



American Hospital  
Association

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July 23, 2009

The Honorable John D. Rockefeller, IV  
United States Senate  
SH-531  
Washington, DC 20510

Dear Senator Rockefeller:

On behalf of our more than 5,000 member hospitals, health systems and other health care organizations, the American Hospital Association (AHA) is writing to express appreciation for your recent hearings on “Competition in the Health Care Marketplace” and your scrutiny of some of the very troubling practices by health insurance companies. We too believe that anticompetitive conduct in the insurance industry has led to higher prices for American consumers.

We also agree with you that the Department of Justice (DOJ) should become more engaged in “policing anticompetitive practices by insurance companies.” In a May 11 letter to Assistant Attorney General for Antitrust Christine Varney, the AHA raised concerns about the lack of a robust and coherent enforcement policy on health insurance plan mergers and anticompetitive conduct. We called on the Antitrust Division to launch a critical examination of competition and enforcement policy as it applies to health plans and made specific recommendations for a comprehensive study of consummated health plan mergers and the analytical framework that should apply for reviewing mergers and conduct complaints. We also urged DOJ to hold public hearings to better understand the reasons for the lack of competition among health plans in most markets and the impact on consumers, providers (including hospitals) and President Obama’s health care reform initiatives.

A copy of the AHA letter and accompanying paper, *The Case for Reinvigorating Antitrust Enforcement for Health Plan Mergers and Anticompetitive Conduct to Protect Consumers and Providers and Support Meaningful Reform* are enclosed. Hospitals, physicians, and other providers are the backbone of our nation’s health care delivery system. Protecting them from current and future abuses of market power by health plans must be a mainstay of any successful health reform effort.



Senator Rockefeller

July 23, 2009

Page 2

In addition, the Federal Trade Commission (FTC) needs to be more involved. While the FTC has aggressively applied the antitrust laws to arrangements between physicians and between physicians and hospitals, there is no comparable focus on health plan abuses. The FTC also has an important role to play in enabling hospitals and physicians to enter into clinical integration arrangements – efforts designed to eliminate the fragmentation of the current delivery system and to improve the quality and efficiency of patient care. One of the impediments to clinical integration is the lack of clear and concise guidance on the development of clinical integration programs consistent with antitrust laws. For hospitals and physicians, antitrust laws are a significant barrier to clinical integration because of their complexity and potential consequences.

To address the antitrust impediments to clinical integration, in 2008 the AHA asked former FTC officials to help us craft guidance for the hospital field on antitrust and clinical integration. The result was *Guidance for Clinical Integration*, a working paper that made the case for more agency guidance, provided guidance on establishing clinical integration programs and proposed a legal analysis of how clinical integration fits within established antitrust framework. Our goal was to foster discussion with the antitrust agencies that would lead to guidance similar to that provided by the agencies' *Statements of Antitrust Policy*, which addressed previous concerns and confusion in the health care field about the specific application of antitrust law to health care providers. A copy of our working paper and a related statement presented during the FTC's May 2008 workshop, "Clinical Integration in Health Care: A Check-Up," are enclosed. A key component to reforming the delivery system, and achieving the larger goals of health care reform, is eliminating barriers to greater collaboration and teamwork between hospitals, physicians and other providers.

We would be pleased to participate in a future committee hearing and to meet with your staff to discuss our concerns.

Sincerely,

Rick Pollack  
Executive Vice President

Enclosure