Competition and Consolidation in the U.S. Health Care System

by

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I. Introduction

Chairman Bachus, Ranking Member Cohen, and members of the subcommittee, I am Joe Miller, General Counsel for America's Health Insurance Plans (AHIP), which is the national association representing health insurance plans. AHIP's members provide health and supplemental benefits to more than 200 million Americans through employer-sponsored coverage, the individual insurance market, and public programs such as Medicare and Medicaid. AHIP advocates for public policies that expand access to affordable health care coverage to all Americans through a competitive marketplace that fosters choice, quality, and innovation.

Before joining AHIP in 2010, I worked at the Antitrust Division of the U.S. Department of Justice for 12 years. My last job at the Antitrust Division was as Assistant Chief of the Litigation I Section, with jurisdiction over health care and health insurance. I have also worked in private practice, and began my legal career as a staff attorney for the Federal Trade Commission.

We appreciate this opportunity to testify on issues surrounding competition and consolidation in the U.S. health care system. These issues have far-reaching implications for the cost of health care, quality improvement, consumer choice, and innovative approaches to the delivery of care. We applaud the committee for holding this hearing to call attention to these important issues.

Our testimony today focuses on the following topics:

- The importance of ensuring vigorous competition in the health care system;
- The harmful impact of anticompetitive consolidation among hospitals and other health care providers;
- The ability of hospitals to pursue innovation and quality without harmful consolidation; and
- Issues for policymakers to consider in the new regulatory environment created by the Affordable Care Act (ACA).

II. The Importance of Ensuring Vigorous Competition in the U.S. Health Care System

A highly competitive health care system is the best way to achieve innovative, high quality, affordable health care for all Americans. Vigorous competition creates incentives for all stakeholders to increase efficiency and hold down costs for consumers.

In the health insurance marketplace, competition is helping to drive innovative programs as health plans continually work to make their products more appealing to consumers and employers based on both quality improvements and cost savings. Our members, while operating in competitive markets, have demonstrated strong leadership in developing and implementing initiatives through which they are:

- developing performance measures to provide consumers better information about quality and costs to help them make value-based decisions about their medical treatments and how their health care dollars are spent;
- rewarding quality and promoting evidence-based health care through payment reforms;
- providing disease management services to enrollees who stand to benefit the most from pro-active interventions;
- working with primary care physicians to expand patient-centered medical homes that promote care coordination and accountability for clinical outcomes;
- providing incentives to promote the use of decision-support tools and health information technology;
- providing quality improvement reports for physicians to monitor their progress in managing disease;

- improving the flow of information between clinicians and plans through administrative simplifications;
- offering personalized risk assessments and wellness programs;
- encouraging electronic prescribing and consumer safety alerts; and
- providing peer-to-peer comparisons to demonstrate the appropriate use of health care services across specialists.

Through these and other strategies, health plans are working hard to ensure that their enrollees receive high quality health care at competitive prices. Vigorous competition among other participants in the health care system, including hospitals and physician practices, also is crucial to promoting a fair system that serves the best interests of consumers. Such competition – which is stifled in a growing number of markets by provider consolidation – is needed not only to create incentives for providers to control costs and increase efficiency, but also to promote quality improvements and innovation.

III. The Harmful Impact of Anticompetitive Consolidation Among Hospitals and Other Health Care Providers

Provider-related costs are a significant portion of total medical costs, and the growth in such costs has had an important, and detrimental, effect on consumers. Consumers benefit when health care providers compete to offer them lower costs, higher quality services, and innovative approaches to delivering care. There are situations in which provider consolidation does not impede these benefits or even enhances them. In other situations, however, consolidation diminishes competition among providers and leaves consumers with higher costs, diminished quality, and a reduced prospect of innovation or improvement. The federal antitrust agencies have selectively and carefully challenged mergers of hospitals that hold a significant prospect of such harm to consumers. While such challenges represent a relatively small percentage of the total number of hospital mergers, they are of great importance to consumers. Not only do such challenges, and the investigations that preceded them, prevent harm in specific markets, they also deter other anticompetitive transactions through a sentinel effect.

