Federal Trade Commission Workshop on Health Care and Competition Law and Policy

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Panel 1
Health Care Services: Provider Integration
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Introduction

Good afternoon, I'm Stephanie Kanwit, and I am General Counsel and Senior Vice President, Public Policy and Research, for the American Association of Health Plans (AAHP). AAHP is the principal national organization representing HMOs, PPOs, and other network-based health plans. Our member organizations provide health care coverage to approximately 170 million individuals nationwide. AAHP member health plans contract with large and small employers, state and local governments, as well as with the Medicare, Medicaid, Federal Employee Health Benefits Plan (FEHBP), and State Children's Health Insurance (SCHIP) programs.

We appreciate the opportunity to participate in this dialogue on provider integration and other important trends in the health care system. In an environment of rising costs, it is important to take a step back and examine the key factors shaping today's health care market.

Trends in Today's Health Care Market

According to the U.S. Department of Health & Human Services (HHS), overall health care spending rose 6.9% in 2000, the largest increase since 1993.[i] While a number of factors are contributing to this increase, both HHS and the nonpartisan

Center for Studying Health Systems Change, which you heard from this morning, cite increases in hospital costs as the single largest factor.[ii] Moreover, a study commissioned by us at AAHP and conducted by PricewaterhouseCoopers found that "rising provider expenses" -- a category which includes hospitals, physicians, and others -- accounted for 18% of the increase in health care premiums from 2001-2002.[iii] All three studies identify hospital consolidation as one of the prominent drivers of rising health care costs.

While consolidation among health care organizations has the potential to benefit consumers by adding efficiency and affordability to the health care market, in evaluating the impact of any consolidation from an antitrust standpoint, the key question that needs to be answered is whether this test is met. Unfortunately, the evidence published to date suggests that some consolidations may have had unintended, negative consequences.

I will briefly review five examples of the type of market activity that should be evaluated closely.

1) Increases in Charges. In site visits to 12 nationally representative communities in 2001, the Center for Studying Health Systems Change found that consolidation has given hospital systems significantly more leverage in contract negotiations -- making it possible for them to gain substantially higher payments from health plans.[iv] A 2001 article in the *New York Times* reported that as a growing number of hospitals gained market power through mergers and acquisitions, they demanded rate increases as high as 40 to 60 percent for some services.[v] These rate increases ultimately are passed on to employers, consumers, and governments in the form of higher health care costs.

2) Spillover Effect. In some instances, provider charges not only increase for the largest player in a given market but also for all hospitals in the region. This is because once the largest player obtains a large increase, there is significant upward cost pressure throughout the geographic area.

3) All-or-Nothing. In some markets, hospital systems force health plans to contract with every facility affiliated with their system, even if some of these facilities fill no real need in the health plan's network.

4) Termination – Not Negotiation. Some hospital systems are using a strategy of sending termination letters to health plans as part of their efforts to obtain higher rates. While termination used to be the last resort in negotiations, in some highly consolidated markets, it would appear that termination notices are used as a first strategy. The disruptions in service and the concern and uncertainty these tactics produce for consumers should be cause for concern.

5) Increased Leverage Through Joint Arrangements with Physicians. In some cases, hospitals are forming joint arrangements with physician groups that have increased their market power substantially and resulted in major rate increases for provider services. In a number of metropolitan areas, large hospital systems own or are affiliated with physician practices. When large hospital systems also own physician groups that represent the majority of physicians in the market, the limits on consumer choice as well as the impact on consumer affordability are of equal concern.

Increases in hospital and physician charges have a ripple effect throughout the health care system in both the public and private sectors. As costs rise, it becomes more difficult for both government and private employers – particularly small businesses – to offer health coverage to their workers. Consumers ultimately pay the price, in the form of increased health premiums, higher cost-sharing, and, in the extreme case, loss of access to employer-sponsored health coverage. To promote policies and practices that benefit consumers, it is critical that enforcement agencies monitor the market closely and take steps to address anti-competitive practices.

Recommendations

In light of these developments in the market, we need a renewed focus on ensuring appropriate enforcement of the antitrust laws to ensure that consolidation benefits consumers. Such an approach could include the following three things:

1) Given recent press reports about how consolidation is impacting health care negotiations, we believe it is prudent for the Agency to proceed with its plans to evaluate the impact of consummated mergers. Such an analysis is critical to determine whether existing mergers meet the test of benefiting consumers by promoting efficiency and affordability in health care markets rather than adding another administrative layer for negotiating purposes.

2) In the past, we believe that the federal courts reviewing hospital merger cases have defined markets for acute care hospital services as geographic areas that are too broad. We believe that the initial steps in the Agency's analysis should be to re-evaluate the definition of hospital markets and to assemble a more

appropriate definition that accurately reflects patterns of utilization in geographic areas.

3) Third, we encourage the Agency to continue its important efforts in coordination with state and other federal enforcement agencies, to gather the facts necessary to evaluate existing mergers and to analyze proposed mergers through the prism of whether the impact is positive or negative for health care consumers.

In the next panel, we will be addressing the important issue of antitrust enforcement and how it impacts the quality of care. Maintaining competition in the health care market is critical to create an environment in which policymakers, payors, and providers in both the public and private sectors can develop effective strategies to bring health care costs under control and provide consumers choice of affordable health care options.

Thank you very much.

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[i] Levit et al. Inflation spurs health spending in 2000. (2002) *Health Affairs*. Vol. 21. No. 1. 172-181.
[ii] Ibid; Strunk, B., Ginsburg, P., & Gabel, J. (2001). Tracking health care costs: Hospital care surpasses drugs as the key cost driver. *Health Affairs*. Web Exclusive. W39-W50.
[iii] PricewaterhouseCoopers (2002). The factors fueling rising healthcare costs. Prepared for the American Association of Health Plans. Washington, D.C.

[iv] Strunk et al.
[v] Freudenheim, M. Medical costs surges as hospitals force insurers to raise payments. *New York Times*. May 25, 2001.