

AMERICAN MEDICAL ASSOCIATION HOUSE OF DELEGATES

Resolution:
(I-10)

Introduced by: Texas Medical Association

Subject: AMA Statement to FTC, CMS, and OIG DHHS Supporting the Ability of ACOs to Negotiate With Insurers on an Exclusive Basis

Referred to:

1 Whereas, Hospitals across the country are frantically buying up practices and employing
2 physicians to position themselves for contracting as accountable care organizations
3 (ACOs) under the Patient Protection and Affordable Care Act (PPACA) and in the private
4 sector; and

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6 Whereas, Physicians have reported threats that if they do not sign up now, they will be
7 excluded from the hospital-created ACO; and

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9 Whereas, Our American Medical Association submitted a statement on Sept. 27, 2010,
10 to the Federal Trade Commission (FTC), the Centers for Medicare & Medicaid Services
11 (CMS), and the Office of Inspector General (OIG) of the U.S. Department of Health and
12 Human Services (DHHS) urging the government to loosen the antitrust restrictions on
13 exclusive contracting networks and enable unencumbered growth; and

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15 Whereas, Hospitals are or soon will be conditioning physician participation in their ACOs
16 on the exclusion of participation in other ACOs; and

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18 Whereas, The marketplace already has seen the nefarious effects of a hospital requiring
19 physicians to be loyal to one hospital system over another through economic
20 credentialing, exclusive arrangements, referral requirements on employed or contracted
21 physicians, and other schemes; and

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23 Whereas, When hospitals are allowed to take advantage of loosened antitrust
24 restrictions, the market power of these hospital-controlled ACOs, negotiating for both
25 hospital and physicians services, will threaten the viability of private-practice physicians;
26 prevent physicians from referring patients to the most qualified physicians, specialists,
27 and facilities; and prohibit physicians from also forming, leading, or participating in their
28 own viable ACO; and

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30 Whereas, A statement supporting the removal of antitrust barriers to promote integration,
31 without clearly limiting the statement's reach to avoid empowering hospitals, insurers,
32 and other nonphysicians in their control over ACOs and physician medical practices, can
33 disadvantage licensed physician autonomy and control over medical decision making,
34 interfere with the physicians' fiduciary duty to their patients, and adversely affect the

1 desired goal of PPACA to have physician-led ACOs improve quality and efficiency in the
2 provision of medical and hospital services; therefore be it

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4 **RESOLVED:** That our American Medical Association clarify its support of antitrust relief
5 for physician-led ACOs, as stated in its Sept. 27, 2010, statement to the Federal Trade
6 Commission, the Centers for Medicare & Medicaid Services, and the Office of Inspector
7 General of the U.S. Department of Health and Human Services, as being limited to
8 physician-led ACOs and not to ACOs owned and controlled by nonphysicians, including
9 hospitals, insurance companies, or others. (Directive to Take Action.)

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11 **H-383.992 Antitrust Relief**

12 Our AMA will: (1) redouble efforts to make physician antitrust relief a top legislative
13 priority, providing the necessary foundation for fair contract negotiations designed to
14 preserve clinical autonomy and patient interest and to redirect medical decision making
15 to patients and physicians; and (2) affirm its commitment to undertake all appropriate
16 efforts to seek legislative and regulatory reform of state and federal law, including federal
17 antitrust law, to enable physicians to negotiate effectively with health insurers. (Sub.
18 Res. 905, I-07; Reaffirmation A-08)

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20 **H-383.993 Negotiations Issue**

21 Our AMA:

22 (1) will continue its efforts to promote the involvement of physician organizations in
23 health policy decisions by public and private institutions pursuant to health system
24 reform;

25 (2) will continue its efforts to enhance the involvement of physician organizations in the
26 current health system, including the Medicare program and private sector payers and
27 institutions;

28 (3) will continue with its efforts to support and enhance the self regulatory structure of
29 the profession, and will continue to review the development of new self regulatory efforts
30 that may be needed to meet the challenges of the new environment;

