



May 31, 2011

Federal Trade Commission
Office of the Secretary
Room H-113 (Annex W)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Proposed Statement of Antitrust Enforcement Policy Regarding ACOs Participating in the Medicare Shared Savings Program, Matter V100017

Submitted Electronically

Dear Sir or Madam:

LeadingAge appreciates the opportunity to comment in response to the Federal Trade Commission (FTC) and Department of Justice (DOJ) on Proposed Statement of Antitrust Enforcement Policy Regarding ACOs Participating in the Medicare Shared Savings Program, Matter V100017 (the "FTC/DOJ Statement"). The members of LeadingAge (www.LeadingAge.org), formerly AAHSA, serve as many as two million people every day through mission-driven, not-for-profit organizations dedicated to expanding the world of possibilities for aging. Our 5,700 members, many of which have served their communities for generations, offer the continuum of aging services: adult day services, home health, community services, senior housing, assisted living residences, continuing care retirement communities and nursing homes. Together, we advance policies, promote practices and conduct research that supports, enables and empowers people to live fully as they age. LeadingAge's commitment is to create the future of aging services through quality people can trust.

The FTC and DOJ requested comments on the antitrust enforcement of Accountable Care organizations (ACOs). LeadingAge commends the FTC and DOJ in their efforts to address the significant task of implementing the Patient Protection and Affordable Care Act (ACA) with respect to ACOs.

The goals of the ACA are to foster access, efficiency and quality in our health care system. The FTC/DOJ Statement on antitrust determinations for ACOs creates a difficult hurdle for new ACOs. For example, in many markets, there is only one hospital, and/or practitioners of a certain

specialty. Moreover, the antitrust guidelines outlined in the Statement would require an application to the FTC for permission to form entities if they control over 50% of the market, regardless of the fact that Medicare beneficiaries may be well less than 50% of the patient population. This application process would 1) slow down the development of the ACO; 2) dramatically increase the costs of ACO development, especially in high cost areas such as the use of lawyers and accountants; and 3) be intimidating for many providers that are not typically concerned with antitrust issues as well as the fear that once they open themselves up to FTC/DOJ scrutiny on a voluntary basis, it would invite further scrutiny in potentially unrelated areas.

Although the focus of the ACO regulations is centered on physicians and hospitals, in order to be effective and garner savings, it is critical that ACOs include providers across the continuum of care is essential. Long-term care providers are in a unique position to help ACOs reach their quality and savings requirements, especially with respect to reducing hospital readmissions and increasing performance on quality indicators. Moreover, participation and representation of various providers in the ACO governing structure could provide the types of checks and safeguards against anti-competitive behaviors that the FTC and DOJ are concerned about. Such an arrangement should decrease the need for oversight rather than increase it, while achieving the goals of access, efficiency and quality. The ACO concept raises many challenges and concerns and these issues may need to be addressed by new ways of viewing and analyzing the antitrust issues surrounding ACOs.

LeadingAge would commend the FTC and the DOJ to continue working closely with CMS and, if necessary, enlisting CMS staff and other resources to help the IRS work through or investigate these issues and any other comments it receives.

Sincerely,

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