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FTC Issues Approval of Clinical Integration Model

On September 17, 2007, the Federal Trade Commission issued an Advisory Opinion that analyzes the elements of a "clinically integrated" physician venture in the Greater Rochester Independent Practice Association, Inc.¹ An advisory opinion is a legal opinion of the FTC, or its staff, with respect to a party's proposed course of action. Usually an FTC advisory opinion states whether the staff will recommend that the Commission undertake an enforcement action.

The FTC has previously addressed clinical integration in a 2002 advisory opinion² and in guidance issued jointly by the FTC and the Department of Justice.³ In general terms, the FTC has required that for physicians to price their services jointly to payors, the following requirements must be met: (1) there must be substantial clinical integration among the physicians; (2) the integration must produce significant efficiencies in the provision of care; (3) the joint pricing by the physicians must be subordinate to and reasonably related to the IPA's plan to integrate the provision of medical care by its physicians; and (4) the joint pricing must be reasonably necessary to implement the program and achieve its efficiency benefits.

The Rochester Advisory Opinion finds that GRIPA satisfied these requirements. The Rochester Advisory Opinion does not enunciate new antitrust law. The real significance of the opinion is the depth of detail about the organizational and operational aspects of the GRIPA program. The FTC provides an extensive antitrust analysis of the GRIPA program, giving insight into what the FTC believes is necessary to allow joint pricing of physician services. The guidance provided in the Rochester Advisory Opinion may be helpful to physicians as they struggle with organizing IPAs that can compete in the value-based purchasing programs that are currently under development by Medicare

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and commercial payors. More importantly, the Rochester Advisory Opinion is only the second time the FTC has issued a favorable opinion related to clinical integration.

GRIPA's ownership and organizational structure is complex and beyond the scope of this article, but may be reviewed on the FTC website at www.ftc.gov/bc/adops/gripa.pdf.

That being said, the organizational structure of GRIPA is an important part of the FTC's analysis. This article focuses only on the operational aspects of GRIPA's program. Please feel free to e-mail me at the address noted above if you have questions about GRIPA's organizational structure.

GRIPA was created in 1996 to contract with health maintenance organizations on a risk-sharing basis. This risk payment system was predicated on the "percentage of premium" method. In 2005, as the number of percentage of premium arrangements diminished, GRIPA began developing a clinical integration program that did not include a risk-sharing component. Instead, GRIPA's program included a substantial information technology system to analyze claims data, utilization and disease states. A department of GRIPA—Care Management Services—is responsible for case management, disease management and pharmacy management. To that end, the FTC determined that "GRIPA's disease management programs, which focus on diabetes, asthma, and heart failure, involve developing, monitoring compliance with, and reinforcing treatment and prescription plans, as well as patient education about the disease and its treatment."⁴

Through its IT systems, GRIPA monitors and provides performance reports to each primary care physician, obstetrician/gynecologist, cardiologist and orthopedist regarding the physician's individual and comparative performance in treating patients and adhering to GRIPA's performance standards. Essentially, GRIPA retains the ability to influence the delivery of care delivered by physicians through enforcement of its guidelines by Care Management Services.

An interesting side note to the Rochester Advisory Opinion is the admission by GRIPA that its intention was to raise prices to the payors by its actions. The FTC commented that normally such an admission would constitute a "red flag." In this instance, however, the FTC found that the efficiencies created by the GRIPA program offset the normal concerns raised by such an admission. Another important part of the Rochester Advisory Opinion relates to a finding that there were other networks for payors to contract with

in the area. Based on that finding, the FTC concluded that GRIPA could not improperly exercise market power through its clinical integration program.

The Rochester Advisory Opinion provides useful direction to competing physician groups seeking to price their services jointly to payors. In previous HIO articles, we have discussed the issues related to FTC oversight of such activities. The development of a clinically integrated network is complex and costly. Nevertheless, integrated networks may yet be the least costly way to provide care in a health care market that is rapidly moving toward payment methodologies that demand coordination of care.

¹ FTC Adv. Op. In re Greater Rochester Independent Practice Association, Inc. (Sept. 17, 2007).

² FTC Adv. Op. In re MedSouth (Feb. 19, 2002).

³U.S. Dep't of Justice & Federal Trade Comm'n, Statements of Antitrust Enforcement Policy in Health Care (Aug. 1996).

⁴ FTC Adv. Op. In re GRIPA at p. 3.

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