Alaska State Medical Association

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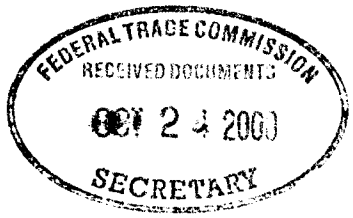

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, N.W.
Washington DC 20580

RE: In the Matter of Alaska Healthcare Network, Inc. File No. 991-0103

Dear Commissioners:

The Alaska State Medical Association (ASMA) represents Alaska's patients and the physicians who care for them. ASMA appreciates the opportunity to provide commentary in the above subject matter. ASMA understands that the allegations made by the FTC are just that, allegations; and that the agreement to be entered into by Alaska Healthcare Network, Inc. (AHN) does not constitute any admission of wrongdoing, or that the facts alleged by the FTC are true.

ASMA's comments fall into two general categories. The first being related to an element in the Decision and Order which defines the term "payor". The second category relates to the characterizations made about the Alaska, medical market place.

In the Decision and Order relating to this matter, a definition of term "payor" is found. Included in that definition of "payor" is the clause "government health benefits program". The inclusion of this clause would seem to imply that any organization of independently practicing physicians could not jointly deal with government or its agent unless it complied with appropriate guidelines regarding anti-trust. (e.g., such would not be allowed unless, for example, the group of physicians was fully clinically and financially integrated.) The logical extrapolation would be that an organization such as ASMA could not deal with HCFA or one of its agents regarding Medicare reimbursement issues. The same would hold true for Tri-care and the various governmental agencies involved with that system. (For your information, federal government officials have asked ASMA to work with them specifically regarding payment issues in Alaska). It is ASMA's understanding that the ability to collectively interact with the government is protected by the United States Constitution. It would appear that the inclusion of government health benefits program in the definition of payor would be unconstitutional.

ASMA's review of the Complaint, Decision and Order, Agreement Containing Consent Order, and the Analysis of Agreement Containing Consent Order to Aid Public Comment leads to the conclusion that the Alaska market place is not understood. The separate statement made by Commissioners Arron Swindle and Thomas B. Leary is predicated on what would seem to be the same conclusion (particularly for the "structural" remedy included). In part, Swindle and Leary state "..., we are not persuaded that this provision will operate in a rational and predictable way in a market as small as Fairbanks. ...". ASMA contends that same statement holds true for the entire state. Alaska is huge geographically but extremely small population wise. The majority of our population is concentrated in a few locations (e.g., Anchorage, Fairbanks, and Juneau) with the rest dispersed over an area twice the size of Texas. These cities that contain the majority of

our population are the service centers for the entire State, which includes medical care and particularly specialty care. The "private" payor health plan marketplace is miniscule when you remove those people covered under governmental plans (notably federal employees, military personnel and their dependents, and Alaska Natives). Attachment A to the Decision and Order is an indication of the market for health plans in Alaska. (ASMA believes that some entities named are not identified correctly. "Adar Corporation" is possibly Admar Corporation a part of Principal Mutual Insurance Company. "GERA" is probably GEHA. Also, "Blue Cross of Washington and Alaska" is now known as Premera Blue Cross, a Washington state corporation, which does business in Alaska as Blue Cross Blue Shield of Alaska.) The dominant participants in the market are Aetna and Premera Blue Cross who through their fully insured plans and as acting as administrators for various self-insured plans represent well over 50% of the entire Alaska health plan market. Obviously, such a circumstance could give rise to unfair, oligopsonic practices when it comes to contracting with medical care providers in Alaska for their services. This type of market dominance by a few payors is a historical fact in Alaska. As pointed out by Commissioners Swindle and Leary, the effect of the "structural remedy", due to the "grand-fathered" groups, in those specialties identified in their statement, is to inhibit the formation of presumably similar, efficient practice groups. The bottom line is that a few practitioners are left to negotiate on an individual basis with two oligopsonic insurers; essentially on a "take it or leave it" basis.

