American Chiropractic Association

DEDICATED TO IMPROVING THE HEALTH AND WELLNESS OF AMERICA, NATURALLY.

September 9, 2003

Donald S. Clark
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Comments Regarding Health Care and Competition Law and Policy

Dear Mr. Clark:

The American Chiropractic Association ("ACA") respectfully provides the following commentary in connection with the Federal Trade Commission/U.S. Department of Justice joint hearings entitled "Health Care and Competition Law and Policy". The current health care marketplace contains within it an unbalanced playing field. Many operations of managed care organizations and insurance companies are not subject to the restrictions of the antitrust laws under the McCaren-Ferguson Act. Individual health care providers are, therefore, at a distinct disadvantage since they are subject to the full force and effect of these laws. Such providers are limited in the way in which they communicate with each other and with the public on vital issues affecting patient care.

The unbalanced nature of the marketplace in this regard has made it difficult for health care providers, including doctors of chiropractics, to react to a managed care industry, which is

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increasingly unresponsive to the concerns of the individual provider. In March 2002, in response to what it views as a marked increase in abusive tactics practiced by the managed care industry, the ACA House of Delegates adopted the following policy:

DISCRIMINATORY PRACTICE (MCO)

WHEREAS, the ACA has long been concerned over the harmful and discriminatory practices of managed care organizations, particularly chiropractic networks and third-party administrators affecting proper patient care an d the practice of chiropractic, Therefore, be it

RESOLVED, that the ACA vehemently opposes these harmful and discriminatory practices, that negatively impact quality of care, including but not limited to:

- *Limiting full scope of practice*
- *Inappropriate CPT applications and reimbursement policies*
- *Use of discount/affinity programs*
- *Restrictive limits of care and*
- *Improper utilization review.*

Be it further,

RESOLVED, that ACA staff and leadership are directed to communicate our concerns to the profession; obtain detailed data on these abuses; develop and implement a plan to halt these unfair practices; and give a status report in August 2002 and at each subsequent House of Delegates meeting. (Ratified by the House of Delegates, March 2002).

In response to the above policy and directive, the ACA initiated a nationwide survey of doctors of chiropractic in June 2002 to assess the effects of policies and procedures imposed by managed care organizations.

The survey revealed a series of reimbursement related issues which impact in an adverse manner on the individual practices of doctors of chiropractics. Such issues involved:

- Denied/terminated network participation
- Excessive paperwork, lost patient health records, incorrect benefit plan information
- Inappropriate bundling of procedure codes, inappropriate denial of procedure codes
- Inappropriate denial of appeals and pre-authorizations
- Inappropriate denial of x-rays and additional visits
- General complaints concerning reimbursement and denied payment

The ACA also sought guidance from the Federal Trade Commission on the collection and dissemination of fee related information, which would compare the percentage of payments from various managed care organizations. Such information would be provided to the public as well as to purchasers of health care services to demonstrate the inequities and abuses of managed care reimbursement. In that regard, the Commission directed the association to a February 6, 2003 Advisory Opinion in connection with a "health care advocacy group" composed of practicing physicians in Dayton, Ohio. That Advisory Opinion addressed a similar collection of managed care fee information prepared to also demonstrate the inequities and "ill-effects and other consequences of the policies and procedures, including depressed reimbursement, by third party payers in Dayton".

While the Advisory Opinion stated that the desire to focus public attention on the concerns of the physicians is entirely consistent with antitrust principles, "one aspect of the proposal warrants more extended discussion: the collection and publication (to physicians as well as to other members of the public) of the fees paid by named health plans for specific medical services." The Advisory Opinion dctailed the process by which the Dayton physician group could collect and publish such fee information and noted that the procedures would correspond to the criteria of the safety zone for health care provider participation and price information exchanges found in Statement 6 of the Statements of Antitrust Enforcement Policy in Health Care jointly issued by the FTC and the Department of Justice in August 1996. The advisory opinion noted, however, that "the safety zone does not apply to physicians' exchanges of information about specific health plans' payments." Therefore, from the outset, the collection of such specific and critical information is not subject to the safety zone protections established by the FTC and the Department of Justice.

The advisory opinion went on to point out that such payment information can also reflect physician prices (which falls under the protections of the Statement 6 safety zone) and concluded, based on the other safeguards outlined in the Dayton physicians' proposal, that "these safeguards appear to offer substantial assurance that the price exchange aspect of the survey will not involve significant antitrust risk." The advisory opinion also commented on "the potential competitive effects" of the proposed publication of insurer payments and noted that such publication can be helpful to patients and employers in making their purchasing decisions and "would be expected to facilitate competition". The advisory opinion concluded that, "On

balance, therefore, we conclude that the proposed activity would not be likely to unreasonably restrict competition among Dayton physicians, so long as it is carried out as described above."

Given the findings contained in the FTC advisory opinion referenced above, the ACA would urge the Commission and the Department of Justice to amend the existing Statement 6 to specifically include physicians' exchanges of information about specific health plans' payments. In addition, the ACA would urge the Commission and Justice Department to consider other avenues by which the playing field between the managed care industry and individual health care providers can be leveled. Greater flexibility should be provided to individual health care providers working through trade associations to communicate truthful and accurate information to the consuming public and purchasers of health care services. Such information exchange can only help further competition in the health care industry and help address what the ACA views as an unbalanced playing field.

Very truly yours,

Daryl D. Wills, D.C., President
American Chiropractic Association

James D. Edwards, D.C., Chairman
ACA Board of Governors

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