According to Irving Levin Associates[1], a health care research firm, the number of hospital mergers and acquisitions in the United States more than doubled from 50 in 2009 to 105 in 2012. Moreover, an analysis of provider consolidation by Bates White Economic Consulting[2] found that hospital ownership in 2009 was "highly concentrated" in more than 80 percent of the 335 areas studied. Numerous research findings demonstrate that this consolidation in the hospital industry is resulting in higher health care costs for consumers and employers:

- A June 2012 study published by the Robert Wood Johnson Foundation (RWJF)[3] found that "increases in hospital market concentration lead to increases in the price of hospital care," and that "when hospitals merge in already concentrated markets, the price increase can be dramatic, often exceeding 20 percent." This study further cautions that "physician-hospital consolidation has not led to either improved quality or reduced costs" and, additionally, points out that consolidation "is often motivated by a desire to enhance bargaining power by reducing competition." An earlier RWJF research project[4], focusing on hospital consolidation in the 1990s, stated: "Studies that examine consolidation among hospitals that are geographically close to one another consistently find that consolidation leads to price increases of 40 percent or more."

- An article published in June 2011 by the *American Journal of Managed Care*[5] found that "hospitals in concentrated markets were able to charge higher prices to commercial insurers than otherwise-similar hospitals in competitive markets."

- An issue brief published in July 2011 by the National Institute for Health Care Management Foundation[6] found that one of the factors contributing to higher prices is "ongoing provider

[1] New Laws and Rising Costs Create a Surge of Supersizing Hospitals, *New York Times*, August 12, 2013
[2] Market concentration of hospitals, Bates White Economic Consulting, Cory Capps, PhD, David Dranove, PhD, June 2011
[3] The impact of hospital consolidation–Update, Martin Gaynor, PhD and Robert Town, PhD, Robert Wood Johnson Foundation, June 2012
[4] How has hospital consolidation affected the price and quality of health care?, William B. Vogt, PhD and Robert Town, PhD, Robert Wood Johnson Foundation, February 2006
[5] Hospital Market Concentration, Pricing, and Profitability in Orthopedic Surgery and Interventional Cardiology, James C. Robinson, PhD, *American Journal of Managed Care*, June 24, 2011

consolidation and enhanced negotiating strength vis-à-vis insurers, resulting in an ability to extract higher payment rates from insurers."

- Paul Ginsburg and Robert Berenson, in an article published in the February 2010 edition of *Health Affairs*[7], stated that "providers' growing market power to negotiate higher payment rates from private insurers is the 'elephant in the room' that is rarely mentioned."

- The Massachusetts Center for Health Information and Analysis[8] recently released its "2013 Annual Report on the Massachusetts Health Care Market." In a discussion about the impact of provider consolidation, the report notes that the highest priced 25 percent of providers in Massachusetts received over 50 percent of commercial payments made to acute hospitals and physician groups in 2012. A *Boston Globe* article[9] pointed out that the report's findings show that as hospitals and provider groups consolidate, "larger groups often have the leverage to demand higher prices from insurers."

- A September 2013 research brief by the Center for Studying Health System Change[10] reported that "it is clear that provider market power is key in price negotiations and that certain hospitals and physician groups, known as 'must-haves,' can extract prices much higher than nearby competitors." This study also concludes that "increases in provider prices explain most if not all of the increase in premiums" in recent years.