Alaska has a long history of not having a large number of payors in our health plan market for a number of reasons. The biggest reason is the relative, small size of our population coupled with our geographic separation from the rest of the United States. A payor's decision to enter the Alaska marketplace is just that—to enter Alaska or not enter Alaska. An insurer domiciled outside of Alaska is not going to enter Alaska on whether or not it plans on doing business in one community or another. The numbers are so small that ASMA contends such entry decisions are made on a statewide basis. To give you a further idea of Alaska's quest for payors you only need to look to Premera Blue Cross. It is a "hospital or medical service corporation" under Alaska's insurance law (AS 21.87). For an entity to operate in Alaska as a hospital or medical service corporation, it must be an Alaska domiciled corporation. Premera Blue Cross (formally known as Blue Cross of Washington and Alaska) is a Washington state corporation. It operates only in Alaska because it was "grand-fathered" when Alaska became a state in 1959. Alaska's Legislature, although having had many legislative sessions in which to do so, has not ever taken action to eliminate the "grand-father" provision applicable only to Premera Blue Cross. ASMA believes this to be the case because of the fear that such action would cause Premera Blue Cross to leave Alaska and thus further reducing the number of payors participating in our market place.

The term "HMO" is used throughout the various documents involved in this matter. To the best of ASMA's knowledge, no HMO, as defined in Alaska Statute, operates in Alaska at the present time or has ever operated in Alaska. The use of this term in the various documents could lead a reader to believe that HMO's are a competitive factor in Alaska. That is not true now nor has it ever been. Again, the demographics of Alaska probably are still such that an HMO operation would not be economically feasible. Certainly, health plans in Alaska do include elements of "managed care". Of course, managed care runs the spectrum for an insured plan having a pre-authorization requirement for a specific medical service all the way to a full, staff model HMO.

ASMA is concerned that some unintended consequences of the "structural" remedy may occur which would be detrimental to access to health care for Alaskans and which could also adversely impact the cost. Commissioners Swindle and Leary state in part "...The imposition of such a structural relief in a setting like Fairbanks results in anomalies that would not arise in a larger urban area...". ASMA agrees with that statement and would further assert this statement holds true for the entire State. The anomalies would result in detrimental unintended consequences. This particularly would hold true for specialists and sub-specialists that serve a much larger geographic area than that in which they reside. Such limitations as the 30% or 50% "cap" could lead to situations detrimental to the public's health if such benchmarks are considered as setting precedents for other situations. For example, if such regulatory structures would prevent an additional

needed sub-specialist from being recruited, this could lead to "burn-out" for the existing group of sub-specialists which could result in medical errors, delayed or no treatment, or increased costs by having to transport a patient out of Alaska for treatment.

The practice of medicine in frontier States such as Alaska is not as "economically efficient" as it is in other more populous areas. That classic inefficiency is exacerbated as you look at the more rural areas of Alaska. For example, it might be the norm for a particular practice specialty to be one practitioner for each 5,000 in population. First, assume for the moment that a mythical town in Alaska exists with 3,500 in population. Such a town would not be connected by road, but probably only accessible by air. You can't recruit a fraction of a doctor so you recruit one. However, a single doctor in such a setting is now on duty, to use the vernacular, 24/7/365. This has proven to be a formula for disaster which results in professional isolation, and "burn-out" which results in high turnover. Certainly, another physician could be recruited or perhaps all patients could be transported by air-ambulance to another locale for treatment. These approaches would add to the cost.

Recruitment of physicians to Alaska continues to be a significant issue in Alaska. Alaska has been a net importer of physicians throughout its history. Alaska has no medical school. It has only 10 slots at the University of Washington Medical School each year through a special arrangement. The current situation in Alaska is that about half of the private practice physicians are age 51 and older. So, recruitment is a significant issue at the present time and any thing which hampers recruitment of new physicians is to the detriment of our public's health.

Again, thank you for this opportunity to comment. ASMA feels that any decision made by you should be made with a good understanding of the environment involved. In summary, we feel that the definition of "payor" including government health benefit plans presents a Constitutional problem. Furthermore, ASMA believes the "structural" remedy to be inappropriate for Fairbanks and for any area in Alaska.

Sincerely,

BY: James J. Jordan
Executive Director

FOR: Alaska State Medical Association

cc: Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young
Governor Tony Knowles
Senator Drue Pearce, President, Alaska State Senate
Representative Brian Porter, Speaker, Alaska House of Representatives

JJJ/kms