



May 31, 2011

To whom it may concern:

On behalf of large employers, Catalyst for Payment Reform (CPR) works to drive improvements in how we pay for health care in order to get better and more cost-effective care for our employees. Working closely with payers, consumers, and providers, CPR identifies and coordinates workable reforms, tracks the nation's progress, and promotes alignment between the public and private sectors.

CPR welcomes the opportunity to provide comments on the FTC-DOJ Proposed Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program. CPR regards the Medicare Shared Savings Program and the accountable care movement as a positive step toward much needed health care delivery reform. If implemented thoughtfully, ACOs could greatly enhance the value of health care accessible to Americans. It will be important that the potential for unintended consequences is proactively identified so that policies can be structured effectively to protect against them.

CPR has been working with the Consumer Purchaser Disclosure Project and agrees with their comments. In addition, to help the FTC, DOJ, and HHS implement the most sound policy possible regarding ACOs, we have two specific issues to highlight.

First, final FTC and DOJ guidelines must adequately address private sector purchaser concerns about market power. Over the past several years we have seen prices increase after hospital consolidation.<sup>1,2</sup> Recent trends in hospital consolidation and purchasing of physician practices heighten our concern that it will continue in the current environment. Additionally, hospital payment rates for private payers are as much as 400% higher than Medicare.<sup>3,4,5,6</sup> While we support the FTC and DOJ's proactive approach to conduct expedited reviews of proposed ACOs prior to allowing them to participate in the program to address and avoid any potential market concentration issues, we believe the rules should go further.

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<sup>1</sup> RA Berenson, PB Ginsburg, N Kemper. Unchecked Provider Clout In California Foreshadows Challenges To Health Reform. *Health Affairs*, 29, no.4 (2010):699-705 Feb 2010.

<sup>2</sup> CH Williams, WB Vogt, R Town. How has hospital consolidation affected the price and quality of hospital care? Princeton (NJ): Robert Wood Johnson Foundation; 2006 Feb.

<sup>3</sup> W Fox & J Pickering. Cost Efficiency at Hospital Facilities in California: A Report Based on Publicly Available Data. Millman. Oct 2007.

<sup>4</sup> Analysis of Hospital Cost Shift in Arizona. The Lewin Group. March 2009.

<sup>5</sup> Health Care Trends in America. BlueCross BlueShield Association. 2009 Edition.

<sup>6</sup> Ginsburg, P. Wide Variation in Hospital and Physician Payment Rates Evidence of Provider Market Power. Center for Studying Health System Change, Research Brief No 16, November 2010.

There must be a mechanism in place to assess on an ongoing basis the impact of ACOs on private sector health care costs. The development of this mechanism should include input from private sector purchasers and payers. It will also be crucial that the final rule detail the agencies' authority and triggers to take specific actions (e.g., terminating safe harbor status, reassessment of requirements, etc.) if there is evidence of unintended consequences such as price increases and cost shifting to the private sector resulting from market power.

Second, we have grave concerns that the enforcement policy outlined applies only to new entities formed for the sake of participating as an ACO in the Medicare Shared Savings program and does not apply to existing entities. Existing provider organizations are rapidly consolidating today, whether this is hospitals buying physician practices or hospitals or physician groups merging. It is critical that these entities, at the very least, be expected to avoid the five types of conduct the Statement outlines to help ACOs reduce significantly the likelihood of an antitrust investigation. We are hopeful that even in a time of financial constraints, the FTC will be adequately resourced to take a proactive role in enforcement.

Please contact us with any questions or for more information. CPR is eager to work collaboratively toward a health care system that delivers greater value to those who use and pay for health care.

Best regards,

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