LAW360 Healthcare Authority

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FTC's Probes Of Trans Care Orgs Raise Jurisdiction Concerns

By **Mark Payne**

Law360 (March 31, 2026, 3:49 PM EDT) -- The Federal Trade Commission's demands for information from transgender care organizations may be exceeding the agency's authority to investigate medical nonprofits, legal experts have told Law360.

Last week, the FTC turned down petitions from the World Professional Association for Transgender Health, the American Academy of Pediatrics and the Endocrine Society to quash civil investigative demands issued by the agency as part of a broader push by President Donald Trump's administration against transgender care.

The CIDs, sent to the groups in January, requested information regarding potential violations of the FTC Act for deceptive and unfair trade practices.

According **to the demands**, the FTC is focused on the groups' marketing and advertising materials that provide medical guidance on treating minors experiencing gender dysphoria.

In a **failed effort to quash** the demands and in an **ongoing legal challenge**, the groups argued that, as nonprofits, they fall outside the FTC's jurisdiction and that the administration is violating their First Amendment and free association rights.

While the FTC maintains it can investigate nonprofits to determine whether it has jurisdiction to pursue enforcement action, some legal experts say this approach indicates that the agency is willing to chart new territory to further the administration's vow to end gender-affirming care.

Gerald Stein, a partner at Davis Wright Tremaine LLP and former attorney at the FTC's Bureau of Competition, told Law360 he doesn't think the FTC has the authority to make civil demands on nonprofits.

"I think the FTC is taking a very aggressive approach on this by issuing CIDs to nonprofits in this context," Stein said.

Alden Abbott, a senior research fellow at George Mason University's Mercatus Center, disagreed, saying the FTC does have broad powers to issue CIDs because they could reveal information that a nonprofit is conducting business for the benefit of its members or to make the organization excessive profits, leading to enforceable action.

But Abbott, who served as the FTC's general counsel in the first Trump administration, agreed that the agency's actions are aggressive and put the FTC in uncharted territory.

"This is sort of unusual," he said. "It's something beyond what they've gone after in the past."

Trump Administration on the Offensive

The path to these investigations has been building since last year.

Since his inauguration, Trump has been adamant that he would end gender-affirming care and has taken action against providers, including by threatening to cut federal funding to organizations that continue to provide hormone blockers or other treatments.

The administration has also blocked transgender women from participating in women's and girls' sports, banned transgender people from military service and ordered agencies to remove previously public data on transgender care.

After his appointment as chairman of the FTC in January 2025, Andrew Ferguson outlined his agenda that included a plan to "fight back against the trans agenda" and "investigate the doctors, therapists, hospitals and others who deceptively pushed gender confusion."

Last summer, the FTC launched a public inquiry to examine how Americans have been exposed to false claims about gender-affirming care. The agency also held a workshop focused on potential unfair or deceptive trade practices around gender-affirming care for minors.

In mid-January, the FTC issued the civil investigative demands. The CIDs are seeking information from the organizations on their marketing and advertising practices and alleged that the groups advise providers to treat gender-dysphoric or gender-diverse minors, in violation of the FTC Act Section 5 and Section 12.

The CIDs also questioned the groups' membership, whether members are profiting from their affiliation with the organization and whether the nonprofits offer goods or services that allow them to make a profit.

On Feb. 11, all three groups **challenged the agency subpoenas** in motions to quash or limit the investigations. They argued that the commission lacked jurisdiction and that the probe violated their First Amendment rights and was unduly burdensome. The AAP and the Endocrine Society also argued that the probes violate their Fourth Amendment rights.

A week later, all three organizations launched lawsuits in a Washington, D.C., federal court, making the same claims as in their quash motions and asking for a temporary injunction.

The summer workshop and public inquiry are proof, the groups argued, that the agency's true goal was to target the key groups that provide guidelines on how to treat gender-dysphoric minors.

"The retaliatory nature of the FTC's actions here is amplified by the fact that it lacks jurisdiction to investigate or bring a Section 5 action against WPATH, as WPATH is not a 'corporation,' nor does it engage in commercial speech," **WPATH said in its lawsuit**.

The **FTC responded that** Congress gave the agency the investigative tools to protect American consumers from false or misleading medical claims.

"Importantly, a CID is not self-executing, meaning that it imposes no legal consequences on its recipient unless enforced by a federal court in a separate lawsuit brought by the agency," the FTC argued in its opposition to WPATH's injunction request.

