FTC Chairman Offers Support to Physicians

Says that agency's enforcement of antitrust measures is not 'a barrier to improved care.'

BY SUSAN BIRK

FROM THE ANNUAL MEETING OF THE AMERICAN MEDICAL ASSOCIATION HOUSE OF DELEGATES

CHICAGO — Contrary to common perception, "the nation's antitrust laws allow—even encourage—doctors to collaborate in ways that lower costs and improve patient care," according to Jon Leibowitz, chairman of the Federal Trade Commission.

If physicians join forces to fix prices, the FTC will stop them, but if they work together to deliver affordable, high-quality care, "not only will we leave you alone, we'll applaud you. And we'll do everything we can to help you put together a plan that avoids antitrust pitfalls," Mr. Leibowitz said in a speech that sought to dispel any stereotype that physicians might have of the commission as being run by "fastidious bureaucrats" and "surreptitious socialists" who are determined to keep doctors from charging fair prices for their services.

"Too often, I believe, our antitrust enforcement actions are portrayed as a barrier to improved care. If there is any stereotype I would like to disabuse you of today, that's the one," he said.

The relationship between organized medicine and the FTC has become strained recently by physician opposition to the "Red Flags Rule" that requires small businesses, including medical practices, to develop policies to detect and prevent identity theft.

The American Medical Association, the American Osteopathic Association, and the Medical Society of the District of Columbia filed suit against the FTC in May to block it from enforcing the rule against physicians. The "bureaucratic burden" imposed by the rule "outweighs any benefit to the public," Cecil B. Wilson, then AMA president-elect, said in a statement.

Mr. Leibowitz said that the commission agrees with physicians that the rule is overreaching, and has urged Congress to provide a legislative fix for the issue as soon as possible. "Fastidious bureaucrats aren't pushing Congress to work quickly to fix the Red Flags Rule that has unintentionally swept up countless small businesses. … The FTC is," he said.

Mr. Leibowitz cited several areas for potential cooperation between physicians and the FTC, all of them stemming from the Affordable Care Act.

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The use of health information technology to improve work flow and monitor populations and individuals; clinical integration; and accountable care organizations (ACO) are among the areas that hold potential for collaboration to improve quality and lower health care costs, he said.

Although they are not "a free pass to fix prices," he said that health information technology systems "can be an important tool" to make patient care more effective and affordable. The FTC recently issued three favorable advisory opinions on the use of HIT by health care providers.

In the area of clinical integration, the FTC provides guidance to providers in the form of advisory opinions regarding joint ventures. The FTC will analyze a proposal and, where feasible, provide an opinion on whether it would recommend an enforcement action if the proposal were implemented, he said.

With regard to ACOs (integrated health systems that will be responsible for providing care to defined populations), "there is already talk of their moving into the private sector," and "we want to work with you moving forward" to avoid competition issues, he said.

"As long as the government purchases the services and unilaterally sets payment levels and terms, there won't be an antitrust issue," he added.

The FTC will hold a public workshop this fall on competition policy, payment reform, and new care models, including ACOs. ■

IMPLEMENTING HEALTH REFORM

On the Independent Payment Advisory Board

Tucked within the Affordable Care Act is a provision aimed at reining in health care spending. The provision creates the Independent Payment Advisory Board (IPAB), a panel of 15 experts charged with slowing the growth of Medicare and private health care spending, as well as improving health care quality.

By law, the board's recommendations will automatically take effect unless Congress enacts its own cost-cutting plan that achieves the same level of savings. The advisory board is not expected to submit its first recommendations to Congress until 2014, but already the medical community is crying foul.

Dr. J. Fred Ralston Jr., president of the American College of Physicians, explains some of the issues with the new board.

CARDIOLOGY NEWS: Everyone agrees that something needs to be done to control health care spending, so why is the IPAB so unpopular with physicians?

Dr. Ralston: The ACP is supportive of the concept of an entity such as the Independent Payment Advisory Board. We believe that making complex Medicare payment and budgetary decisions is very difficult within a political process with substantial lobbying pressures, and that a knowledgeable, independent board serving this role would have some protection from this undue influence.

Many physician and other provider groups are opposed to this provision because it removes a significant amount of influence from the accessible, elected congressional body. The sense is that if too much congressional authority is removed, there will be inadequate opportunity for physicians and other health care providers to express their point of view and influence the actions taken.

CN: How does the IPAB differ from other bodies like the Medicare Payment Advisory Commission (MedPAC)?

Dr. Ralston: The IPAB, a body whose members must be appointed by the president and confirmed by the Senate, is provided with the authority to have changes made by the Secretary [of Health and Human Services] to the Medicare system to reach a budgetary target. The IPAB-recommended changes will take effect unless Congress passes legislation that meets the same budgetary target. Even if Congress passes such legislation, that legislation can be vetoed by the president and the IPAB recommendation would still take effect.

Recommendations from IPAB will take effect unless Congress passes legislation that meets the same budgetary target.

DR. RALSTON

However, Congress can choose whether to enact recommendations from MedPAC. It has no direct authority to implement change, which differs significantly from the IPAB.

CN: The ACP and other medical societies have called for changes to how the IPAB is structured. What changes would the ACP like to see?

Dr. Ralston: The College would like to see the following changes:

► A requirement for inclusion of a primary care physician on the IPAB. The perspective of those physicians that provide first-contact, comprehensive, and continuous care to the population must be a part of the process.

► Stronger protections to ensure that the recommendations to decrease expenditures do not reduce quality of care.

► The authority for Congress to reject the implementation of IPAB recommendations with a majority vote, which maintains a reasonable influence in the hands of the elected body.

► Equal distribution of risk for budgetary reductions among all health care providers. Hospitals, for example, are protected from budgetary reductions over the first several years of the legislation, placing physicians at increased risk of being required to take reductions.

CN: If Congress eliminated the IPAB, how could it achieve comparable health care savings?

Dr. Ralston: The College believes that the [Affordable Care Act] sets a foundation for many changes that can lead to increased savings. This includes the piloting of integrative payment models that reward efficiency and effectiveness, as opposed to the current system that rewards only volume. These models include accountable care organizations, increased bundled payments, and gain-sharing arrangements, among others.

Furthermore, data from ongoing demonstrations of the patient-centered medical home care model, which fosters increased care coordination and improved treatment of chronic conditions, indicate a high potential to reduce cost and improve quality.

Finally, the increased development and dissemination of comparative effectiveness information to help inform the decisions of patients in consultation with their physicians also has the potential to significantly reduce costs while improving, or at least maintaining, quality. ■

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