Cooley

FTC, Requiring Divestitures, Approves Final Consent Decree in Ascension/AmSurg Deal

September 1, 2026

On August 25, 2026, the Federal Trade Commission (FTC) announced it had finalized a consent order resolving antitrust concerns arising from Ascension Health Alliance's $3.9 billion acquisition of AmSurg. This order arrives against the backdrop of heightened FTC attention to the healthcare sector. In March 2026, FTC Chairman Andrew Ferguson directed the agency to form a Healthcare Task Force to pursue a "coordinated, integrated approach" to healthcare enforcement and advocacy in coordination with other agencies and law enforcement partners (such as the Department of Health and Human Services and Department of Justice). The final order in the Ascension/AmSurg matter reflects this continued focus and offers a useful window into how the FTC is applying it in practice.

The final order requires Ascension to divest seven AmSurg ambulatory surgery centers (ASCs) across five metro areas, settling allegations that the deal would substantially lessen competition for certain outpatient surgical services. The order also imposes a 10-year prior notice obligation on Ascension for future ASC acquisitions in the affected markets, as well as transition assistance, nonsolicitation, asset maintenance and monitor provisions typical of recent FTC healthcare merger remedies. True to FTC form, the matter demonstrates the agency's continued scrutiny of vertical and horizontal healthcare consolidation at the local, service level – even where the overall transaction value and combined entity size might not otherwise trigger significant antitrust concern nationally.

Background

On June 2, 2026, the FTC announced a proposed consent order requiring Ascension, a national nonprofit health system, to divest several ASCs in order to proceed with its proposed acquisition of AmSurg. The FTC's June 1 complaint alleged that the combination of Ascension and AmSurg, both providers of outpatient surgical services ranging from cataract surgeries to colonoscopies, would limit competition for certain outpatient surgical services performed by gastroenterologists, ophthalmologists and orthopedists in the Nashville, Tennessee, Panama City, Florida, Tulsa, Oklahoma, Waco, Texas, and Wichita, Kansas, metropolitan areas. The FTC alleged that this loss of competition would likely lead to higher surgery prices for patients while also threatening to lower the quality of care and limit innovation in surgical services. Daniel Guarnera, director of the FTC's Bureau of Competition, stated that, "[a]ccess to quality surgical care at an affordable price is critically important for millions of Americans across the country," and that the divestitures would "help preserve a competitive market that will allow patients to get the care they need at a fair price."

Under the terms of the proposed order, Ascension agreed to divest seven AmSurg ASCs located in the markets where the FTC identified competitive concerns. Six of the centers were to be divested to SC Affiliates, while the seventh, located in Panama City, was to be divested to Florida Gastroenterology Center (referred to in the order as the Panama City Doctors), a physician group that already held a minority stake in that facility and would assume full ownership. The proposed order also required Ascension, Ambulatory Topco and AmSurg to provide up to one year of transition assistance, protect confidential information, maintain the viability of the divested assets pending transfer and refrain from interfering with employment relationships at the affected facilities. The FTC further required the appointment of a monitor to oversee compliance and imposed a 10-year prior notice obligation on Ascension for any future ASC acquisitions in the relevant metro areas.

The FTC's investigation was conducted in coordination with the state attorneys general of Florida, Oklahoma and Tennessee, and the vote to issue the complaint and accept the consent agreement for public comment was 2 – 0. The proposed order was then placed on the public record for a 30-day comment period.

Why this matters

- **Local market power, not deal size, still drives FTC scrutiny.** The FTC's focus here was narrow. It did not object to the transaction as a whole, but to the loss of competition in five specific metro areas for three specific types of outpatient surgery. This demonstrates that deal size alone does not determine whether the FTC intervenes: A modest, local overlap in a single service may be enough to trigger a complaint and require a remedy. Companies acquiring ambulatory surgery centers, physician practices or other outpatient providers should expect the FTC to continue to analyze competition market by market and service by service, not just at the level of the overall transaction.
- **A 10-year leash: Prior notice extends well beyond Hart-Scott-Rodino (HSR) obligations.** The order also puts Ascension under long-term FTC oversight – for the next 10 years, Ascension must notify the FTC at least 30 days before acquiring any interest in an outpatient surgery center in the five affected metro areas. This notice obligation applies even to deals that are too small to require a standard HSR filing. This means that the FTC can review Ascension's future, smaller deals in these markets that might otherwise escape antitrust review entirely. Companies with a history of FTC healthcare enforcement should expect similar long-term reporting or notice conditions in future settlements.
- **The FTC is backing its words with action.** The Ascension/AmSurg divestitures demonstrate yet another example of the FTC following through on its enforcement priorities, not just announcing them. Just days before finalizing this order, the FTC won a full trial in federal court blocking Henkel's proposed acquisition of Liquid Nails, a construction adhesives merger, and secured a permanent injunction rather than settling for a preliminary one. That case was the first merger challenge litigated entirely in federal court under Ferguson's stated preference for bringing merger cases only in federal court and bypassing the FTC's in-house Part 3 administrative process. Similarly, the Ascension/AmSurg order highlights the agency's announced commitment to working with other law enforcement partners to pursue coordinated enforcement efforts in the healthcare sector. Taken together, the Ascension/AmSurg order and the Henkel litigation win show that the agency is pursuing its stated priorities in practice, and that the FTC is prepared to both negotiate strong structural remedies and litigate mergers to a final result in federal court when a negotiated fix is not available.

Key Contacts

Norman Armstrong Jr. Washington, DC	narmstrong@cooley.com +1 202 728 7120
Albert Y. Kim Washington, DC	albert.kim@cooley.com +1 202 776 2378
Hanna T. Ali Washington, DC	htali@cooley.com +1 202 776 2210