A Fight Over Nonprofit Status

In its consumer protection CIDs, the FTC said its authority rested on Section 5 of the FTC Act, which allows the FTC to investigate whether a company is engaging in "unfair or deceptive acts or practices" in commerce.

Amanda Wait, a partner and head of the antitrust team at Michael Best & Friedrich LLP, said the part of the federal law that grants the FTC the power to issue investigative demands has limitations.

Wait, a former attorney at the FTC, told Law360 that, while the FTC has blanket authority to issue CIDs to corporations, those businesses are defined under federal law as for-profit businesses.

"The distinction that I think the parties are trying to draw here is that under Section 5, which is the underlying substantive statute that the FTC says that they are investigating whether it has been violated, says that it applies only to corporations," Wait said.

In some instances, nonprofits function like for-profits if members benefit from membership or the group makes excessive money that's then given to executives.

As part of the investigations, the FTC is also seeking details about the organizations' membership requirements and whether members might be benefiting from services offered by the nonprofits.

Mike Finio, antitrust counsel at Saul Ewing Arnstein & Lehr LLP, said the FTC has the right to investigate whether a nonprofit organization is functioning like a nonprofit.

"The mere fact of tax-exempt status is not dispositive of the ability to avoid investigation," Finio said.

However, the FTC's jurisdiction under the FTC Act applies to matters affecting commerce, and that typically falls outside the realm of a nonprofit, according to Davis Wright Tremaine's Stein.

"Thus, the FTC does not have jurisdiction over most nonprofit organizations, but it does have jurisdiction over sham charities or other nonprofits that, in actuality, operate for profit," he said.

A spokesperson for WPATH told Law360 that the FTC is out of bounds and cannot investigate the organization's noncommercial speech.

"In initiating this retaliatory investigation, the FTC has departed from its role as defined by Congress in regulating commerce and instead advanced the administration's ideological agenda," the spokesperson said in an emailed statement.

An Endocrine Society spokesperson similarly told Law360 that the FTC is outside its jurisdiction, and that the group's public statements, guidelines or advertising can't be implicated by the CID.

"The First Amendment safeguards the Endocrine Society's right to speak freely and openly about a developing area of medical science and prohibits the government from using its investigative and enforcement powers to silence speech, settle scientific debates or demand adherence to its preferred views," the spokesperson said.

The American Academy of Pediatrics and the FTC didn't respond to requests for comment.

A "Bright Line" Between Enforcement and Investigation

The FTC has argued in both the administrative and federal court cases that it has jurisdiction to investigate and determine whether it has jurisdiction to enforce claims against the medical nonprofits.

Until the target organizations comply with the CIDs and produce "information and documents sufficient to show the commission that it lacks enforcement authority," then "the commission cannot concede that it lacks enforcement authority," the agency said in the decision denying the quash bid.

John Steren, a healthcare antitrust attorney at Epstein Becker Green, told Law360 that it's a challenge to determine whether the FTC should pursue investigations on nonprofits to determine whether they are conducting business as nonprofits.

He noted that even if an investigation doesn't turn into enforcement, it could lead to negative consequences for a nonprofit.

"There obviously is a bright line as to when an investigation morphs into an enforcement action, but trying to use a CID simply for investigative purposes can obviously cause a lot of hardship," Steren said.

The FTC's position that its power over nonprofits extends only to enforcement, not investigations, may be tough to make, according to Davis Wright Tremaine's Stein.

"If the FTC doesn't have jurisdiction over a nonprofit, then it stands to reason that it can't enforce compliance with a CID," he said.

The outcome of the medical nonprofits' federal lawsuits could hinge on the resolution of a similar, ongoing lawsuit in a D.C. federal court.

In August, a judge rejected that argument in a First Amendment lawsuit, Media Matters for America v. Federal Trade Commission.

In that case, U.S. District Judge Sparkle L. Sooknanan **granted a preliminary injunction** of the FTC's investigation into Media Matters, saying the investigation was likely a retaliatory response to the groups reporting that ads on Twitter appeared next to antisemitic posts.

During a hearing, the judge said she was "troubled" by the agency's argument that CIDs can't be challenged in federal court.

A split D.C. Circuit panel **declined to lift** Judge Sooknanan's temporary injunction, saying the FTC didn't justify impinging on the media group's First Amendment rights. The agency has since **urged the court to unblock** the investigation.

George Mason University's Abbott told Law360 that it will be tough for the FTC to prevail against the medical nonprofits' First Amendment argument.

"I think the FTC is skirting some real potential First Amendment risks here," Abbott said.

--Editing by Emma Brauer.
