CLIENT ALERTS & INSIGHTS

Word on the Street: State AGs Set Their Sights on Antitrust, Data Centers and Healthcare

SEPTEMBER 17, 2026

Authors: Kevin B. Frankel, Mark J. Silberman, Zachary Cobb

Featured Practices: State Attorneys General Investigations & Enforcement, Litigation, Healthcare, Healthcare Litigation, White Collar, Government Investigations & Regulatory Compliance

Key Takeaways

- State attorneys general are poised to take a larger role in antitrust and consumer protection enforcement as they fill perceived gaps left by federal regulators. Businesses should expect greater scrutiny of mergers, private equity roll-ups, healthcare transactions and other deals that affect local markets.
- The enforcement landscape is becoming more state-driven. From antitrust oversight and healthcare fraud investigations to data center development and clean energy policy, AGs are increasingly using state authority and coordinating across jurisdictions to pursue shared priorities.
- Companies in healthcare, energy, technology and consumer-facing industries should reassess compliance and regulatory strategies through a state-level lens. Early review of antitrust risks, close monitoring of environmental policy developments and strong healthcare compliance programs will be critical as state AGs expand enforcement efforts.

The Benesch State Attorneys General team recently sat down with several Democratic state attorneys general and candidates running in November’s election to better understand their upcoming priorities. Here are key insights for businesses operating in these spaces.

State Antitrust Enforcement: Filling the Federal Vacuum

First, these AGs highlighted concerns that the Department of Justice (DOJ) has been settling cases at the outset of trial in ways that may not serve the public interest, driven in part by lobbyist influence trumping career enforcement staff judgment. Second, the FTC's independence has been compromised: following the removal of two Democratic commissioners-upheld by the Supreme Court-the agency has operated without Democratic representation for 18 months.

Democratic state attorneys general are aggressively stepping into this void. But there are resource imbalances. Virginia only has two antitrust attorneys in its AG’s office. Oregon, by contrast, has hired 18 new antitrust enforcers. Key enforcement priorities include hospital mergers and nonprofit-to-for-profit conversions, private equity roll-ups of local businesses (including veterinary practices) and consolidation in sectors that directly affect consumers-energy, healthcare, childcare and groceries.

The sentiment is that if an illegal merger goes through, there is little the states can do about it after the fact. Accordingly, premerger notification laws and enforcement have become a priority. This shifts more antitrust power to the state AGs who are skeptical about the DOJ antitrust division.

Practical implications: Companies contemplating mergers or acquisitions-particularly in healthcare, retail and consumer services-should anticipate heightened state-level scrutiny. Premerger notification activity is increasing, and smaller transactions that may not trigger federal review could still draw attention from state AGs focused on local competitive effects. Multistate coordination among state attorneys general is also intensifying, as smaller offices lean on larger ones to pool resources.

Clean Energy and Environmental Policy: Data Centers, Coal and Tribal Sovereignty

On the environmental front, a central topic was the tension between data center expansion and clean energy commitments. The conversation turned to whether states should impose moratoria on new data centers until green energy sourcing can be assured or alternatively withhold tax incentives. Nuclear energy was identified as a carbon-free option that could be paired with data center development, though opinions differ among the Democratic AGs about the safety and future of nuclear energy.

The conversation also addressed the federal administration's controversial use of emergency powers under the Federal Powers Act to prevent coal plant closures. The administration's actions are forcing state utilities to maintain aging and sometimes non-functional plants at significant cost. For example, by preventing the closure of an aging coal-power plant in Michigan, the administration prevented an estimated $600 million in savings for taxpayers and increased production costs by approximately $300 million during the period for which the plant was scheduled to be closed. The D.C. Circuit recently ruled in favor of the Michigan Attorney General's challenge to the Department of Energy's invocation of the emergency powers, finding that the action was contrary to the statute as it failed to address any imminent threat to the energy supply. These emergency orders have disrupted long-term decommissioning plans across the sector.

Tribal lands provide opportunities as potential early regulatory incubators for clean energy technology, including biofuel projects aimed at international markets, despite the disproportionate burden of federal policy shifts on tribal communities. These lands are generally free from state regulation and present a different-if not necessarily smoother-path for constructing data centers and the power plants that support them.

Practical implications: Companies in the energy and technology sectors should monitor state-level regulatory actions around data center siting, coal plant operations and renewable energy incentives. AGs are expected to hire public utility regulatory lawyers and engage private attorneys to challenge coal plant extensions and promote clean energy transitions.

Healthcare Enforcement

State attorneys general continue to evaluate increasingly active participation in combating healthcare fraud, using their broad enforcement authority under state consumer protection statutes, existing regulatory frameworks, and state-level false claims legislation. These tools allow them to investigate and prosecute fraudulent schemes through civil prosecution divisions and dedicated Medicaid Fraud Control Units (MFCUs).

Practical implications: Healthcare providers, pharmaceutical companies, medical device manufacturers and private equity investors in the healthcare space should prepare for intensified state-level scrutiny. State attorneys general are increasingly leveraging consumer protection statutes and false claims acts to pursue fraud cases independently of federal enforcement, making state-level risk a standalone compliance priority. Organizations should ensure robust compliance programs are in place to withstand investigations by both civil prosecution divisions and MFCUs. Additionally, companies involved in Medicaid billing, pharmaceutical pricing or marketing practices should expect that state AGs will coordinate across jurisdictions to pursue larger enforcement actions, pooling resources to target schemes that affect multiple states.

Benesch is well positioned to help companies navigate the evolving priorities of state attorneys general. With a deep bench of former government enforcement attorneys and subject-matter expertise across regulatory, environmental, consumer protection and real estate issues, our team can guide clients through proactive engagement strategies, compliance risks and potential enforcement actions to achieve the best possible outcomes.