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FTC Guidance on Clinical Integration: Comparison of Recent Advisory Opinions

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“Clinical Integration in Health Care: A Check-Up”

Wrap-Up Session

May 29, 2008

Healthcare Statement 8 – Suggested Program Features

- Establishing mechanisms to monitor and control utilization of health care services that are designed to control costs and assure quality of care;
- Selectively choosing network physicians who are likely to further these efficiency objectives;
- Significant investment of capital, both monetary and human, in the necessary infrastructure and capability to realize the claimed efficiencies.

FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care, Statement 8.B.1 (1996).

MedSouth

Features:

- 2002: IPA with 415 Member Physicians
 - 315 Specialists, 100 Primary Care Physicians
- 2007: 280 Member Physicians
 - 205 Specialists, 75 Primary Care Physicians
- Geographic area: South Denver and Arapahoe County
- Non-exclusive
- Previously entered into risk contracts

MedSouth

Program Design:

- Covers 80-90% of the diagnoses that are prevalent in the physicians' practices
- Clinical Protocols - in place for 60 major diseases (as of June 2007)
- Utilization and Quality Measured Against Protocols
- Web-based Clinical Data Record System – updated with a new software system
- Practice Standards and Goals for Physician Members
- Primary care physicians' referrals are almost exclusively to specialty physicians in the program
- Consequences: If necessary, program will expel physicians who cannot or will not fully participate in the program or adhere to its standards

Result:

- Approved with plans to monitor (2002); earlier opinion confirmed (2007)

Suburban Health Organization (“SHO”)

Features:

- PHO’s with 192 Primary Care Physicians in 8 Hospitals
- Geographic area: Indianapolis and surrounding counties
- Exclusive
- Previously utilized non-risk contracts between payors and physicians using “messenger model”
- Very little overlap between SHO member community hospitals’ employed physicians
- Partial integration program



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Suburban Health Organization

Program Design:

- Medical Management Activities – monitoring patients to identify specific diseases
- Quality Management Programs – measure compliance with guidelines and protocols
- Physician Incentive Plan – participating physicians could receive up to 5% additional compensation from incentive pool
- Web-Based Technology – implementation would take 18-24 months
- Applied only to limited set of medical treatments
- Consequences: Relies largely on each individual hospital to motivate its own employed physician participants and relies entirely on the individual hospitals to discipline those physicians regarding their performance

Result:

- FTC concluded program would not be permissible under antitrust laws

Greater Rochester IPA, Inc. (“GRIPA”)

Features:

- IPA with 575 Physicians in 41 Medical Specialties
 - Approximately 345 Specialists and 230 Primary Care Physicians
 - Also includes 81 Contract Physicians providing medical specialty services and geographic coverage
- Geographic area: Rochester, NY
- Non-exclusive
- Previously entered into risk contracts



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Greater Rochester IPA, Inc.

Program Design:

- Covers 90% of eligible primary care physicians and 75% of eligible specialists and sub-specialists
- Evidence-Based Practice Guidelines or Protocols and Quality Benchmarks
- Monitoring of Individual and Aggregate Performance in Applying the Guidelines and Achieving Network Benchmarks
- Web-Based Electronic Clinical-Information System – GRIPA Connect Web Portal
- Physicians Agree to Refer Patients to other GRIPA Network Physicians
- Clinical Services Reports – used to identify patients who have not received the care recommended by GRIPA's guidelines
- Consequences: All GRIPA member physicians agree to be subject GRIPA's review of the physician's practice behavior, and to be subject to the program's educational and disciplinary requirements, including possible expulsion

Result:

- Approved as proposed

Positives

MedSouth

- Non-exclusive
- Primary and specialty care
- Potential to create procompetitive efficiencies
- Covers 80-90% of the diagnoses that are prevalent in the physicians' practices
- Upgraded its electronic data system with new software
- Improvement in individual and aggregate physician performance
- Physicians who cannot or will not fully participate in plan are subject to expulsion

SHO

- Involves some integration among hospital participants
- Has some potential to generate limited efficiencies in the provision of primary physician care services
- Participation allows member hospitals to pool data on physician performance

GRIPA

- Non-exclusive
- Primary and specialty care
- Potential to produce significant efficiencies in provision of medical services
- Covers 90% of eligible primary care physicians and 75% of eligible specialists and sub-specialists
- Physicians agree to refer patients to other GRIPA network physicians
- Central clinical information system – performance reports will monitor use of the portal
- Educational and disciplinary requirements must be met, or member physician faces possible expulsion

Concerns

<u>MedSouth</u>	<u>SHO</u>	<u>GRIPA</u>
<ul style="list-style-type: none"> • Potential members together might be able to exercise market power <ul style="list-style-type: none"> – Mitigated by the overall decrease in number of participating physicians in 2007 from 2002 – Some concern remains in medical specialty areas • Potential misuse of sensitive price information collected by network • Loss of some physician specialists potentially could adversely affect ability to monitor and coordinate patients' care 	<ul style="list-style-type: none"> • Exclusive • No reason to believe individual hospitals could not develop this type of program and itself provide higher quality services • No SHO authority to discipline physicians or enforce protocols • Relied exclusively on hospitals to motivate individual performance • Primary care only; limited set of medical treatments • Little interaction among physicians at different SHO hospitals • Technology platforms would take 18-24 months to roll out 	<ul style="list-style-type: none"> • Seeks and expects to be able to contract at higher fee levels for the services of its physicians <ul style="list-style-type: none"> – Offset by greater overall efficiency and improved quality in provision of medical care – Anticipates that total cost of providing care should decrease • Market power could be exercised if program ran on exclusive basis • Potential transaction cost efficiencies from contracting with payers are theoretically cognizable, but likely modest in practice

Commissioner Rosch's Remarks:

“Clinical Integration in Antitrust: Prospects for the Future” September 17, 2007

- Preference for “meaningful financial integration”
- Expects Agencies to ensure there are significant efficiencies before allowing a physician joint venture under Statement 8
- Set out a number of lessons that can be inferred from MedSouth and SHO:
 - Integral connection between an ancillary restraint and the achievement of the efficiencies is what is most important, not the legitimacy of the clinical integration program or the bona fides of its participants
 - Must be an explanation as to why it is not reasonably practicable for each group to achieve the efficiencies on their own
 - The group, and not the individual members, must have mechanisms to ensure compliance and cooperation with the program's requirements
 - Improving efficiency and quality is not sufficient to constitute a “new” product – that requires the nature of the services to patients or payers be changed
 - Weak arguments:
 - Program aligns the interests of the employees with the group
 - Joint venture is necessary to solve inequitable sharing of costs and benefits by members
 - View of managed care organizations with respect to new service or product is important

Practical Advice

- Critical to demonstrate connection between contracting and achieving efficiencies
 - example: ability to maintain in-network referrals
- Importance of consequences for failure to comply with program protocols and guidelines
 - demonstrate legitimacy of program
 - motivate physicians
- Ability to accomplish clinical integration may be enhanced by previous participation in risk contracting
- Bottom line: will program be viable in the marketplace without threat of collective refusal to deal with purchasers?