

United States Senate

WASHINGTON, DC 20510

February 11, 2011

The Honorable Christine Varney
Assistant Attorney General
Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

The Honorable John Leibowitz
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Dear Assistant Attorney General Varney and Chairman Leibowitz:

We write to encourage your important work in developing the antitrust guidance and review process for Accountable Care Organizations (ACOs) related to the Medicare Shared Savings Program, as outlined in the *Affordable Care Act*. We share your goal of having a careful and timely review process, as it will play an essential role in enhancing the delivery of quality, efficient and integrated care. The competition issues faced by ACOs will provide new challenges for the antitrust agencies, and we are pleased to see your collaborative efforts in addressing these challenges.

Although the DOJ and FTC have historically split antitrust enforcement jurisdiction among a variety of industries, both agencies have accumulated extensive expertise in the complexities of health care antitrust matters. The complementary experience and industry knowledge gained over the years by both the DOJ and FTC in different facets of health care antitrust law will serve the public well when harnessed cooperatively. We hope you will agree that a shared effort will lead to the best results for patients, providers and the agencies themselves.

The FTC and DOJ have, in the past, demonstrated their ability to efficiently and effectively work together to provide timely health care antitrust advice. The joint guidelines for health care collaboration issued by FTC and DOJ in 1996, for instance, prompted numerous collaborative care entities to seek clearance for their formation, and your agencies responded expeditiously. The FTC and DOJ now face the task of helping to transforming our health care delivery system from one based on quantity to one based on quality and value, and we hope both agencies will again meet expeditious deadlines for providing advice to providers, hospitals and insurers hoping to form ACOs.

Moreover, as ACOs are formed, we also appreciate the importance of monitoring and challenging any arrangements that have the potential to increase prices or reduce the quality of care. We welcome the agencies' continued attention to detecting and challenging harmful concentration in the market as it continues to evolve. The agencies will be most effective in grappling with this challenge by combining their complementary expertise.

In sum, we are concerned that placing antitrust jurisdiction for the Medicare Shared Savings program solely in one agency's purview will not fully harness the aggregate expertise and experience necessary to make ACOs work. Background in all relevant industries—including the hospital, provider, *and* payer arenas—is essential. The model of shared jurisdiction has served health care consumers well for decades. We firmly believe that it is the most effective approach to deal with the upcoming challenges in health care antitrust regulation.



Sincerely,

Senator Mark Udall



Senator Jeanne Shaheen



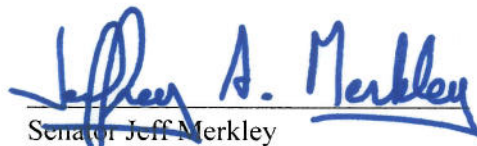
Senator Tom Udall



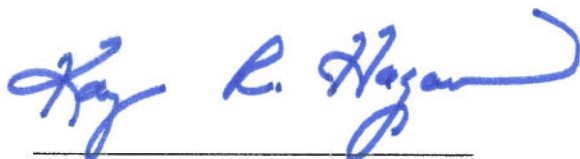
Senator Mark Warner



Senator Michael F. Bennet



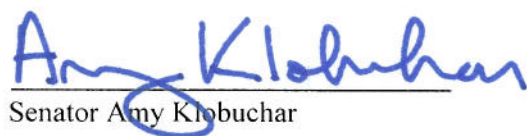
Senator Jeff Merkley



Senator Kay Hagan



Senator Ron Wyden



Senator Amy Klobuchar

Cc: The Honorable Kathleen Sebelius
Ms. Nancy-Ann DeParle
Dr. Donald M. Berwick