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SENT ELECTRONICALLY to FTC AND DOJ  
<https://ftcpublishcommentworks.com/ftc/acoenforcementpolicy/>

May 31, 2011

The Honorable Christine Varney  
Assistant Attorney General  
Antitrust Division  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

The Honorable Jon Liebowitz  
Chairman  
Federal Trade Commission  
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 Assistant Attorney General Varney and Commissioner Liebowitz:

On behalf of Billings Clinic, we are providing comments on the Proposed Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations (ACOs) Participating in the Medicare Shared Savings Program (Statement) issued jointly by the Federal Trade Commission (FTC) and Department of Justice (DOJ) on March 31, 2011. We very much appreciate the antitrust agencies' recognition of the importance of integrated health care organizations, like ACOs, and the historic effort to work cooperatively with other federal agencies to craft a legal and regulatory framework for the Medicare program.

Billings Clinic, located in Billings, Montana, is a not for profit physician-led integrated health care organization comprised of a 236 physician multi-specialty group practice, a 272-bed regional acute care tertiary-level hospital, regional primary care clinics, and long term care serving a population of 600,000 in eastern Montana, northern Wyoming, and the western Dakotas. We also manage six critical access hospitals in this same region. We were fortunate to participate with nine other organizations in the Physician Group Practice (PGP) demonstration program between 2005 and 2010 and learn to better coordinate care and reduce the rate of growth in per capita expenditures, while improving quality.

Given our vast rural market area and the tertiary hospital and sub-specialty medical services Billings Clinic offers, we have been particularly interested in how the guidance would facilitate ACO development with rural health care organizations. The proposed Statement states that it applies to collaborations among other competing providers and provider groups. Collaborations are defined as a set of agreements, other than merger agreements, among otherwise independent entities jointly to engage in economic activity, and the resulting economic activity. Presumably, therefore, the Statement does not apply to any ACO whose provider participants are all viewed under the antitrust laws as a single economic entity, such as a vertically-integrated health system. We recommend the FTC/DOJ clarify that the Statement does not apply to any ACO whose provider participants are all viewed under the antitrust laws as a single economic entity, such as a vertically-integrated health system.

In our market, critical access hospitals often employ their physicians or non-physician providers, operate post-acute care services and function as a single vertically integrated organization. In addition, the rural exception in the antitrust safety zone for ACOs is too narrow and does not reflect the realities of a frontier marketplace.

We thank you for the work and collaboration among the agencies that created the proposed Statement and appreciate the opportunity to comment.

Sincerely,

Nick Wolter, M.D.  
Chief Executive Officer