31 (4) working through a consortium of appropriate interested organizations (i.e.,
32 specialties, groups), may act as the negotiator on behalf of, and with active input from,
33 physicians and physician groups, for reimbursement of physician services, practice-
34 related issues (including quality improvement), utilization review, physician supply and
35 professional liability reform;

36 (5) believes that at the state and local level, physician-directed organizations (i.e., state
37 or county associations) may act as a negotiator on behalf of member physicians after
38 antitrust relief has been obtained; and

39 (6) will continue to pursue enhanced roles for physicians in private sector health plans,
40 including lobbying for appropriate modification of the antitrust laws to facilitate physician
41 negotiation with managed care plans and for legislation requiring managed care plans to
42 allow participating physicians to organize for the purpose of commenting on medical
43 review criteria, and including the development of an AMA team to develop the
44 information and networks of consultants necessary to assist physicians in their
45 interactions with managed care plans. (BOT Rep. QQ, I-92; BOT Rep. HHH, A-93;
46 Reaffirmed: BOT Rep. 40, I-93; Reaffirmed: BOT Reps. 25 and 40, I-93; Reaffirmed:
47 Sub. Res. 110, A-94; Reaffirmation I-98; Reaffirmation A-00; Reaffirmation I-00;
48 Reaffirmation A-04; Reaffirmation A-05; Reaffirmed: BOT Rep. 10, I-05; Consolidated
49 and Renumbered: CMS Rep. 7, I-05; Reaffirmation A-06; Reaffirmation A-08;
50 Reaffirmation I-08)

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1 **H-270.992 Remedial Antitrust Legislation**

2 Our AMA supports legislation that would require courts reviewing antitrust cases
3 involving the sale or delivery of health services to consider whether the activities are
4 directed, authorized or encouraged by the federal or state government, whether the
5 activity is intended to maintain or improve the quality of health care in the public interest,
6 and whether the activity is intended to control costs in the public interest. (BOT Rep. Q,
7 A-82; Reaffirmed: CLRPD Rep. A, I-92; Reaffirmation I-98; Reaffirmation A-00;
8 Reaffirmation I-00; Reaffirmation A-04)

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10 **H-380.987 Antitrust Relief as a Priority of the AMA**

11 Our AMA will continue its aggressive efforts to achieve appropriate negotiations rights
12 and opportunities and necessary antitrust relief for physicians, by whatever means.
13 Achieving this important goal will remain a top priority for the Association. (Sub. Res.
14 223, A-93; Reaffirmed by BOT Rep. 33, A-96; Reaffirmation A-97; Reaffirmation A-00;
15 Reaffirmation I-00; Reaffirmation A-04; Reaffirmation A-05; Reaffirmed: BOT Rep. 10, I-
16 05; Reaffirmation A-06; Reaffirmation A-08)

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18 **D-383.990 AMA's Aggressive Pursuit of Antitrust Reform**

19 Our AMA will: (1) place a high priority on the level of support provided to AMA's Public
20 and Private Sector Advocacy Units, which are key to successfully addressing the
21 problems physicians face as a result of the current application of federal antitrust laws;
22 (2) through its private and public sector advocacy efforts, continue to aggressively
23 advocate for a level playing field for negotiations between physicians and health insurers
24 by aggressively pursuing legislative relief at the federal level and providing support to
25 state medical society efforts to pass legislation based on the "state action doctrine";
26 (3) continue to advocate to the Federal Trade Commission and Department of Justice for
27 more flexible and fair treatment of physicians under the antitrust laws and for greater
28 scrutiny of insurers;
29 (4) continue to develop and publish objective evidence of the dominance of health
30 insurers through its comprehensive study, Competition in Health Insurance:
31 Comprehensive Study of US Markets, and other appropriate means;
32 (5) identify consequences of the concentration of market power by health plans to enlist a
33 Senate sponsor for a bill allowing collective negotiation by physicians; and
34 (6) develop practical educational resources to help its member physicians better
35 understand and use the currently available, effective modalities by which physician
36 groups may legally negotiate contracts with insurers and health plans. (Res. 908, I-03;
37 Reaffirmation, A-05; Reaffirmed: BOT Rep. 10, I-05; Reaffirmation A-06; Reaffirmation
38 A-08)