



May 31, 2011

Submitted electronically at <https://ftcpublic.commentworks.com/ftc/acoenforcementpolicy>

Federal Trade Commission  
Office of the Secretary  
Room H-113 (Annex W)  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

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

Dear Sir or Madam:

I am writing on behalf of Molina Healthcare Inc. to offer comments in response to the "Proposed Statement of Antitrust Enforcement Policy Regarding ACOs Participating in the Medicare Shared Savings Program." Since 1980, Molina Healthcare has been a leader in providing quality healthcare to those who depend on government assistance. Our commitment to our members has made us a national leader in providing affordable healthcare to families and individuals. We work with Medicare, Medicaid, and the Children's Health Insurance Program (CHIP) to provide healthcare assistance to approximately 1.6 million members in ten states.

It is Molina's understanding that the proposed policy will allow a certain amount of "price-fixing" and/or "market-allocation agreements" among traditionally competitive providers who "integrate" for the purpose of forming an accountable care organization (ACO). We are also aware that the proposed policy articulates criteria to be used to determine when federal antitrust laws are violated, based on the number of participants (covered lives) in the ACO's Primary Service Area (PSA); however, the policy does not articulate if the PSA analysis will be based on the ACO's entire market of healthcare consumers, or if the federal government will make PSA determinations based on specific sub-categories (Medicare, Medicaid, etc.) of healthcare consumers. For example, if an ACO has over 50% of Medicare lives in its PSA, but 10% of the commercial lives, its PSA of all participants would likely be below 30% and in the safe harbor range. In this particular scenario, Molina is concerned that the ACO will have market power in the Medicare market and could undertake anticompetitive behavior with those payers that contract with the ACO for Medicare business.

Based on the comments/concerns above, Molina requests the Federal Trade Commission (FTC) and the Department of Justice (DOJ) to clarify how they will enforce the proposed policy when an ACO's PSA is different in a particular sub-market(s) (Medicare, Medicaid, Commercial or Exchange), as opposed to the entire healthcare market where the ACO operates.

Thank you for your consideration. We appreciate the opportunity to comment on this important regulatory proposal.

Sincerely,

John Puente  
Vice President, Deputy General Counsel

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