through their employer-sponsored health plan or the health insurance marketplace.
20. As it pertains to the Proposed Transaction, the most important distinction between Medicare FFS, Medicare Advantage, and other commercial health plans is the method through which reimbursement rates are determined.
21. When a clinic renders dialysis services for a Medicare FFS beneficiary, the clinic receives a fixed reimbursement rate, which is determined formulaically and updated annually by the Centers for Medicare and Medicaid Services (“CMS”).
22. In contrast, a clinic that renders dialysis services for a commercial health plan beneficiary is generally reimbursed pursuant to contractual agreements negotiated with that beneficiary’s insurer.
23. Accordingly, outpatient dialysis clinics may exercise market power to demand higher reimbursement rates from commercial health plans, including MA plans, but not Medicare FFS.

V. THE PROPOSED TRANSACTION

24. Pursuant to an [equity/asset] purchase agreement between Firm A and Firm B dated [Month XX, YYYY], Firm A will acquire all rights, titles, and interests in, and substantially all the assets and properties of Firm B’s dialysis business, including its dialysis clinic(s), in a non-HSR-reportable transaction.

¹ The Social Security Amendments of 1972 (PL 92-603) extended traditional Medicare fee-for-service coverage to include dialysis for individuals suffering from ESRD. The 21st Century Cures Act of 2016 permitted Medicare beneficiaries with ESRD to sign up for MA plans starting in 2021.

25. The Proposed Transaction constitutes an acquisition subject to [relevant state authority and, if relevant, Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18].

VI. THE RELEVANT MARKET

A. The Relevant Product Market

26. The relevant product market in which to assess the effects of the Proposed Transaction is the market for outpatient dialysis services. Patients receiving dialysis have end stage renal disease (“ESRD”), a chronic disease characterized by a near total loss of function of the kidneys. ESRD is fatal if not treated.
27. In theory, there are four treatment modalities that may be used for ESRD patients. These include outpatient dialysis services, inpatient dialysis services, home dialysis services, and kidney transplant.
28. Although these treatments are used for the same disease, they are not generally considered close substitutes for individual patients.
29. Kidney transplant is the best treatment for ESRD, but there is a three-year waitlist for donor organs. In the meantime, patients on the waitlist have no alternative to dialysis services.
30. Inpatient, outpatient, and home dialysis services are not close substitutes either.
31. Inpatient dialysis services can only be administered by hospitals to admitted patients, and most patients who access dialysis are not admitted to a hospital three days a week.
32. Home dialysis services involve stringent requirements for patient eligibility based on their other health conditions, frailty, and availability of caregiver support. For many patients, home dialysis services are simply not an option.
33. As a result, the market reality is that many ESRD patients have no alternative to outpatient dialysis treatment.

B. The Relevant Geographic Market

34. The relevant geographic market in which to assess the effects of the Proposed Transaction is [insert relevant geographic market(s) names here]. The relevant geographic market is defined by [insert description of geographic market boundaries (e.g., the market is co-extensive with XXX county, the market is centered on XXX city and includes the surrounding 30-mile radius, etc.)].

VII. ANTICOMPETITIVE EFFECTS

35. The effects of the Proposed Transaction, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant market in violation of [relevant state authority and, if relevant, Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18].

The Proposed Transaction would eliminate actual, direct, and substantial competition between Firm A and Firm B in the market for outpatient dialysis services in the relevant geographic market, increasing the ability of the merged entity to unilaterally raise prices for outpatient dialysis services and reducing incentives to provide high-quality services in the relevant geographic market.

A. Increased Bargaining Leverage with Commercial Insurers

36. The Proposed Transaction will increase Firm A's ability and incentive to demand higher reimbursement rates from commercial health plans. Patients with high-deductible health plans and coinsurance are directly exposed to the cost of these increases. Additionally, as reimbursement rates rise, insurers pass the costs through to patients in the form of higher premiums. Thus, if consummated, the Proposed Transaction will increase premiums and out-of-pocket costs for commercially-insured patients.

