WBGH

WASHINGTON BUSINESS GROUP ON HEALTH
50 F Street, NW Suite 600 • Washington, D.C. 20001
202.628.9320 • Fax 202.628.9244

Creative Solutions for Today, Strong Policy for Tomorrow

September 30, 2002

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

Dear Mr. Clark:

The Washington Business Group on Health (WBGH) welcomes the opportunity to submit written comments on competition law, enforcement, and policy in health care as a follow up to my remarks on September 9th. WBGH and its members applaud and fully support the Federal Trade Commission's efforts to increase its focus on issues of antitrust and competition in health care. I am grateful to have had the opportunity to participate in the workshop and voice the concerns of our members. While the comments that follow do not address the technicalities of antitrust law and enforcement, they do reflect the experience and concerns of employers, who purchase billions of dollars of health care annually for employees, retirees, and their dependents.

The Washington Business Group on Health (WBGH) is the national voice of large employers on health care and health benefits issues, with a membership of 175 of the nation's largest and most innovative private and public sector employers. WBGH's members provide health care coverage for more than 40 million U.S. workers, retirees, and their families. WBGH represents employers in promoting market-based, performance-driven health care delivery systems that improve the health and productivity of employees and communities and the quality of health care.

WBGH would welcome the opportunity to meet with the FTC to discuss this issue in more detail.

Sincerely,

Helen Darling

Helen Darling
President

Attachment

Comments Regarding Competition Law and Policy & Health Care

As health care costs continue to rise by double-digit increments for the foreseeable future, employers are increasingly concerned about the extent to which lack of competition in health care, particularly due to significant hospital consolidation, may be contributing to rising health care costs. Employers and employee-consumers alike are paying more for health care -- a 50% increase in the last five years (1998-2002).[1] These cost increases have broad implications for consumers and the economy as a whole. Some analysts estimate that for every 1% increase in health care costs, 100,000 employees lose their jobs any many more jobs are not created.

Employers generally face extremely competitive market conditions for their goods and services, both in the United States and internationally. Employers would ultimately like to see a health care marketplace that competes on the basis of quality, service, innovation and price, as do other goods and services. Unfortunately, the health care market currently falls far short in too many of these areas to be effective. As a result, employers and employees have no guarantee of the value, in terms of quality and efficiency, they receive in return for the billions they spend on health care each year. The landmark Institute of Medicine report *To Err Is Human* (1999) concluded that preventable medical errors in the hospital alone cause up to 98,000 deaths and costs between $17-29 billion annually.

Although spending on all types of health care services has outpaced general inflation, recent growth in spending for hospital services has been the most dramatic. Overall, growth in inpatient and outpatient hospital spending accounted for 43% of growth in health care spending in 2000 and were expected to accelerate in 2001.[2] Too often we see double-digit increases in hospital administration and overhead without a corresponding investment in technology to improve patient care.

Provider consolidation, particularly hospital consolidation, is aggravating these cost increases. In a growing number of geographic areas, urban and rural, (e.g., Northern California and Long Island), consolidation has left a single or a few dominant hospitals or hospital systems, which have demanded and received payment increases in some cases of up to 40%. Recent highly public contract showdowns between hospitals in some communities and payers reflect the increase in market power of hospitals.[3] In many of these cases, consolidation may show little clear evidence of any benefits to consumers or quality improvements and are clearly affecting employers' ability to provide benefits to their employee-consumers. Worse yet, there are "hospital systems" that join together for cost/price negotiation purposes, with no apparent evidence of any other integration of resources, services, or referrals that might benefit patient care.

We believe that these actions hurt consumers and make it more difficult to institute programs that improve quality and moderate costs. Payers' ability to reward the better

[1] *Towers-Perrin, Health Care Cost Survey, 2002.*
[2] *B. Strunk, P. Ginsburg, and J. Gabel, "Tracking Health Care Costs," Health Affairs, 2001*
[3] *B. Strunk, K. Devers, and R. Hurley, "Health Plan--Provider Showdowns on the Rise, National Center for Studying Health System Change, June 2001*

quality, more efficient hospitals declines as choice of facility shrinks because payers must contract with hospitals on the basis of availability rather than on quality. Many new efforts on the East and West Coasts and elsewhere to align provider incentives to promote improved outcomes and quality of care could be jeopardized.

WBGH applauds recent efforts by the FTC to step up antitrust enforcement efforts in health care and increase staffing in this area. <u>In addition, WBGH believes that post-merger follow up and continuing oversight is essential to determine whether hospital mergers have actually benefited consumers or simply allowed hospitals to charge more and resist efforts to improve quality and patient safety.</u> For too long, we have ignored the impact on consumers and the communities where hospital mergers have occurred to monitor whether the benefits claimed are actually attained.

Although consolidation among hospitals is the primary focus of these comments, other areas are also of concern to WBGH. Regarding pharmaceuticals, employers support fair market rules that promote access to affordable medicine as well as promote the development of tomorrow's innovative therapies. Playing by the rules stimulates innovation and promotes robust and fair competition that benefits consumers. Anti-competitive abuses and unwarranted delays to market entry harm employers, employees, and all consumers.

In the health care market generally, WBGH would be very concerned about efforts to ease or waive health care antitrust regulations in general and for any specific segment of the health care industry. Such a change is likely to reduce access and competition and lead to higher costs, particularly for some services or in some geographic areas. We urge you to carefully assess any proposal to ease healthcare antitrust regulations to determine who will really benefit. In an increasingly consumer-driven health care world, any change must result in clear benefits to the consumer.

Finally, transparency is a critical ingredient for a truly competitive health care marketplace. Consumers need information to make wise health care choices. Providers should make information on quality, utilization, and performance easily available to all consumers. In many cases, this information is publicly reported and not proprietary. We believe that hospitals should post all publicly reportable information in a user-friendly way on their websites so that consumers can use it to select on quality, efficiency, and service.