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

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

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

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

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

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

Whereas, A statement supporting the removal of antitrust barriers to promote integration, without clearly limiting the statement’s reach to avoid empowering hospitals, insurers, and other nonphysicians in their control over ACOs and physician medical practices, can disadvantage licensed physician autonomy and control over medical decision making, interfere with the physicians’ fiduciary duty to their patients, and adversely affect the
desired goal of PPACA to have physician-led ACOs improve quality and efficiency in the provision of medical and hospital services; therefore be it

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

H-383.992 Antitrust Relief

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

H-383.993 Negotiations Issue

Our AMA:

(1) will continue its efforts to promote the involvement of physician organizations in health policy decisions by public and private institutions pursuant to health system reform;
(2) will continue its efforts to enhance the involvement of physician organizations in the current health system, including the Medicare program and private sector payers and institutions;
(3) will continue with its efforts to support and enhance the self regulatory structure of the profession, and will continue to review the development of new self regulatory efforts that may be needed to meet the challenges of the new environment;
(4) working through a consortium of appropriate interested organizations (i.e., specialties, groups), may act as the negotiator on behalf of, and with active input from, physicians and physician groups, for reimbursement of physician services, practice-related issues (including quality improvement), utilization review, physician supply and professional liability reform;
(5) believes that at the state and local level, physician-directed organizations (i.e., state or county associations) may act as a negotiator on behalf of member physicians after antitrust relief has been obtained; and
(6) will continue to pursue enhanced roles for physicians in private sector health plans, including lobbying for appropriate modification of the antitrust laws to facilitate physician negotiation with managed care plans and for legislation requiring managed care plans to allow participating physicians to organize for the purpose of commenting on medical review criteria, and including the development of an AMA team to develop the information and networks of consultants necessary to assist physicians in their interactions with managed care plans. (BOT Rep. QQ, I-92; BOT Rep. HHH, A-93; Reaffirmed: BOT Rep. 40, I-93; Reaffirmed: BOT Reps. 25 and 40, I-93; Reaffirmed: Sub. Res. 110, A-94; Reaffirmation I-98; Reaffirmation A-00; Reaffirmation I-00; Reaffirmation A-04; Reaffirmation A-05; Reaffirmed: BOT Rep. 10, I-05; Consolidated and Renumbered: CMS Rep. 7, I-05; Reaffirmation A-06; Reaffirmation A-08; Reaffirmation I-08)
**H-270.992 Remedial Antitrust Legislation**

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

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

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

**D-383.990 AMA’s Aggressive Pursuit of Antitrust Reform**

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