AHA

Advancing Health in America

American Hospital Association
Statement Presented by Fmr. FTC Commissioner Christine Varney

Department of Justice and Federal Trade Commission Hearing

PERSPECTIVES ON COMPETITION POLICY AND THE HEALTH CARE MARKETPLACE

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I am appearing here today on behalf of the American Hospital Association (AHA) and its nearly 5,000-member hospitals, health systems, networks and other providers. AHA member hospitals are committed to providing patients with the highest possible quality of care and improving their communities through an efficient and effective health system. We are pleased to participate in these hearings on the health care field being inaugurated this week by the Department of Justice's (DOJ) Antitrust Division and the Federal Trade Commission (FTC).

Health care is an extremely important sector of our economy. Currently, it accounts for over 14 percent of our GDP or $1.4 trillion. It is also a dynamic and rapidly changing sector of our economy. A single medical breakthrough can virtually revolutionize the way patients are cared for by our nation's doctors and hospitals.

We hope that the hearing being inaugurated this week will give the federal antitrust agencies, and those who follow their progress, some important insights into the workings of the health care field as it operates today. It is absolutely essential for the antitrust agencies to develop a contemporary framework in which to analyze competitive conduct.

To repeat the advice I offered in a speech I gave while serving as a Commissioner:

> The dynamism of these [healthcare] markets requires antitrust enforcers to keep fully abreast of all the changes in those markets. We know a great deal about health care markets, but we need to know more in order to make sure that we have the analysis right.

Quite simply, the health care field operates significantly differently today than it did five or ten years ago. In many important respects, the services hospitals offer today are quite different than they used to be, thanks to rapid advances in medical technology, changes in the manner and even the place where many services are delivered as well as greater availability through broadening networks of providers. The federal antitrust agencies need to become familiar with the most recent trends in the payment and delivery of health care and the myriad financial, regulatory and community pressures under which the field operates today in order to analyze it correctly.

Certainly, the most pressing issue for consumers today must be the rising cost of their health insurance premiums. The cost of health insurance premiums rose by 12.7 percent in 2002. Whether the antitrust agencies have a role to play in addressing that staggering increase remains to be seen, however, in my view, the best way for the agencies to make that determination would be to take a holistic approach to understanding the entire health care field and what's driving it today.

As a Commissioner, I was an unabashed proponent of a holistic approach to analyzing competitive issues in the hospital field, because I recognized that hospitals are unusually complex organizations operating in a dynamic health care environment. The types of brick-and-mortar industries with which the agencies are well acquainted, such as grocery stores and car dealers, simply do not provide an analogous model for analyzing conduct or transactions for hospitals. It is apparent to me that hospitals face financial, regulatory and community pressures that distinguish them from these more conventional industries, as well as others in the health care field and that affect significantly the competitive analysis. To be relevant in this field, antitrust analysis must transcend its traditional framework and look beyond static issues, such as market shares, in order to understand and predict marketplace competitiveness.

We view this series of hearings on health care as an opportunity for the federal antitrust agencies to broaden and improve their understanding and, consequently, their analysis of how hospitals operate and interact with other entities in today's health care environment. We believe that to fully seize that opportunity the hearings must begin by taking a top-down or holistic look at the field. That includes a close look at what is driving spending on hospital care.

Although spending on hospital care has risen more slowly than other types of health care spending, such as pharmaceuticals, payer overhead and profit, professional services and nursing homes, it accounted for 32 percent of total national health care expenditures in 2001.

A report by PricewaterhouseCoopers (PwC Report), for the AHA and the Federation of American Hospitals, released last week, confirms that the rise in hospital spending is driven principally by consumer demand. Since 1997, the largest source of hospital spending growth has been volume – more people demanding more services. The reasons for the increase in volume are fourfold:

- Aging of America -- as Americans grow older they use more hospital services;

- Ineffective care management and patient education -- lack of access to primary care and inadequate management of chronic diseases, such as asthma and diabetes, outside the hospital setting continues to lead to overuse of expensive emergency room services;

- Less restrictive benefit plans -- consumers are demanding and moving to less restrictive managed care plans and insurers are relaxing restrictions on HMOs by broadening their networks and loosening utilization control measures, such as preauthorization; and

- New and more expensive technologies – increasingly patients can be treated earlier and more aggressively with new lifesaving technologies. Simply put, healthcare today can do more things for more people.