More recently, a great deal of provider consolidation has been occurring at the so-called "vertical" level. In such situations, hospitals employ, acquire, or effectively control previously independent physicians or physician practices. Again, the effects of such consolidation will depend upon the specific facts and circumstances in particular markets. Some of this consolidation, however, holds the prospect of harm to consumers similar to that which results when previously competing hospitals merge with each other. For example, if such vertical integration reduces competition among hospitals because the relevant physicians will now only

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[6] Understanding U.S. Health Care Spending, National Institute for Health Care Management Foundation, July 2011
[7] Unchecked Provider Clout In California Foreshadows Challenges To Health Reform, *Health Affairs*, February 2010
[8] 2013 Annual Report on the Massachusetts Health Care Market, Massachusetts Center for Health Information and Analysis, August 2013
[9] Partners hospitals, doctors top health-payment list, *The Boston Globe*, August 14, 2013
[10] High and Varying Prices for Privately Insured Patients Underscore Hospital Market Power, Center for Studying Health System Change, September 2013

refer to one hospital, consumers may suffer harm. Similarly, if previously competing physicians are consolidated so that there is no, or less, competition among these physicians, consumers will be harmed. While this is an area in which there is less of an enforcement history, we are pleased that the Department of Justice and the Federal Trade Commission appear to be focusing on these issues as well. We encourage their vigilant inquiries into this area and, where appropriate, their challenge of such consolidation.

IV. Innovation and Quality Are Possible Without Harmful Consolidation

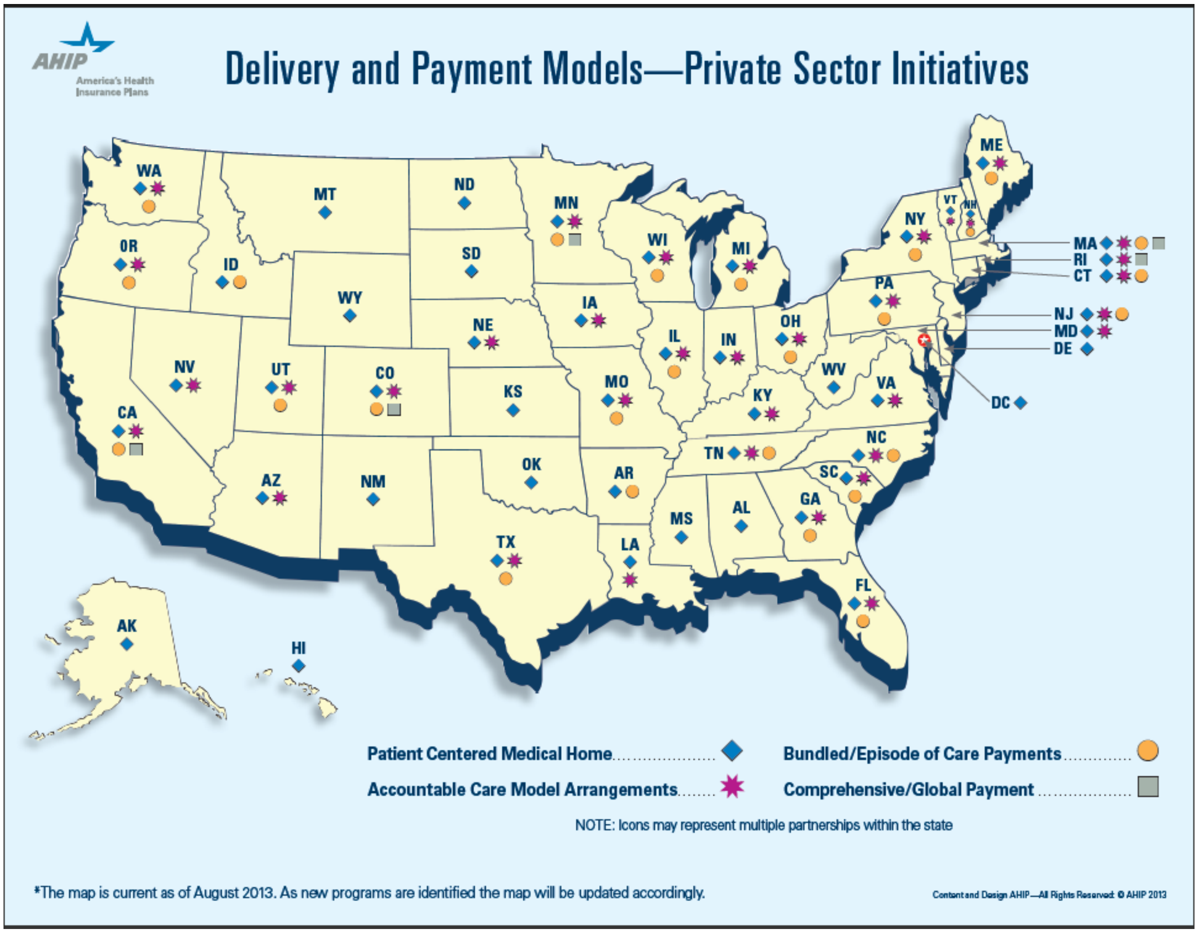
Hospitals seeking to pursue the goals of health reform – higher quality, more efficient care – can achieve these goals without undertaking anticompetitive consolidation. Through the appropriate use of technology and care coordination strategies with partners, hospitals can address health care quality without the harmful effects of consolidation that limits competition.

