



American Medical Women's Association
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Position Paper on Anti-Trust Issues

Anti-Trust Issues

Under present anti-trust law, physicians banding together to negotiate collectively on an equal basis with powerful payers may be viewed as committing illegal acts. In contrast, postal workers, steel workers, carpenters, policemen, firemen, clothing workers, and numerous other groups have that right under the law. In the era of managed care, many physicians are no more than "employees" struggling to deliver care in spite of policies and management decisions which make such a "job" difficult or impossible. Those physicians who have continued a private practice, a "commercial venture," have to contend with their patients being enrolled in health insurance plans that dictate much of their practice. These physicians are alone and must battle the insurance industry individually. Physicians must carefully avoid violating anti-trust law while remaining competitive in the marketplace and continuing their businesses. The two federal agencies charged with enforcing federal anti-trust law are the Department of Justice (DOJ) and the Federal Trade Commission (FTC), in addition to the State Attorneys General.

Anti-trust law applied to health care is based on the supposition that a competitive marketplace will stimulate high quality physician services for patients at the lowest possible prices, just as any competition in business should generate better prices for the consumer. The courts believe that the practice of medicine is no different from other commerce. The statute most relevant to physicians prohibits contracts, combinations, and conspiracies that unreasonably restrain trade (Section One of the Sherman Act). Therefore if two separate entities (two physicians, two physician groups, etc.) make an agreement to set reimbursements, or to boycott, those acts are unlawful. Physicians violating such laws may lose their licenses, may be imprisoned, and may be fined.

In 1994, new guidelines were issued by the DOJ and the FTC to provide for "safety zones" pertaining to some collective actions in the health care arena which include: physicians collecting non-fee related information, physicians providing fee-related information to purchasers of health care, physicians participating in exchanges of cost information, and organizing network joint ventures.

It should also be noted that the Employee Retirement Income Security Act (ERISA) allows many health plans a certain protection from lawsuits which could be initiated by patients and physicians. In these health plans, physicians accept total responsibility for patient care without total authority for decision-making. While not restricting or promoting competition directly, ERISA does restrict recourse for the physician and patient, since there is no legal remedy available to them. Although physicians could possibly use anti-trust law themselves to fight unlawful conduct by competing insurance organizations or health care monopolies, such use has not been popular or widespread.

In 1995, the American College of Physicians urged enforcement agencies to adopt an even more flexible approach. Monitoring of the marketplace must ensure that physicians are being treated fairly. As the health market changes, anti-trust law must be revised to allow physicians to retain their autonomy and form their own health care plans to provide better quality care for less.

AMWA believes that anti-trust law must be revised for the health care industry, or a different set of laws must be written. New law should take into account the metamorphosis of managed care organizations and health maintenance organizations headed by bottom-line driven non-physicians. Physicians must be able to band together to ensure autonomy of physician decisions; to assure that physician reimbursement is consistent with

the amount of education, training, continuing medical education, costs, liability, and time commitment necessary to provide high quality care to patients; and to be able to share resources, technology, laboratories, administrative assistance, and building space in order to decrease the cost of medical care.

Women physicians are less likely to engage in private practice and more likely to practice as employed physicians. The unfair advantage that insurers have in the current system has played a part in making private practice less desirable for women. Revisions to anti-trust law will level the playing field for all physicians in private practice and make it a more attractive practice option for women physicians as well.

We urge the Congress to enact changes in the law, and the FTC and the DOJ to enact changes in regulations, which will allow physicians to be able to negotiate collectively with payors such as insurance companies or managed care organizations. These changes are necessary for physicians to be able to have autonomy, maintain the physician-patient relationship, and deal with payors such as insurance companies and managed care organizations on an equal footing. Anti-trust relief is essential to ensuring the future of the private practice of medicine and for the benefit of patients who want and need this option of care.

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