B. Decreased Service Quality Will Result in Increased Hospitalization and Mortality Rates for Dialysis Patients

37. The Proposed Transaction will decrease Firm A's incentive to provide high-quality services in the relevant geographic market.
38. Empirical economic research has documented a negative relationship between market concentration and quality in the market for outpatient dialysis services. Eliason et al. (2020), for example, finds that recently acquired dialysis clinics implemented cost-cutting measures, such as reduced patient-to-station ratios and increased patient-to-employee ratios, to the detriment of patients' health.²
39. In particular, they find that patients at formerly independent facilities are 10.0% more likely to be hospitalized for blood infection, 2.1% more likely to be hospitalized for an adverse cardiac event, and 2.9% less likely to be alive after two years of treatment post-acquisition.

² Eliason, Paul J, Benjamin Heebsh, Ryan C. McDevitt, and James W. Roberts. "How Acquisitions Affect Firm Behavior and Performance: Evidence from the Dialysis Industry." *The Quarterly Journal of Economics* (2020): 221 – 267.

40. Additionally, new patients who begin dialysis post-acquisition are 8.5% less likely to receive a kidney transplant or be added to a waitlist in their first year at the facility, even though kidney transplant is the gold standard for ESRD treatment. This is consistent with outpatient dialysis clinics' incentive structure: patients do not require dialysis after a kidney transplant, so it would not be profitable for dialysis clinics to steer patients toward transplant.
41. Thus, if consummated, the Proposed Transaction will diminish quality of dialysis services for patients in the relevant geographic market.

VIII. ENTRY CONDITIONS & BARRIERS

42. Entry into the relevant market described in **Section V** would not be likely, timely, or sufficient in magnitude, character, and scope to counteract the expected anticompetitive effects of the Proposed Transaction.
43. The most significant entry barrier is engaging a nephrologist with an established referral base to serve as the dialysis clinic's medical director.
44. Pursuant to 42 CFR § 494.150, each dialysis clinic must have a nephrologist serve as the facility's medical director. In particular, the medical director must be a board-certified physician who has completed a board-approved training program in nephrology and has at least 12-months of experience providing care to patients receiving dialysis.
45. Identifying and engaging a *local* nephrologist that meets these criteria and has an established referral base is difficult because clinics typically enter exclusive contracts with their medical directors.
46. Even if a potential entrant engages a *non-local* nephrologist to serve as their clinic's medical director, the clinic may struggle to attract patients in the short term because they do not have a pre-established referral network in the area.
47. Furthermore, nephrologists typically refer their patients to the clinics at which they or one of their partners are medical directors, so a non-insignificant portion of demand (for outpatient dialysis services) would be non-contestable.
48. **Optional, if applicable:** Beyond entry barriers, there are certain market characteristics that tend to attract entry (all else equal). These characteristics include low penetration of dialysis clinics and high ratio of commercial-to-Medicare patients. The relevant geographic market does not have these characteristics.
49. **Optional, if applicable:** Finally, the State of [Plaintiff State] has certificate-of-need laws that apply to dialysis clinics, which further delay or inhibit entry by requiring potential entrants to

apply for state approval first. [Insert additional details about the Plaintiff State's certificate-of-need laws, including average wait times and criteria for approval].

IX. ABSENCE OF EFFICIENCIES OR PROPOSED REMEDY

50. Any purported efficiencies are speculative, not merger-specific, not verifiable, and would not be sufficient to overcome the anticompetitive effects and harm to competition that the Proposed Transaction will cause in the relevant geographic market.
51. **Optional, if applicable:** Any purported cost savings are unsubstantiated and reflect speculative assumptions that do not address the particular situation of the relevant geographic market. Even if any purported efficiencies were substantiated and achievable, many are not merger-specific.

X. VIOLATION ALLEGED

52. The Proposed Transaction, if consummated, would constitute a violation of [relevant state authority and, if relevant, Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18].

XI. REQUESTED RELIEF

53. The Attorney General respectfully requests that:
 - The Proposed Transaction be adjudged to violate [relevant state authority and, if relevant, Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18];
 - Defendants be permanently enjoined from and restrained from carrying out the Proposed Transaction;
 - Plaintiff State be awarded fees and the costs of this action; and
 - Plaintiff State be awarded such other relief as the Court may deem just and proper.

Dated this **DD** day of **Month, YYYY**.

Respectfully submitted,

FOR PLAINTIFF STATE OF **STATE**:

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