

United States Senate

WASHINGTON, DC 20510

June 8, 2010

The Honorable Christine Varney
Assistant Attorney General
Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, NW
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 ask the Department of Justice's Antitrust Division and the Federal Trade Commission to work together to promptly produce user-friendly guidance on clinical integration for the nation's health care providers. Reports from a number of authoritative sources suggest that the cost of health care will continue to rise until there are fundamental reforms in the effectiveness and efficiency of our nation's health care delivery system. We believe the efforts by the providers themselves to improve upon efficiency and quality and, thereby lower the cost of health care, have great potential to effectively lead the way toward a reformed delivery system that best serves consumers of health care services and lowers federal spending on health care.

Chief among the challenges to reforming the health delivery system are federal laws and regulations that discourage collaboration among providers, such as hospitals, doctors, nurses, long-term care providers and others in the health care continuum. Lack of clarity in the antitrust laws and how those laws will be administered by the federal antitrust agencies has contributed to the problem. While we appreciate that the antitrust agencies have recently supported efforts by some providers to experiment with clinical integration and that the Antitrust Division has indicated it would consult with providers on this topic, to date, there is still no user-friendly guidance on which providers can rely.

The *Statements of Antitrust Enforcement Policy in Health Care* that the antitrust agencies produced in the 1990's in response to concerns that lack of clarity in the antitrust laws was inhibiting innovation by providers is an excellent model for providing guidance on clinical integration. That guidance clearly articulated the way in which the antitrust laws would be

applied in specific circumstances and included safe harbors on which providers could rely. At the time, the agencies recognized that further guidance would be needed as health care evolved. More than a decade later, further guidance is needed on the ways in which providers can effectively collaborate to improve health care delivery for our nation.

We urge you to work together with providers to once again produce user-friendly guidance on clinical integration.

Sincerely,

John Cornyn

John G. Hatch

J. Thum

Pat Roberts

Carl Levin

Dominique Snow