

The Future of Managed Care: Resurgence of IPAs and PHOs

In the wake of two favorable advisory opinions regarding *clinical integration* from the Federal Trade Commission (FTC) over a period of the past six years, it is likely that the near future will see a resurgence of *independent practice associations* (IPAs) and *physician hospital organizations* (PHOs). According to attorney Gregory Pepe,¹ the 2002 *FTC MedSouth Advisory Opinion*¹ and the 2007 *Greater Rochester Independent Practice Association (GRIPA) Advisory Opinion*¹ lead to the conclusion that “everyone now believes that there are ways in which these organizations can work collectively with independent physician practices to try to put together programs that will deliver some sort of clinical integration that the federal government will allow.”¹ Pepe believes that 2008 will be the year that IPAs and PHOs begin to gain traction with clinical integration.

Clinical integration among IPAs and PHOs has traditionally been scrutinized by the FTC as generally being *anticompetitive* and in violation of antitrust laws. However, since the *MedSouth* and *GRIPA* advisory opinions, it has now become clear that clinical integration is not considered to be a *per se* violation of antitrust regulations. If the subject transaction is not deemed to be a *per se* violation, the FTC reviews joint contracting arrangements under a *rule of reason* analysis, determining whether the arrangement would actually lead to *procompetitive* outcomes. The benefits of clinical integration are that it allows a network of competing providers to participate in both *joint-pricing* and *risk sharing*, thus leading to improved efficiency that will benefit consumers.

The particular goals of the GRIPA integration were to create a *connected community* of physicians, hospitals, labs and imaging facilities which will share electronic access to patient information, thus cutting costs.¹ The plan also allowed the group to negotiate *payer contracts* on behalf of members, and requires physicians to adhere to Clinical Guidelines that apply to the entire IPA.

To avoid violating federal antitrust laws, FTC Commissioner, J. Thomas Rosch, notes that, “a very strong system of rewards and punishment” is absolutely necessary, as well as seamless patient care, ultimately lower costs, rigorous quality control, and physician

discipline.¹ It is also important to note that one essential feature of GRIPA’s integration scheme is that it is *non-exclusive*, i.e., it allows payors to negotiate individually with member physicians. It was due to the combination of these elements that the FTC did not challenge GRIPA’s clinical integration as being a violation of antitrust laws.

Most notably, the GRIPA clinical integration system provides all members in a patient’s care team easy access to that patient’s information through a *Health Information Exchange*, with the goal of significantly improving quality. Mr. Pepe predicts that this trend of IPAs helping members create patient registries, as well as to assemble databases and disease management teams, will continue as IPAs and PHOs become more successful with clinical integration. As positive as this trend may seem, however, it is still likely that some payors will not be satisfied with it, thereby increasing the potential for litigation as clinical integration increases. Notwithstanding that potential for conflict, because IPAs and PHOs now have a clinical integration system model which avoids FTC enforcement action to refer to, it is likely that more groups will develop successful integration schemes in the coming months and years.

¹ Principal of the law firm of Neubert, Pepe, and Monteith in New Haven, Connecticut

¹ Letter from Jeffrey W. Brennan, Assistant Director, Federal Trade Commission Bureau of Competition, to John J. Miles, Law firm of Ober, Kaler, Grimes & Shriver, *Staff Advisory Opinion: MedSouth, Inc.*, February 19, 2002, available at <http://www.ftc.gov/bc/adops/medsouth.shtm> (last accessed April 18, 2008).

¹ Letter from Markus H. Meier, Assistant Director, Federal Trade Commission Bureau of Competition, to Christi J. Braun and John J. Miles, Law firm of Ober, Kaler, Grimes & Shriver, *Greater Rochester Independent Practice Association, Inc., Advisory Opinion*, September 17, 2007, available at <http://www.ftc.gov/bc/adops/gripa.pdf> (last accessed April 18, 2008).

¹ “Resurgence of IPAs and PHOs Predicted for 2008,” *The Executive Report on Physician Organizations*, Vol. XI, No. 2, Feb. 2008, pg. 1.

¹ “GRIPA Receives Favorable Advisory Opinion from FTC for Clinical Integration Program,” GRIPA website, Sept 18, 2007, <http://www.gripa.org/press-release-ftc-reviews-clinical-integration.asp> (Accessed Apr. 11, 2008).

¹ “FTC Gives More Guidance on Clinical Integration,” Susan Robinson, Timenews.net website, Oct. 26, 2007, http://www.timesnews.net/community_article.php?id=1871 (Accessed Apr. 11, 2008).



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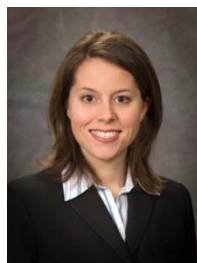
Mr. Cimasi holds a Masters in Health Administration from the University of Maryland, as well as several professional designations: Accredited Senior Appraiser (ASA – American Society of Appraisers); Fellow Royal Intuition of Chartered Surveyors (FRICS – Royal Institute of Chartered Surveyors); Master Certified Business Appraiser (MCBA – Institute of Business Appraisers); Accredited Valuation Analyst (AVA – National Association of Certified Valuators and Analysts); and, Certified Merger & Acquisition Advisor (CM&AA – Alliance of Merger & Acquisition Advisors). He has served as an expert witness on cases in numerous courts, and has provided testimony before federal and state legislative committees. He is a nationally known speaker on healthcare industry topics, the author of several books, the latest of which include: *“The U.S. Healthcare Certificate of Need Sourcebook”* [2005 - Beard Books], *“An Exciting Insight into the Healthcare Industry and Medical Practice Valuation”* [2002 – AICPA], and *“A Guide to Consulting Services for Emerging Healthcare Organizations”* [1999 John Wiley and Sons].

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