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Chairwoman Ramirez

March 24, 2015

The Honorable Edith Ramirez  
Chairwoman  
Federal Trade Commission  
600 Pennsylvania, Avenue N.W., Room  
438 Washington, D.C., 20580

The Honorable William Baer  
Assistant Attorney General  
United States Department of Justice  
Antitrust Division 950 Pennsylvania  
Avenue, N.W. Washington, D.C., 20530

Dear Chairwoman Ramirez and Assistant Attorney General Baer:

On behalf of our 33,000 physician members of the American College of Emergency Physicians (ACEP), I am writing to express my concern about your recent workshop--Examining Healthcare Competition. The composition of most panels was heavily weighted to economists and health insurers, with very few medical providers. In addition, the lack of input from emergency medicine, a key stakeholder in the nation's health care system, contributed to unbalanced and inaccurate perspectives on the current practice environment.

For example, suggestions to assign physicians and hospitals into "quality and value" tiers may sound reasonable, but as a recent study of hospital ratings shows, each rating organization uses different criteria which greatly reduces the value of these data to consumers. In addition, some emergency physicians are reporting that the tiering efforts in their states are placing them in every tier depending on the criteria used, which underscores how complicated and unreliable these criteria can be.

Several panelists also called for an end to cost shifting in health care services. This is not realistic in the current environment, unless the federal government and the states were to address how public programs have historically underpaid their share of costs and ignored the costs of the under and uninsured.

Emergency physicians are unique as they practice under The Emergency Medical Treatment and Labor Act (EMTALA) of 1986. This (unfunded) federal law mandates that hospitals (and therefore emergency physicians) see every individual who comes to the emergency department, regardless of ability to pay. This law, which ACEP supports, has allowed some health insurers to take advantage of physicians and pay them at extremely low rates. As a result, physicians are dropping out of networks, and that is causing problems for unsuspecting patients, especially those experiencing emergencies.

Without the ability to balance bill, insurers would accelerate their efforts to reduce physician fees even further. Our members would prefer to participate in networks, and ACEP has urged CMS for over three years to require insurers to use a transparent, verifiable database to establish fair payment rates that cover the costs of care. Facts like these were ignored, while panelists focused on concerns of growth of provider market power and the unfairness of balanced billing, while praising insurers for their competitive behavior.

ACEP's members are anxious to participate in alternative payment models, but to date, emergency care has not been included in bundles, episodes, etc. and, despite the fact that over 50 percent of inpatient admissions come through the emergency department, ACOs have not integrated emergency physicians into shared savings to date. Perhaps a

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statewide hospital global payment model like that underway in Maryland will provide a large-scale test case to see if global payment is a promising policy lever that can result in a level of integration and cooperation that will improve patient outcomes and reduce costs.

If you would like to discuss these comments with me, please contact Barbara Tomar in our Washington, DC, office at 202-728-0610, ext. 3017 or [btomar@acep.org](mailto:btomar@acep.org). ACEP stands ready to work with your staffs to implement health care reform and to ensure that enforcement is based on accurate marketplace information. We trust that our comments and perspective will be given consideration by the FTC and Antitrust Division.

Sincerely,

  
Michael J. Gerardi, MD, FACEP  
President, ACEP