

Practical Legal Guidance: The Myths and Facts about Clinical Integration and Other Forms of Provider Collaborations

UT Law's 27th Annual Health Law Conference

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Legal Framework

- Collaborations can raise many different types of antitrust concerns
 - Government scrutiny
 - Exposure to private treble damages lawsuits by payors, consumers or competitors
- Analysis is often complex and fact specific
 - Single entity?
 - Core activity or ancillary restraint?
 - Effect on competition/market power concerns?

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Legal Framework

- According to the FTC, “[e]xtensive evidence that consolidation of health care providers leads to higher prices without corresponding improvements in quality supports the FTC's continued vigilance over these markets.” (NEJM Dec. 2014 article by Chairwoman Ramirez).
- View that providers compete to be included in health plans and that this competition provides patients with options and helps keep costs lower, which can lead to narrow geographic markets.

Myths

- Tell me what I need to do. I need a playbook and then we will implement.
- Clinical Integration does not cost a lot of time and investment.
- We can jointly negotiate immediately once we agree to clinically integrate.
- It is easy.
- Once we are clinically integrated, we can rest easy and no longer have to be concerned about the details.

Facts

- If you are implementing an integrated structure just to be in compliance with the antitrust laws, you are likely to fail.
- Integrated networks take time, commitment and money to implement.
- Not a “recipe and cook” solution.
- Constantly evolving.
- Demonstrable improvements in quality.
- Transparency.

Facts

- For independent providers to engage in joint contracting with commercial payors, the providers must achieve “integration that is likely to produce significant efficiencies that benefit consumers, and joint contracting must be reasonably necessary to realize those efficiencies.”
- Both the Financial and Clinical Integration (FI and CI) models are based on the formation of physician networks, yet can also be adopted by hospitals.
- Once formed, the FTC’s assessment will be akin to a merger, particularly if the network is exclusive.
- The messenger model is an alternative to joint contracting and can be the first step towards FI/CI.

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