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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
BRIAN A. BENCZKOWSKI, *Republican Staff Director*

November 3, 2009

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 Leibowitz
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Assistant Attorney General Varney and Chairman Leibowitz,

We are writing to respectfully ask you to work with the hospital and provider communities to develop clear and user-friendly guidance for hospitals, physicians and other healthcare providers seeking to explore clinical integration.

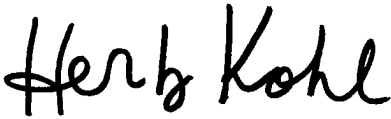
In June of 2007, Senators Kohl, Specter, Grassley, Durbin and Whitehouse made a similar request in a letter to the Assistant Attorney General for Antitrust and the Chairman of the Federal Trade Commission. Since then, the Commission has issued several opinion letters on this topic. While these letters have been generally supportive of clinical integration in appropriate circumstances, the guidance has been limited to the specific situations described therein. As a result, providers not covered by the letter opinions have continuing concerns about moving forward with clinical integration models.

Your agencies could make a significant contribution to integration efforts by providing guidance on clinical integration similar to that provided on related topics in the *Statements on Antitrust Enforcement Policy in Health Care*. The *Statements* are now 15 years old and while their success in providing clear and concise guidance is a testimonial to both antitrust agencies and an excellent model of agency collaboration, an updated version including a broad and clear statement of enforcement policy is needed. Similar to the early 1990s when the agencies issued the *Statements*, we are in another time of “fundamental and far-reaching change” in the health care field. Clear and user-friendly guidance would reduce barriers to coordination and innovation ultimately leading to cost efficiencies in health care delivery system.

With significant health care reform is underway, guidance would be timely. Supporters of clinical integration argue that it offers an opportunity to ensure greater efficiency and affordability in the reformed systems, in a manner consistent with the goals outlined by the President and Congress. Successful efforts to coordinate provider efforts, streamline the delivery of health care, and lower costs will be aided by clear regulatory guidance.

Thank you for your interest in this important matter. We look forward to your response.

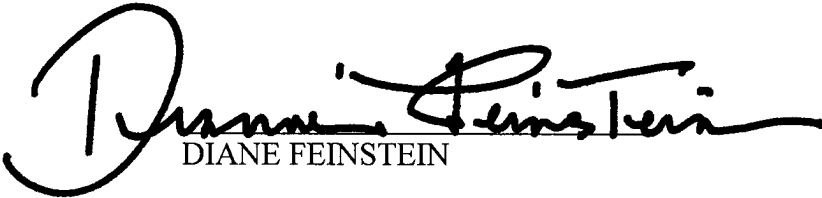
Sincerely,



HERB KOHL, Chairman
Subcommittee on Antitrust, Competition
Policy and Consumer Rights



PATRICK LEAHY, Chairman
Committee on the Judiciary



DIANE FEINSTEIN



SHELDON WHITEHOUSE



ARLEN SPECTER