

## What GAO Found

Stakeholders—health care industry groups and experts in antitrust law—had different perspectives on the adequacy of three key aspects of antitrust guidance for health care provider collaboration. First, stakeholders’ perspectives differed on the sufficiency of guidance on clinical integration, which involves integrating clinical activities across providers in a collaborative arrangement. Clinical integration is one way for a collaborative arrangement to satisfy the requirement that the arrangement demonstrate the potential to yield significant benefits, such as reduced costs or improved quality, in order to be able to jointly negotiate prices. Five of the six experts and one of the four industry groups said that agency guidance was sufficient, while one expert and two industry groups asserted that agency guidance on clinical integration was inadequate. Second, stakeholders’ perspectives differed as to whether the agencies should permit greater use of exclusive collaborative arrangements, which restrict the ability of providers within a collaborative arrangement to contract with other arrangements or health plans. The use of exclusive arrangements has the potential to improve or reduce competition, depending on the circumstances. Four of the experts said that the agencies’ guidance on exclusive arrangements was reasonable, while three industry groups stated that the agencies should permit greater use of exclusive arrangements. Third, stakeholders’ perspectives differed on the adequacy of guidance related to which collaborative arrangements are exempt from the antitrust analysis and therefore are presumed to be lawful—known as being within a safety zone. One of the four industry groups and one of the six experts said the size and scope of the safety zones outlined in the 1996 Statements were appropriate, while three industry groups and three experts contended that the safety zones should be expanded to include a wider range of arrangements.

## Why GAO Did This Study

Health care delivery in the United States generally is fragmented, with care delivered by multiple providers and in multiple care settings, often without systematic coordination across providers and settings. This can lead to inefficient care delivery, poor quality of care,

and patient dissatisfaction. There is a growing consensus among providers, researchers, and policymakers that collaboration among health care providers is essential to addressing these problems. Collaborative arrangements can take a variety of forms, including collaborations among independent physician groups—called physician arrangements—or among multiple types of independent providers—called multiprovider arrangements. For example, a physician arrangement could involve a network of primary care physicians and specialists, such as cardiologists and radiologists, who contract collectively with health plans. Similarly, a multiprovider arrangement could involve a hospital collaborating with groups of physicians to contract collectively with health plans. Collaborative arrangements may be able to address problems associated with fragmented care delivery because providers generally have greater resources and ability to coordinate care when collaborating with each other than when acting separately. For example, providers within a collaborative arrangement could pool resources to use electronic health records (EHR) to obtain timely and relevant clinical information and enable them to coordinate patient care across various care settings, potentially improving efficiency and quality of care. Or providers collaborating with each other could negotiate capitated rates with health plans to give these providers a financial incentive to furnish care efficiently.

While collaborative arrangements can have potential benefits, such arrangements may lead to higher prices. In a competitive health care market, consumers are able to choose from a wide variety of competing providers that have an incentive to furnish the highest-quality services at the lowest cost. However, the providers in a collaborative arrangement may be able to negotiate higher prices with health plans than would otherwise be expected in a competitive market merely because they have agreed to act together in setting fees. While higher prices benefit providers, consumers are adversely affected if higher prices for providers result in higher health plan premiums. Furthermore, when collaborating providers have the ability to negotiate prices in excess of competitive levels, the arrangement may violate federal antitrust laws, which are designed to promote market competition.

The Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ), the agencies that are responsible for enforcing federal antitrust laws, have issued general guidance for the business community, and specific guidance for health care providers, on the application of these laws. One aspect of this guidance by the FTC and DOJ (the agencies) describes the analysis they undertake to determine whether to challenge a particular collaborative arrangement among competing health care providers as unlawful. The agencies also issued guidance in October 2011 describing their approach to antitrust policy for certain collaborative arrangements, called Accountable Care Organizations (ACO), that are eligible to participate in the Medicare Shared Savings Program (SSP). The SSP is intended to promote provider collaboration to reduce costs and improve quality of care for Medicare beneficiaries by allowing ACOs to receive a portion of the net savings realized as a result of their efforts.

Congress asked us to examine how federal antitrust guidance may affect the ability of health care providers to collaborate to improve health care quality. In this report, we describe the perspectives of stakeholders—health care industry groups and experts in antitrust law—on key aspects of federal antitrust guidance related to collaboration among health care providers.

For more information, contact James C. Cosgrove at (202) 512-7114 or [cosgrovej@gao.gov](mailto:cosgrovej@gao.gov).