



Department of Justice

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JUSTICE DEPARTMENT AND FEDERAL TRADE COMMISSION ISSUE REVISED ANTITRUST GUIDELINES FOR THE HEALTH CARE INDUSTRY

Guidelines Promote Innovative Health Care Arrangements to Provide Consumers with Better Health Care Services

WASHINGTON, D.C. -- The Justice Department and the Federal Trade Commission today released revised antitrust guidelines for the health care industry to let health care providers and hospitals know how they can enter into joint ventures and other collaborative activities without violating the antitrust laws. The newly-revised guidelines provide significantly expanded discussions of the antitrust principles that the Department and FTC apply when analyzing physician network joint ventures and multiprovider networks.

The guidelines reflect and promote the continued emergence of innovative health care arrangements to meet consumer demand for cost-effective, high-quality health care services. The statements make clear that physician network joint ventures may be procompetitive and expand consumer choice. Such arrangements that offer consumers significant efficiencies and are reasonably necessary to achieve them will be reviewed under a flexible analysis rather than viewed as naked price fixing agreements, the Department said.

The new statements were announced today at a press conference held by Anne K. Bingaman, Assistant Attorney General for the Department's Antitrust Division, and Robert Pitofsky, Chairman of the Federal Trade Commission.

"The health care industry is rapidly changing and evolving in response to consumer demand for new and better methods of delivering high quality health care efficiently," said Bingaman. "The current revisions to the policy statements demonstrate that antitrust analysis and enforcement are flexible and resilient to accommodate these changing markets."

The nine statements issued today build upon the set of similar statements the Department and the FTC issued in 1993 and revised in 1994. All of the statements outline the antitrust principles that the Department and FTC apply in analyzing a variety of joint ventures and other activities by health care providers that may be procompetitive and cost-saving, and thus alleviate antitrust uncertainty in these areas.

Today's revisions expand the statements on physician network joint ventures and multiprovider networks. They provide an expanded analytical framework that physicians and other providers can rely upon in creating new health care networks tailored to consumer demand for cost-effective, high-quality health care services.

The statements provide seven new hypothetical examples of how the antitrust laws apply to specific situations. There are several examples of physician hospital organizations, including one in a rural market involving a large percentage of physicians, that would receive favorable treatment under the antitrust laws.

There is also an example of a "messenger model" arrangement that explains how unintegrated networks can facilitate physician contracting with payers while avoiding unlawful price agreements.

The revised statement on physician joint ventures continues to provide safety zones for networks of a particular size--20 percent where exclusive and 30 percent where non-exclusive--that share substantial financial risk. Exclusive joint ventures, explicitly or in practice, restrict doctors from participating in other networks or from contracting individually with health benefits plans. The statement provides additional examples of substantial financial risk sharing, and further emphasizes that a physician network joint venture can be procompetitive even if it does not come within a safety zone.

Most of the statements also describe safety zones that define circumstances in which the Department and FTC will not challenge such conduct. The revisions emphasize that conduct falling outside the safety zones may be lawful.

Under the statements the Department and the FTC also continue their commitment to an expedited procedure to respond, generally within 90 days, to parties seeking additional guidance on proposed health care joint ventures and other activities.

The Department has issued 40 business review letters in the health care area since the policy statements were first issued in September 1993. Many of these involved physician or other

provider networks that were approved by the Department because they were structured to prevent anticompetitive harm and to promote competition in the marketplace.

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