



Kaiser Foundation Health Plan, Inc.
Program Offices

May 26, 2011

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

Submitted electronically via www.regulations.gov

Dear Sir or Madam:

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

Kaiser Permanente offers the following comments to the proposed Statement of Antitrust Enforcement Policy Regarding ACOs Participating in the Medicare Shared Savings Program, Matter V100017 developed by the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ).

The Kaiser Permanente Medical Care Program is the largest private integrated healthcare delivery system in the nation; it includes Kaiser Foundation Health Plan, Inc., the largest not-for-profit health plan; the nonprofit Kaiser Foundation Hospitals and their subsidiaries; and the Permanente Medical Groups, independent physician group practices that contract with the health plan to meet the health needs of Kaiser Permanente's approximately 8.6 million members. Most pharmacy, diagnostic, and laboratory services are performed within Kaiser Permanente.

We support the Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program (the "proposed Policy") being proposed by the FTC and DOJ. We believe the proposed Policy provides reasonable standards and guidance for independent providers wishing to form Accountable Care Organizations (ACO).

Kaiser Permanente supports government incentives to providers to form integrated care delivery systems that have the potential to improve the quality of care and encourage efficient utilization of resources. The formation and success of integrated care delivery systems is key in addressing health care costs. However, without appropriate oversight and regulation, provider collaborations could harm consumers through higher prices, limitations in access or lower quality of care.

Kaiser Permanente believes the proposed Policy establishes appropriate guidelines for providers that seek to form an ACO. The guidelines are similar to existing guidelines relating to collaboration by independent health care providers that are generally understood and work well, including the DOJ/FTC Statements of Antitrust Enforcement Policy in Health Care. Accordingly, we believe it would be appropriate for the guidelines to apply to all ACOs, including ACOs formed by mergers or acquisitions. As proposed, the guidelines exempt ACOs formed by mergers and acquisitions. ACOs formed by mergers and acquisitions could result in ACO participants having market concentrations for common service lines that exceed the guidelines' thresholds. Consumers are better protected if all ACOs were subject to review under the guidelines.

Overall, however, we believe that the proposed Policy will benefit providers seeking to establish ACOs as well as consumers who will benefit from the improved efficiencies and higher quality care that will result from greater integration of health care services.

Thank you for the opportunity to comment on the proposed Policy. Please feel free to contact me at 510-271-6835 (email: anthony.barrueta@kp.org) with any questions or concerns.

Anthony Barrueta
Senior Vice President
Government Relations