

MEMORANDUM

To: FTC/DOJ Comment Review Staff

From: John Branscombe, Director Accountable Care Organization, Eastern Maine Medical Center, Bangor, Maine

Re: Comments on the Proposed Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program, Matter V100017

Date: May 31, 2011

Thank you for the opportunity to comment on the Proposed Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program, Matter V100017.

We appreciate the effort to address the rural nature of communities through these proposed rules. Our community's challenge will be to come up with a way to not exceed the 50% threshold given that we've we have only one tertiary care medical center, Eastern Maine Medical Center, in our primary service area. We propose the following comments to address this and other considerations:

- As the "geographic" market as set forth in the Merger Guidelines may provide more flexibility in terms of ability to fall below the 50% mandatory review threshold, we ask that ACOs have the opportunity to use that in lieu of the PSA.
- As ACO's who wish to operate in the commercial market will need to make significant expenditures of resources, we ask that the rule of reason review continue to extend beyond the three year term of participation in the MSSP and also to other ACO arrangements that we might enter into with CMS.
- If an ACO makes a decision not to participate in the MSSP (due to the downside risk, for example), we ask that the FTC and DOJ permit the ACO be able to rely on the rule of reason analysis in the commercial market and other CMS ACO arrangements.
- Similarly, if an ACO makes a decision not to participate in the MSSP, we ask that the ACO have the ability to use alternatives to establish clinical integration rather than the MSSP criteria.