

May 31, 2011

**SUBMITTED ELECTRONICALLY**

Jon Leibowitz, Chairman  
Federal Trade Commission  
600 Pennsylvania Avenue, NW.  
Room H-113 (Annex W)  
Washington, DC 20580

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**Re: FTC Matter No: V100017: Proposed Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program**

Dear Chairman Leibowitz,

Trinity Health appreciates the opportunity to comment on the *Proposed Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program* (FTC Matter No: V100017) as published in the Federal Register on April 19, 2011. In this letter, we offer reactions and recommendations to the proposed program structure and requirements in regard to antitrust enforcement.

Trinity Health is the fifth-largest Catholic health care system in the country. Headquartered in Novi, Michigan, Trinity Health operates 46 acute-care hospitals, 379 outpatient facilities, 31 long-term care and senior living facilities, and numerous home health offices and hospice programs in nine states – California, Idaho, Indiana, Iowa, Maryland, Michigan, Nebraska, Ohio and Oregon. Our hospitals and clinics employ nearly 1,000 physicians, and we work with another 7,000 physicians through our open medical staff model.

Trinity Health hospitals are very appreciative of the opportunity presented by the Medicare Shared Savings Program established by the Affordable Care Act (ACA). We agree with the three-part aim of accountable care organizations (ACOs): better care for individuals, better health for populations, and lower growth in expenditures. Trinity Health is transforming health care delivery in a number of ways, including with the development of accountable health networks (AHNs). In addition to bringing physicians and hospitals together for care coordination and shared accountability, our AHNs aim to:

- Provide patient-centered, coordinated, efficient, and effective care
- Align the continuum of services (home care, physician services, hospital services, long-term care) to promote the best patient experience possible
- Expand primary care and health promotion, focusing on effective management of chronic conditions and appropriate utilization of high-cost services
- Provide incentives for high-value care delivery

Trinity Health is committed to transforming the care we deliver in order to serve our patients better and more efficiently. In this regard, we view the ACO concept as promising and one that could be fully compatible with our mission orientation. However, we have serious concerns regarding several

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design elements of the MSSP. Without significant adjustments to these elements of the program, we believe that relatively few organizations will participate and that the ACO concept will not live up to its full potential for improving the quality of care and reducing Medicare health care expenditures.

### **Comments on Proposed Statement**

**Proposal:** The Proposed Statement issued by the Federal Trade Commission and the Department of Justice clarifies many of the antitrust concerns for ACOs. However, the Proposed Statement only applies to collaborations among “otherwise independent providers;” it does not address existing provider groups that may have market power but do not consolidate to form an ACO. It is unclear from the Proposed Statement how a hospital in such a market that wishes to contract with Medicare as an ACO (without the market dominant groups) would perform their required market analysis.

**Trinity Health Recommendation:** The FTC and the DOJ should consider clarifying the antitrust issues associated with allowing a provider with significant market power to participate in the Shared Savings Program. Moreover, CMS should carefully consider favoring ACO applications from provider groups without market power while it calibrates and refines the program.

**Rationale:** Addressing this concern will allow providers to collaborate to provide coordinated care without the risk on antitrust enforcement and will avoid potential consumer harm.

### **Closing Remarks**

Trinity Health realizes the difficulties in creating a shared savings program, but believes that very few entities will be willing and/or able to form an ACO because of many barriers we have enumerated in our comments above. We appreciate the opportunity to comment on the Medicare Shared Savings proposed rule and look forward to working with CMS further to improve patient outcomes, expand beneficiary access, and enhance delivery of care. If you have any questions about our comments, please feel free to contact me at [phone] or [email].

Sincerely,

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Tonya K. Wells  
Vice President, Federal Public Policy & Advocacy

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