



AMERICAN COLLEGE OF PHYSICIANS  
INTERNAL MEDICINE | *Doctors for Adults*

May 31, 2011

Mr. Donald S. Clark  
Secretary  
Federal Trade Commission  
Room H-113 (Annex W)  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

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

Dear Secretary Clark:

The American College of Physicians, consisting of 130,000 internal medicine physician specialists and student members, appreciates the opportunity to provide comments to the Federal Trade Commission (FTC) and the Department of Justice (DOJ) on the proposed Statement of Antitrust Enforcement Policy regarding Accountable Care Organizations (proposed FTC/DOJ ACO policy) participating in the Medicare Shared Savings Program. The College supports the efforts of Center for Medicare and Medicaid Service (CMS) to improve the quality and efficiency of healthcare services through this new program, and also understand the importance of properly aligning agency antitrust enforcement efforts with the program's goals. While the College itself does not internally have the technical expertise and necessary resources to properly assess the proposed antitrust policy, we have followed closely the efforts of the American Medical Association (AMA)—an organization that has the necessary technical expertise and resources—to analyze and make recommendations this proposal. **The ACP supports the clearly elaborated recommendations AMA has submitted to you in response to this matter.**

Specifically, the ACP requests that the agency address the following issues:

- **A clarification as to why collaborations created before March 23, 2010, will not be evaluated under the proposed FTC/DOJ ACO Policy.** The College, consistent with the AMA comment, believes that analyses of ACOs should focus on the merits of the organization and whether it complies with the relevant statutory requirements, rather than the date of creation.
- **A recommendation that the FTC and DOJ use the ACO Shared Savings Program as an important opportunity to clarify the requirements for adequate financial integration and declare that arrangements prompted by the need to participate successfully in a two-sided Shared Savings Program are not subject to the *per se* rule against price fixing.**

- **A recommendation to expand the application of the rule of reason to ACOs that continue to maintain the relevant operational and organizations structures required within the Shared Savings Program; even if the ACO chooses not to continue within the Shared Savings Program.**
- **A recommendation to reformulate the proposed Primary Service Area methodology that is the basis of the proposed safety zones to address concerns of high implementation costs and of the inappropriately high risk of false positives in assessing market power, and make necessary changes to the proposed safety zones based on this reformulation.**
- **A recommendation to more precisely define the types of records required to trigger the expedited 90-day review for ACOs exceeding the 50 percent PSA share threshold.**

The ultimate success of the Shared Savings Program is linked to appropriately addressing these relevant antitrust enforcement issues. We encourage your serious consideration of the recommendations and underlying rationales elaborated within the AMA's response to this proposal. Please contact Neil Kirschner on our staff at [nkirschner@acponline.org](mailto:nkirschner@acponline.org) or 202 261-4535 if you have any questions regarding these comments.

Respectfully,

Donald Hatton, MD, FACP  
Chair, Medical Practice and Quality Committee  
American College of Physicians