

September 18, 2006

The Honorable Charles Grassley
Chairman
Committee on Finance
United States Senate
Washington, DC 20510

The Honorable Max Baucus
Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

Dear Chairman and Ranking Member:

We, the undersigned associations, are concerned that misleading information has been circulated suggesting that the safe harbor protection from the anti-kickback law and the exception to the physician self-referral law in H.R. 4157 may create serious antitrust risks. The DOJ and FTC noted in their *Statement of Antitrust Enforcement Policy in Health Care*, “[t]hese [general antitrust] principles are sufficiently flexible to take into account the particular characteristics of health care markets and the rapid changes that are occurring in those markets.” H.R. 4157 is designed to allow the market to function effectively by nurturing a system that allows for better care coordination and improved health care quality through the exchange of patient information, promoting efficiency, and ensuring that physicians are not tied into one particular hospital.

Nothing in H.R. 4157 amends the antitrust laws nor restricts their application. Consequently, continued compliance with them remains a requisite for all providers involved in all health information technology arrangements permitted under the safe harbor and exception. H.R. 4157 neither implicates nor creates a risk of violating the antitrust laws. As Title III of the bill states, the purpose of the safe harbor and exception are to promote the use of health information technology (HIT) to better coordinate care. Better coordination of care is a clear benefit to patients and the health care system, not an antitrust violation. Additionally, the bill includes explicit protections to eliminate antitrust risks, specifically requiring that the provision of the electronic health record (EHR) **not**:

- Be conditioned on the volume or value of patient referrals to the donating entity;
- Limit or restrict the use to services provided by the physician to patients receiving services at the donating entity; and
- Limit or restrict the use of health information technology in conjunction with other health information technology.

The bill also unequivocally prohibits a donor from taking any action to disable any hardware or software component that would otherwise permit interoperability.

H.R. 4157 simply offers a clear roadmap for both donors and recipients of health information technology by creating straightforward exceptions to the physician self-referral and anti-kickback provisions to ensure that hospitals, medical groups and others will be able to share their HIT systems with physicians. By so doing, H.R. 4157 will encourage more rapid HIT adoption throughout the healthcare system, enhance coordination of care, and ensure improved outcomes for patients.

We would be pleased to meet with you should you have any questions or wish to discuss this further.

Sincerely,

American Hospital Association
American Medical Group Association
Association of American Medical Colleges
Federation of American Hospitals