



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
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Bureau of Competition

~
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Dear Mr. Neiderman:

This letter responds to your request on behalf of Medical Group Management Association (MGMA) for an advisory opinion concerning MGMA's proposal to conduct and publish the results of a survey of physician practices. The survey will seek information regarding several aspects of physicians' contractual relationships with third-party payers, including information about amounts that health plans pay for physician services. MGMA will publish the information obtained through the survey only on an aggregated basis; it will not disclose information about individual payers. As discussed below, it does not appear likely that publication of the survey results, in the manner described in your letters, will prompt coordinated anticompetitive behavior by physicians. Accordingly, the Commission staff has no intention to recommend law enforcement action regarding the proposed conduct.

Description of the Proposed Conduct

MGMA is a professional association that represents medical practice administrators, including individual administrators and executives of medical groups and other providers of health care services. According to information on MGMA's website, it has 19,000 members who manage 11,000 physician practices, integrated health care systems, and hospital- and medical school-affiliated practices containing 220,000 doctors throughout the United States.¹

Your request letter states that one of MGMA's functions is to provide to its members data that allow them to benchmark the performance and status of their medical group compared to its

¹ See MGMA website at www.mgma.com.

peers. This information, according to MGMA, can be an important strategic tool in medical groups' competition in the market. MGMA already does annual surveys of its members relating to, among other things, physician compensation and production, and practice costs.²

MGMA's request for an advisory opinion focuses on its proposal to conduct a survey of insurer payments to medical groups and of "medical groups' overall satisfaction with certain aspects of contract performance of third-party payers in the marketplace." MGMA will send the initial survey to Colorado primary care physicians (family practitioners, general internists, pediatricians, and obstetrician-gynecologists). It will obtain information from members of the Colorado State Medical Association as well as members of MGMA. The survey results will be offered for commercial sale to interested parties (at a reduced price to survey participants). If the program is successful in Colorado, then MGMA may expand it to other states and specialties.

Only employees of MGMA responsible for the data collection, analysis, and reporting will have access to the underlying survey responses; this information will not be shared among the physician practices participating in the survey. The payment information, when published, will be at least 90 days old. Either MGMA will request information about prices that were in effect ninety days prior to the response, or it will ask about current prices but not publish them in any form until 90 days after the information is collected.

The proposed survey instrument asks each responding practice to report the amount received for each of ten evaluation and management services procedure codes from up to ten commercial fee-for-service payers. MGMA will publish for each procedure code only aggregated information relating to prices paid by all the insurers whose data are reflected in the survey. The information will not be weighted according to the size of the reporting practice

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See MGMA website at www.mgma.com/surveys.

referring doctor and specialists;

- C What percentage of commercial fee-for-service claims are denied, partially denied, or returned for correction or additional information;
- C What percentage of commercial fee-for-service claims are paid within certain time periods (from 30 to 75 days) after submission; and
- C The practices' satisfaction with payers' responsiveness to questions or concerns regarding claims.

MGMA will not collect and report the information about these subjects with reference to specific payers, but only on an aggregated basis.

MGMA contends that the information exchange will “promote the exchange of meaningful data and enhance the overall efficiency of the health care marketplace, not only among physician participants but also among insurers, employers and consumers.” In essence, MGMA contends that providing information about market conditions to providers and purchasers of health care services will permit those parties to become more efficient participants in the health care system. It also asserts that the proposed information exchange does not pose a significant risk of anticompetitive effects because of the nature of the information involved and the procedural safeguards relating to the survey process that MGMA intends to implement: namely, safeguarding against disclosure of the underlying data to persons other than selected MGMA personnel, the focus on prices at least 90 days old, and the aggregated nature of the data to be reported.

Legal Analysis

MGMA's publication of information obtained from physician practices through the proposed survey of insurer payments and other aspects of insurer business practices constitutes a type of information exchange among competitors. The information that MGMA proposes to collect and publish can be divided into two general categories: information about insurer payments to medical practices, and information about physician practices' satisfaction with other aspects of their business relationships with insurers. Each category of information raises somewhat different antitrust issues and thus warrants separate discussion.

Insurer Payments

MGMA's publication of information about insurer payments to survey respondents is similar to an exchange of price information among physicians, because the payment that any physician practice receives pursuant to a contract with a particular insurer reflects the price that the physicians have agreed to accept for services rendered to patients covered by that insurer's health plan. As is recognized in the DOJ/FTC *Statements of Antitrust Enforcement Policy in*

proposed conduct is likely to encourage restraints on the competitive process, or is intended to

⁴ Collusion may be easier the fewer the competitors that exist in a market. Accordingly, MGMA would reduce the antitrust risk by refraining from publishing information relating to geographic markets containing a small number of physician practices in a particular specialty.

payer.

The information may, however, permit physician practice groups to compare the performance of the payers with which they contract with the overall performance of payers in the same market, as well as permit individual payers to compare their performance to that of the market generally. This appears more likely to encourage payers to compete with respect to their performance on these measure than to prompt physicians' concerted refusal to deal with particular payers.

Conclusion

Groups of physicians could, in some situations, use some of the information that MGMA intends to collect and publish to fix prices or to reach agreements not to deal with certain payers. Such agreements would violate the antitrust laws. MGMA's proposal to publish the information, however, does not appear to be intended, or inherently likely, to promote express anticompetitive agreements or tacit coordinated behavior among physicians in their contracting practices. Accordingly, the Commission staff has no present intention to recommend enforcement action regarding MGMA's proposed information exchange.

This letter sets out the views of the staff of the Bureau of Competition, as authorized by the Commission's Rules of Practice. Under Commission Rule § 1.3(c), 16 C.F.R. § 1.3(c), the Commission is not bound by this staff opinion and reserves the right to rescind it at a later time. In addition, this office retains the right to reconsider the questions involved and, with notice to the requesting party, to rescind or revoke the opinion if implementation of the proposed program