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Price Gouging Weekly Round Up

June 22, 2020

Price gouging enforcement and litigation is front and center for company counsel and business managers nationwide. Our weekly round up highlights some of the most relevant news and information to our clients and friends.

Utah Lawmakers Consider Clarifications and Updates to Price Gouging Law

In a June 15, 2020 discussion on Utah's price gouging law, State Representative Patrice Arent said "[i]t was the one bill I passed that I hoped would never have to be used, and here we are today and we've had to use it, and it's a very serious situation." According to Utah's Division of Consumer Protection, the state has received 912 complaints related to price gouging. The law provides that during a state of emergency, "[i]f a good or service has not been sold by a person during the 30-day period immediately preceding the day on which the state of emergency is declared, a price is not excessive if it does not exceed 30% above the person's total cost of obtaining the good or providing the service." Utah Code Ann. § 13-41-201(1). If the seller sold the good prior to the declared emergency, the price charged for the good or service cannot exceed the sum of: (1) 10% above the total cost to that person of obtaining the good or providing the service; and (ii) the person's customary markup." Utah Code Ann. § 13-41-201(2). However, consumer protection officials suggest that the law needs clarifications. While some goods and services are more "necessary" during an emergency, it often difficult to define. For example, according to the Division of Consumer Protection "food is necessary during a pandemic; but what is the line between 'necessary' food and 'unnecessary' food?" Further, officials have indicated that because some sellers do not keep sales records, it has been difficult to impose a fine for violating the statute.

Maryland Dentists Charging Consumers for Enhanced Infection Controls

A recent press release by Maryland Attorney General Brian Frosh indicated that some dental providers may be violating the Consumer Protection Act by charging customers a surcharge. “Consumers have notified us that some reopened practices are collecting additional, upfront amounts for the costs of enhanced infection controls, including personal protective equipment,” said Attorney General Frosh. “Many dental insurance agreements prohibit certain upfront fees and consumers should be aware that this practice may violate the Consumer Protection Act.” The OAG has received complaints alleging fees that range from $10 to $20 per visit, but have also heard of charges as high as $172. While the OAG did not reach a conclusion as to whether this violates Maryland’s price gouging law, dental providers should be aware that “a retailer is prohibited from increasing the sale or rental price of the following goods or services to a price that increases the retailer's value of profit by more than 10%.” The law, in which dental and other medical service providers may arguably be classified as retailers, covers among others, medical supplies or equipment.

Tennessee Dentists also Passing Expenses on to Patients

Tennessee consumers are similarly seeing a surcharge at their dentist as the cost of acquiring Personal Protective Equipment has increased during the pandemic. According to Robyn Householder of the Better Business Bureau, “[i]t’s not surprising that dentists are having to pass on some of those costs.” While the agency has not received any complaints about increased dental prices, Householder encouraged dentists to “[b]e transparent about what those additional costs are for and in advance make sure they are reasonable [as] the worst thing we want to have is a price gouging situation.” However, Householder noted that “dentists are doing this because they are making a good faith effort.” Recent discussions with the Consumer Protection Agency indicated that Tennessee’s price gouging law, which prohibits any person from charging a price that is “grossly in excess of the price generally charged for the same or similar goods or services in the usual course of business” remains in effect.

Georgia Price Gouging Complaints

Georgia's price gouging statute, which was extended through July 12, 2020, notably prohibits selling or offering to sell "at a price higher than the price at which such goods were sold or offered for sale immediately prior to the declaration of a state of emergency" – meaning that no price increases are permitted. However, the law includes an exception stating that "such price may be increased only in an amount which accurately reflects an increase in cost of the goods or services to the person selling the goods or services or an increase in the cost of transporting the goods or services into the area." Ga. Code § 10-1-393.4. Georgia Attorney General Christopher Carr recently stated that "[o]ur office will not tolerate attempts to use this public health crisis to exploit consumers. We are working around-the-clock to review and look into price gouging complaints, and we will hold violators accountable for any unlawful practices." From March 14 to June 2, 2020, the Consumer Protection Division has received over 1,000 COVID-19 related price gouging complaints. This number is nearly five times more than the complaints received during the Hurricane Irma in 2017. However, this number is still significantly lower than the number of price gouging complaints received during Hurricanes Katrina and Rita in 2005, which exceeded over 6,000. Since March, the Division has put over 850 businesses on notice over price gouging allegations and opened several formal investigations. Those who violate Georgia's law may be subject to a penalty of up to $5,000 per violation.

Price Gouging Enforcement without a Price Gouging Rule – Ohio Attorney General Sues for Price Gouging as Bill is Pending

As reported last week, Ohio does not currently have a price gouging specific law, but Attorney General Dave Yost is finding ways to go after price gouging nevertheless. On June 18, 2020, AG Yost announced a lawsuit against a couple for price gouging hand sanitizer on Amazon. According to the lawsuit, the couple raised the price of their hand sanitizer products by between 241.8% and 1,017.8%. On January 19, 2020, the average sales price of hand sanitizer was $3.53. In February and March, however, Defendants sold the same product for $39.44 per package. The lawsuit alleges violations of Ohio's Consumer Sales Practice Act for unfair and deceptive acts and practices, as well as unconscionable acts and practices. AG Yost seeks an order requiring the Defendants to reimburse consumers, as well as a civil penalty of up to $25,000 for each violation of the Act. "This is appalling behavior and should be answered in a court of law," Yost said. "Even more, it points out the need for a specific price-gouging law." Ohio Senate Bill 301, which would establish a price-gouging law, is currently pending before the Ohio Senate Judiciary Committee.

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