As we discussed above, health plans and providers have engaged in a wide range of collaborative efforts to improve the quality and efficiency of health care delivery – and these efforts have succeeded without anticompetitive hospital consolidation. In fact, it is likely that such consolidation would have the opposite impact on quality improvement efforts. Just as anticompetitive consolidation has been recognized to have a chilling effect on innovation in many other markets, such consolidation among hospitals is likely to reduce innovative collaborations between health plans and providers. This would be an unfortunate outcome for consumers who might otherwise benefit from the improvements in quality and efficiency generated by these innovative collaborations.

Indeed, many of the health plan initiatives noted above involve health plans partnering with providers to improve quality and lower costs in a manner that does not depend upon anticompetitive provider consolidation (see map below). For example, health plans have been leaders in the adoption of patient-centered medical homes, which attempt to replace episodic care with a sustained relationship between patient and physician.[11] Similarly, health plans have been strong partners in many accountable care organizations, with promising early results in reducing

[11] AHIP Press Release, AHIP Board of Directors Releases Principles on Patient-Centered Medical Home, June 25, 2008

preventable readmissions and total inpatient hospital days.[12] The range of such efforts is vast, beginning with the point of contact with the patient and extending all the way to the "back office" interactions between plans and providers. For example, in Ohio, health plans sponsored an information technology initiative to improve the efficiency of transactions between plans and physicians by providing a one-stop service in electronic transactions for physicians.[13]



Such initiatives not only are consistent with provider competition, but often they rely upon it. The false choice – that we can have either competition or innovation, but not both – should be rejected. Instead, by protecting competition in provider markets, authorities will help quality improvement initiatives to flourish in a variety of forms, with the benefits flowing to consumers as plans and providers work together to address costs and quality.

[12] Early Lessons From Accountable Care Models in the Private Sector: Partnerships Between Health Plans and Providers, Aparna Higgins, et al., *Health Affairs*, September 2011
[13] AHIP Press Release, Health Plans Collaborate on Landmark Initiative to Reduce Time, Expense for Physician Office Practice "Paperwork", October 5, 2009

V. Issues for Policymakers to Consider in the New Regulatory Environment Created by the Affordable Care Act

On October 1, less than two weeks from today, health insurance Exchanges across the nation will begin open enrollment for new coverage options that will go into effect on January 1, 2014 under the ACA. We believe that Exchanges can be vehicles that deliver important benefits to consumers, and below we offer a number of suggestions for increasing the likelihood and impact of such benefits.

Our members are strongly committed to offering high quality, affordable health insurance plans under the framework established by the new health reform law. The ways in which they offer such plans vary, but one common theme is that they consistently are seeking to increase affordability and quality. They recognize, though, that this cannot be done without addressing the issue of provider market concentration. Throughout the ACA implementation process, we repeatedly have emphasized that affordability must be a central goal in the health reform process and that addressing provider market issues is an important part of achieving this goal. Promoting competition and halting harmful consolidation in provider markets are critically important steps in making progress toward increased affordability.

