



POST | Politics & Reform, General Interest

Antitrust Laws May Prohibit Physician-Led ACOs

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Posted by [Sandyfoot](#)   on October 07, 2011 - 08:16AM EDT

Author Specialties: Family Medicine

Antitrust rules handcuff physician-led delivery models

Federal regulations are squeezing doctors out of leading ACOs and other innovative methods of providing care.

Editorial. *Posted Oct 3, 2011.*

The Centers for Medicare & Medicaid Services says it wants new delivery models such as accountable care organizations to "raise the likelihood of preserving alternatives in the market, ultimately leading to the emergence of better procedures and treatments." But current antitrust enforcement effectively fails to allow for one possible alternative -- models led by private physician practices.

The Federal Trade Commission and the Dept. of Justice must set forth clear and common-sense rules that would make it feasible for private-practice physicians to organize and lead innovative delivery systems. Patients must be protected from anticompetitive practices, but they also must be given the opportunity to benefit from physician-led efforts to increase quality and reduce costs.

Physicians enter the situation already at a major disadvantage. For the most part, they are small-business people. About 78% of office-based physicians work in practices of nine doctors or fewer, and a majority are in practices of fewer than four doctors. As often happens with small-business people, when there is consolidation among the players they have to deal with, physicians are being squeezed.

On one end are health insurers, which have grown to such enormity, 80% of metropolitan areas are dominated by one or two companies, according to the 2010 update of the American Medical Association study "Competition in Health Insurance: A Comprehensive Study of U.S. Markets." With such a divide in market power between insurers and physicians, it's difficult for doctors to get paid reasonable rates.

On the other end are hospitals. Many markets are concentrated because of a wave of mergers starting in the 1990s. Now those hospitals are getting more aggressive in hiring more physicians and acquiring practices. Often, physicians -- already pressured by insurance payments going down as practice costs, especially for technology and regulatory compliance, go up -- feel they have no choice but to accept a hospital's offer. Otherwise, they risk being shut out by a powerful local health system.

Now, at this pivotal time in health care delivery, the antitrust laws complete the triangle in which many private practices find themselves trapped.

The AMA set forth its concerns in testimony submitted Sept. 9 to the U.S. House Ways and Means health subcommittee, which held a hearing on health industry consolidation. In its comments, the AMA said physician leadership ensures that medical decisions put patients' interests first, rather than being based on commercial interests. And making it easier to create innovative, physician-led models of care could end up reducing health costs, as well. In part, that will come from those models creating more competition in the health care marketplace.

A few physician-led systems have received conditional FTC antitrust clearance. But overall, the rules are unnecessarily restrictive and ultimately prohibitive to physician-led models. For most physicians, the risk is too high that banding together clinically so they may negotiate with payers on an innovative delivery model will lead to an antitrust violation.

Dominant health plans, hungry hospitals and an antiquated view on antitrust prevent all but the slimmest hope of leveling the health care playing field. That is not only the doctors' loss. As small-business people everywhere -- and as practicing physicians all the more so -- they have insight into the needs of the individuals they serve that large

institutions can't be expected to duplicate. Yet unless practices are allowed to work together, physicians will not have the chance to prove it through new models of patient care.



The federal law that largely exempts the health insurance industry from antitrust action is the:

Choose one:

- ☐ The Sarbanes-Oxley Act
- ☐ The Gramm-Leach-Bliley Act
- ☐ The McCarran-Ferguson Act
- ☐ The Hatch Act
- ☐ The National Insurance Act of 1911

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[valleydoc](#)

Internal Medicine



Posted October 07, 2011 - 08:20AM EDT

And in my sunny state, legislation regarding corporate practice of medicine will also interfere... oh the joy to see this clusterfuck disintegrate.

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[orlandoc](#)

Endocrinology



Posted October 07, 2011 - 09:38AM EDT

Another step to decimize physicians.

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Endocrinology



Posted October 07, 2011 - 09:45AM EDT

In CA, Blue Shield has already started ACOs in Sacramento, SF & Modesto. Two IPA groups in Bakersfield and 1 in Fresno have started making efforts to make ACO.

CA also has ban on corporate practice of medicine law but the loophole is through a foundation. One nice little trick they can use is that they can count physicians in their foundation elsewhere to meet the criteria of 40 physicians to employ physicians in other communities. CHW just started acquiring physician practices using the same formula. Adventist, which is a malignant corporation, is very aggressively expanding their foundation.

Once they have physician in their pocket, it is very easy to make ACO, esp with private insurances. Of course, hosp/corp gets to retain all the control. Main interest of these corp in making ACO is to capture market share with exclusivity.