In most economic sectors, growth in volume would be a welcome development. For hospitals, however, growth in volume can be a mixed blessing. Together Medicare and Medicaid account for over half of patient volume. Payment rates for those government programs are fixed and in total fall below the cost of providing hospital care. So, despite recent growth in volume, aggregate total margins for hospitals have continued to fall and currently are only slightly above 4 percent.

Another relatively recent change for hospitals is the skyrocketing growth of labor costs. In the face of a severe nursing shortage and shortages in other key areas such as pharmacists and technicians, hospital labor costs have risen dramatically. In order to retain workers and attract new ones needed to serve patients, hospitals have increased hourly earnings far above the increases paid by private industry. Today, wages and benefits account for nearly 57 percent of all hospital costs. Other new cost pressures include a staggering growth in professional liability premiums in some states. The PwC report found that premiums increased by 30 to more than 100 percent in 2002.

Although not a new development, a persistent financial pressure that distinguishes hospitals from conventional brick-and-mortar industries is uncompensated care. Hospitals treat emergency patients regardless of their ability to pay. Many hospitals believe that it is an essential part of their mission to provide the greatest amount of uncompensated care that they can afford. Uncompensated care costs for hospitals amounted to $21.5 billion in 2001. It is also significant that in the current economic climate, the number of uninsured patients has grown to over 40 million, which portends future growth in uncompensated care.

As the PwC report demonstrates, the key drivers of growth in spending on hospital care are largely unrelated to the need for greater enforcement of the competition laws and policy issues within the purview of the antitrust agencies. Rather, this growth in spending is due to consumer demand, the costs of providing health care, and the unique characteristics of the hospital field.

An issue within the purview of the antitrust agencies that has been blamed by some HMO industry trade groups for driving up the cost of hospital spending and, consequently, health care premiums, is so-called hospital "consolidation." Yesterday, in response to claims by the Blue Cross and Blue Shield Association (BCBSA) that "consolidation" was a leading cause of double-digit health care costs, the AHA released a report refuting the studies on which those claims were based. This report concluded that ***"hospital merger activity does not explain the increases in spending for hospital services claimed in BCBSA report."***

This authoritative report, authored by respected health care economist Margaret Guerin-Calvert and Economists Inc., further showed that attempts to blame hospital "consolidation" are inconsistent with hospital merger data and trends:

- The number of hospital mergers has been falling steadily since 1998; in both 2000 and 2001, fewer than 6 percent of hospital facilities were involved in a transaction;

- During that same time, aggregate margin for hospitals declined; this trend is consistent with findings that increased expenses—not revenues—have driven hospital spending;

- As the antitrust agencies themselves have acknowledged, only a small fraction of hospital mergers have raised any competitive issues; and

- Mergers that took place over the last decade did so during a complex period when hospitals faced significant financial pressures, which resulted, in some cases, in poor financial performance and even closures. At the same time, other trends, such as increases in utilization due to consumer demand for less restrictive PPOs in lieu of tightly controlled HMOs influenced hospital performance and spending on hospital care.

The report concluded that the trends in spending on hospital care ***"do not, however, support a conclusion that greater antitrust enforcement activity is required in the hospital sector or that past mergers and changes in market structure have resulted in price increases."*** In other words, hospital mergers are not what is driving up the cost of health care premiums to consumers.

In many cases, hospital mergers have yielded efficiencies and savings that have helped to control costs. As a Commissioner, I took the position that agencies should do a more in-depth look at efficiencies in hospital mergers, and that in the absence of a severe threat to competition, efficiencies from those mergers "should be presumed to flow to the benefit of consumers."

If the antitrust agencies are serious about determining whether competition policy or antitrust enforcement has a constructive role to play in reducing the cost of health insurance premiums, they will have to broaden their horizons beyond hospitals. The Federal Trade Commission (FTC) in particular seems to be devoting significant resources to hospitals at the expense of other sectors of health care:

- The FTC has announced it is conducting a series of retrospective analyses of hospital mergers, yet there appears to be no similar initiative by either agency directed to HMOs, pharmaceutical or medical device firms or any other sector of health care, despite increasing levels of concentrations in those sectors; and

- The FTC announced at its health care workshop last fall the it would be undertaking significant economic research directed at hospitals, yet there appears to be no similar research initiative by either agency directed at health insurers or any other category of providers.

If the federal antitrust agencies want to make a contribution to the health care cost debate they need to devote more time and resources to other sectors of health care, not just hospitals and doctors. We urge them to do so; anything less will shortchange the people we all serve.

We look forward to working with the federal antitrust agencies to help make these hearings a success.