Enforcement of Antitrust Laws by FTC and DOJ

The Federal Trade Commission (FTC) and the Department of Justice (DOJ), which have authority to enforce federal antitrust laws, play an important role in challenging anticompetitive behavior in the marketplace. This includes investigating and challenging specific cases of provider consolidation that threaten to stifle competition, increase costs, reduce choices, and undermine quality for consumers and employers. AHIP has supported such agency challenges in the past, including an amicus brief[14] we filed in November 2012 supporting the FTC in its challenge of a merger involving two hospitals in Toledo, Ohio.

[14] Amicus Brief filed by AHIP in U.S. Court of Appeals for the Sixth Circuit with respect to ProMedica Health System, Inc. v. Federal Trade Commission, November 21, 2012

We appreciate the FTC and DOJ's commitment to preserving and promoting competition in health care markets. In testimony[15] submitted for an April 2013 hearing in the Senate Judiciary Committee, the FTC expressed concern about anticompetitive mergers among hospitals, other health care providers, and pharmaceutical manufacturers, cautioning that such mergers can increase health care prices for consumers. We urge the FTC and DOJ to continue to be vigilant in identifying hospital mergers that would harm consumers by concentrating market power in a way that diminishes competition. We further encourage the agencies to examine the increasing acquisition of physician practices by hospitals and the potential competitive implications of such acquisitions, both in specific instances and more generally. Dealing with existing market power, as opposed to new transactions that create it, is a more complicated issue for the antitrust agencies. We encourage them, though, to look both back as well as forwards to identify lessons from past consolidation and inform the dialogue about ways to address its harmful effects. Finally, we also urge Congress to ensure that the agencies have sufficient resources to investigate and challenge hospital and other provider consolidation that does not serve the best interests of the American people.

Regulatory Framework for Accountable Care Organizations

Building upon the success of accountable care organizations (ACOs) that were pioneered in the private sector, the ACA establishes a role for ACOs in the new Medicare Shared Savings Program (MSSP). Under this program, the Department of Health and Human Services (HHS) is contracting with ACOs to assume responsibility for improving quality of care, coordinating care across providers, and reducing the cost of care for certain Medicare beneficiaries. If cost and quality targets are met, ACOs will receive a portion of any savings realized by the Medicare program. As implementation of the MSSP continues, it is important for policymakers to closely monitor this program and ensure that it is operating under a regulatory framework that promotes choice and competition and does not allow ACOs to accumulate market power that leads to higher costs for consumers.

Specifically, we look forward to learning what the agencies have learned from the provision by HHS of aggregated claims data on allowed charges and all fee-for-service payments for all

[15] Testimony on "Oversight of the Enforcement of the Antitrust Laws," Edith Ramirez, Chairwoman of the Federal Trade Commission, April 16, 2013

ACOs in the MSSP. We support the role of many ACOs as a route to improving the care delivered to patients, but we share the FTC and DOJ's caution[16] that "under certain conditions ACOs could reduce competition and harm consumers through higher prices or lower quality care." We are pleased that the FTC and DOJ will be given information that will be helpful in addressing this concern, and we look forward to the availability of further information that will help policymakers understand what has happened to date and how to reduce the risk of competitive harm in the future.

Transparency on Provider Cost and Quality

Along the same lines, we encourage the federal antitrust agencies, HHS, and other agencies with access to or oversight related to information on provider cost and quality to take steps to help consumers obtain useful, actionable information. Increasingly, consumers are using information to make decisions about their care. These include select network products, reference pricing, and tiering, among others. These products depend upon consumers having access to actionable information and being empowered to use it.

VI. Conclusion

Thank you for considering our perspectives on these important issues. We appreciate this opportunity to testify about the important role of provider competition, and enforcement that protects such competition, in addressing health care costs. We look forward to continuing to work with the committee and the antitrust agencies to promote and preserve competition with the goal of further expanding access to high quality, affordable health care.

[16] Federal Trade Commission, Department of Justice Issue Final Statement of Antitrust Policy Enforcement Regarding Accountable Care Organizations, October 20, 2011