Messenger Model IPAs Must Always Keep Antitrust in Mind

As managed care reimbursement continues to decline, physicians are looking at any way possible to level the playing field. This includes merging medical practices, selling the physician practice to a hospital, and forming independent practice associations (IPAs). There are still “messenger model” IPAs out there trying to negotiate with managed care payers on behalf of its physician membership. However, will these negotiations run afoul of antitrust laws? Unfortunately many do, they just haven’t been caught yet.

To give you an example let’s take a look two consent orders The Federal Trade Commission (FTC) entered in to with two separate physicians groups settling charges they each carried out agreements among their members that amounted to unlawful price fixing. These consent orders barred each group from engaging in future anticompetitive conduct.

The first complaint involved Independent Practice Associates Medical Group, Inc., doing business as AllCare IPA (AllCare), which had approximately 500 physicians in the Modesto, California, area. According to the FTC, between 2005 and 2006, AllCare acted to restrain competition on fee-for-service contracts by facilitating, entering into, and implementing agreements to fix the prices and other contract terms with preferred provider organization payers; to engage in collective negotiations over the terms and conditions of dealing with such payers; and to have members refrain from negotiating with such payers on terms other than those approved by the group.

The second complaint involved Boulder Valley Independent Practice Association (BVIPA), which had roughly 365 physicians in the Boulder County, Colorado, area. According to the Commission’s complaint, between 2001 and 2006, BVIPA, negotiated and signed agreements with approximately 17 payers and conducted periodic renegotiations of its contracts with large payers to increase rates. The FTC alleged BVIPA threatened payers facing rate increases with contract termination if they refused to negotiate with the group or to otherwise respond to BVIPA’s demands and actively discouraged members from contracting directly with payers.

According to the FTC’s complaints, AllCare’s and BVIPA’s separate conduct constituted illegal price-fixing, and neither group engaged in any activity that might justify collective agreements on the prices its members would accept for their services. The proposed consent orders prohibited AllCare and BVIPA from entering into or facilitating agreements between or among physicians: (1) to negotiate on behalf of any physician with any payor; (2) to refuse to deal, or threaten to refuse to deal, with any payor; (3) to designate the terms, conditions, or requirements upon which any physician deals, or is willing to deal, with any payor, including, but not limited to price terms; and (4) not to deal individually with any payor, or not to deal with any payor through any arrangement other than one involving AllCare or BVIPA, respectively.

So if you are a member of a messenger model type IPA, make sure the IPA is conducting itself properly in relation to its dealings with managed care payers. You can read on the FTC’s website the numerous numbers of IPAs who have spent a lot of money defending themselves against antitrust charges. For more information on this topic, I do suggest you visit the FTC website at http://www.ftc.gov/bc/healthcare/index.htm.

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