FTC Clinical Integration Workshop

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Baseline

- Clinical integration has tremendous potential
- It may be very hard
- Where it's going very well may not often be in the line of sight for outside antitrust counsel
- Or there may not be a lot of significant clinical integration activity outside context of "at risk" organizations
- There is a great deal of interest
- When integration initiative is robust and connected well to joint negotiation, and market power worries absent, antitrust shouldn't be an obstacle. But these conditions not always present.

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Watching out for "ancillary integration"

- Is the restraint ancillary to the efficiency-enhancing integration?
- Or is the restraint primary, and the integration ancillary?
- "How much integration do we need to do so we can negotiate price?"

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Expecting that price negotiation will increase rates?

- Should providers participating in clinical integration expect to be "rewarded" for such participation?
  - Presumably through joint negotiations for higher prices
  - If providers do not have market power, then enhanced compensation should only reflect added value to payors
  - Implicit assumption, sometimes, appears to be that reward will be greater than that

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Should "ancillary-ness" be rebuttable presumption?

- Would put much heavier pressure on "how much is enough" question
- Would put market definition and market power issues to the test much more often

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Rewarding achieved value or rewarding integration

- Will marketplace focus compensation recognition on –
  - Measurable benchmarks of patient outcomes, quality improvement or cost savings?
  - Achievement of clinical integration measures?
- Is the latter a proxy or early indicator of the former?

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Is there a market failure angle?

- Reimbursement system typically pays same level of compensation irrespective of quality or efficiency of service
- Long-term nature of savings from integration investment may dull incentives of payors to fund integration activities
- One claim is that joint price setting is ancillary to clinical integration simply because it enables providers to get the money needed to pay for the integration
- This argument is troubling – first it seems to imply market power, and second because it implies that price- fixing can be appropriate response to the market's failure to "adequately" pay for any of various socially beneficial activities.
- It moves antitrust into social policy arena, in which collusion would be justified so long as proceeds are used in manner deemed socially or economically beneficial