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[Sandyfoot](#)

Family Medicine



Posted October 07, 2011 - 09:54AM EDT

The implications of this cannot be understated. If physicians are not allowed to form an ACO due to antitrust regulations, that means the ACOs will by default be formed by hospitals, insurance companies and perhaps private investors such as venture capitalists. In this scenario, medical decision-making will be heavily centralized, with algorithms, decision-trees and cookbooks determining patient care, all in order to maximize profit from bundled payments. Moreover, physician salaries-- our "cut of the pie"-- will be determined by someone other than our colleagues.

How benevolent do you think a hospital or insurance company CEO will be?

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[rarmstrong](#)

Surgery - General



Posted October 07, 2011 - 09:58AM EDT

Keep this going, Sandyfoot! One of these days a few more doctors will wake up.

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[leegross](#)

Family Medicine



Posted October 07, 2011 - 10:11AM EDT

It's way past time to repeal the McCarran-Ferguson Act.

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 [Sandyfoot](#)

Family Medicine



Posted October 07, 2011 - 10:14AM EDT

leegr,
You gave away the poll answer!

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[orlandoc](#)

Endocrinology



Posted October 07, 2011 - 10:16AM EDT

exactly Sandy.
You and I and some others understand this but vast majority of doctors have no clue, just like last 46 years, as to what trees will come out of these seeds.
This will open ways to wholesale takeover of healthcare by corporate/Govt and later by Govt only. It will take some time.

I will sure not go hungry but it will be disaster for pt including me as a pt.

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[leegross](#)

Family Medicine



Posted October 07, 2011 - 10:17AM EDT

Oops. I don't participate in polls. Polls are for politicians, and my checkered past would never allow me to get into politics.

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[suvarov](#)

Internal Medicine



Posted October 07, 2011 - 10:26AM EDT

FTC protects the sharks from the minnows

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Cardiology

Posted October 07, 2011 - 10:59AM EDT

Get an MBA, become involved as an investor, then start an ACO or maybe a verticalized organization with the insurance company, hospitals, and doctor offices all rolled into one product. That is what UHC was trying to do in Nevada until the economy tanked.

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[packer](#)

Pulmonology

Posted via [iPhone](#) October 07, 2011 - 01:23PM EDT

K

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[dmopain](#)

Pain Medicine



Posted October 07, 2011 - 01:40PM EDT

Why would any doc want anything to do with an ACO????

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[Sandyfoot](#)

Family Medicine



Posted October 07, 2011 - 01:44PM EDT

<Why would any doc want anything to do with an ACO????>

Fear and ignorance will fertilize the fields of submission. The rest of us will keep swinging...

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[dmopain](#)

Pain Medicine

Posted October 07, 2011 - 01:46PM EDT

+1 Sandy

I see fear and ignorance at my hospital everyday. One doc keeps telling me I'm just burnt out when we sit and discuss what's going on, I respond, I'm not burnt out, I'm trying to save my profession. Of course that doc is owned by the hospital and bitches about seeing 40 patients a day.

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Radiology

Posted October 07, 2011 - 04:16PM EDT

ACO's aren't being widely adopted because the hospitals have finally figured out they are a black hole financial model...unlimited risk with limited upside. Nobody can predict the health care costs and needs of a patient population of 5000 for three years...15000 patient years.

I think the ACO model was meant to fail and it why Obamacare must be repealed. They want doctors employed by hospitals, they want hospitals to go broke running ACO's, and then when everyone screams for a solution...presto, Government Single Payer health non care.

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[dgimmd](#)

Internal Medicine



Posted October 08, 2011 - 11:01AM EDT

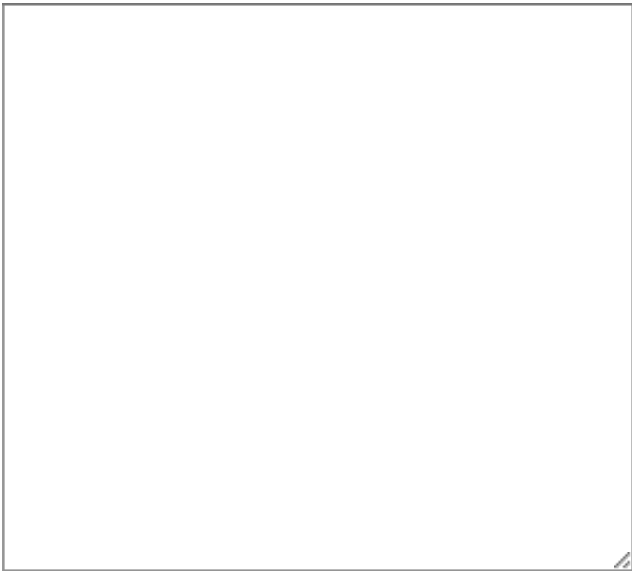
orlandoc re: " This will open ways to wholesale takeover of healthcare by corporate/Govt and later by Govt only...." that's already been done, >20 yrs ago...the tipping point was when the AMA sold out in the 1980s as the code makers for \$\$\$...we lost ANY credible representation, and our current plight and debates, are ample evidence

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Family Medicine



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