

Federal Trade Commission/Department of Justice ACO Working Group

Summary of Activities Following Issuance of the Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program

The Federal Trade Commission and Department of Justice (the Antitrust Agencies) issued the Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations (ACOs) Participating in the Medicare Shared Savings Program (the Policy Statement) in October 2011.¹ The Policy Statement is intended to ensure that health care providers have the antitrust clarity and guidance needed to form procompetitive ACOs that participate in both Medicare and commercial markets.

The Policy Statement established the Federal Trade Commission/Department of Justice ACO Working Group (the ACO Working Group) to collaborate and discuss issues arising out of the Policy Statement.² To further the Policy Statement's goals of antitrust clarity and guidance, the ACO Working Group issues this summary of its activities related to the Medicare Shared Savings Program (the MSSP) through March 31, 2013. During this period, the ACO Working Group has fielded 33 questions related principally to primary service area (PSA) share calculations and two requests for voluntary expedited review.

I. PSA Share Questions

Under the Policy Statement, an ACO may calculate its PSA shares to determine whether it falls within an antitrust safety zone for certain ACOs that are highly unlikely to raise significant competitive concerns.³ The Policy Statement also describes certain conduct an ACO may want to avoid if it has high PSA shares and other indicia of market power.⁴

⁴ As of March 31, 2013, the Antitrust Agencies have received 33 questions relating to PSA share calculations and other issues concerning ACOs participating in the MSSP.⁵ The Antitrust Agencies provided responses to the majority of questions within five business days. In connection with this summary, the ACO Working Group

¹ The Policy Statement is available at <http://www.ftc.gov/os/fedreg/2011/10/111020aco.pdf> and http://www.justice.gov/atr/public/health_care/276458.pdf.

² See Policy Statement, § IV.B.2.

³ The Appendix to the Policy Statement explains how to calculate PSA shares.

⁴ See Policy Statement, footnote 26 (specifying electronic mailbox at aco_psa_questions@ftc.gov).

⁵ The ACO Working Group also responded to an additional 21 questions related to the proposed ACO Policy Statement that are no longer applicable following the issuance of the final Policy Statement.

has made all 33 questions and responses publicly available at <http://www.ftc.gov/bc/healthcare/aco/aco.htm> and http://www.justice.gov/atr/public/health_care/295587.pdf.

The largest category of questions related to obtaining and using Medicare and other data to calculate PSA shares (14 questions). The next largest category of questions related to the steps involved in calculating PSA shares (11 questions). The remaining questions related to the procedures for obtaining voluntary review (3 questions) ahe