

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:

On behalf of the North Carolina Medical Society (NCMS) and our over 12,000 physician and physician assistant members, I am writing to provide our feedback on the Federal Trade Commission (FTC) and the Department of Justice (DOJ) Proposed Statement of Antitrust Enforcement Policy regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program (proposed Antitrust Policy Statement). We appreciate the level of thoughtfulness and coordination by each of the agencies that had a role in the development of the proposed regulations and related documents such as the proposed Antitrust Policy Statement, and we value the opportunity to share our comments on this important program. That said, we have significant concerns about the deterrent effect the proposed regulations and related documents, including the proposed Antitrust Policy Statement, will have on participation in the Shared Saving Program if these proposals are not substantially modified. We strongly urge you to rework the proposals (particularly the proposed Antitrust Policy Statement) so that participation in the Shared Savings Program is feasible for physician practices of all sizes and capabilities that desire to move toward more providing more accountable care.

The NCMS supports the goals of the Shared Savings Program to improve health and quality and to control costs, and we will continue to encourage our members to embrace reasonable changes that will promote these goals. The NCMS has viewed the Shared Savings Program as having the potential to be a reasonable interim approach in transforming how healthcare is delivered, although we understood that the associated rules would ultimately determine the viability of this program. We believe that modifications will be necessary to promote participation in this important program. To avoid being redundant (and subjecting you to 20 additional pages of comments), we support the American Medical Association's (AMA) recommendations in their letter to you on the Proposed Antitrust Policy Statement, which we have reviewed in detail, and we urge you to consider their comment letter and suggestions.

In addition to the comments submitted by the AMA, we have further concerns that relate to specialty-specific PSA analysis. Not all services are performed on a per-specialty basis and as medical care changes and evolves over time, this will become a potential barrier to innovation. For example, in some markets, pain management interventional services are performed by physiatrists, neurologists, anesthesiologists, radiologists, and some primary care physicians. So a zip code analysis on a per specialty basis for neurology, for example, would not

be an accurate reflection of market share, or competition within the market. Neurology is a great example of why a specialty approach to this is problematic. Some neurologists focus on seizures, some on stroke, some on pain management, some on inpatient work, some are entirely outpatient, some are sleep specialists, some focus on dementias, some on multiple sclerosis. The very idea that an ACO must prove it has 50% or less of a particular specialty, or 30% or less to fall within the ambit of the proposed safe harbor is therefore flawed, as medicine is an evolving, fluid profession. The concept of specialty is too rigid a category for analysis purposes and the concept of services rendered (such as percentage of a pain management market) is impossible for an organization to know. The concept of an ACO should be based upon the least costly way of providing the highest quality of care. By emphasizing specialties, the broader concept of provision of efficient services is undermined.

Again, we appreciate the opportunity to share our thoughts and concerns. We hope that you will modify the Antitrust Policy Statement so that physicians will be willing and able to participate in the Shared Savings Program and begin moving down the path to providing more accountable care.

Sincerely,

—
John R. Mangum, MD
President

Copy: Steve Wegner, MD, JD, Chair, NCMS Accountable Care Task Force
Robert Seligson, Executive Vice President, CEO