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## UTAH STATE SENATE

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**May 11, 2006**

**Attorney General Alberto Gonzales  
US Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530**

Dear Attorney General Gonzales:

We are writing with concerns about health care in America. Recent articles indicate 46 million Americans are uninsured! Small businesses are increasingly finding it difficult to provide employee coverage; exclusionary hiring practices are making it impossible for new doctors to enter markets, prescription drugs are being priced out of many consumers reach if they are uninsured.

We believe several areas of change are needed in our health delivery systems. Suggestions:

Patient-Physician choice is paramount in citizen satisfaction. Many insurers are restricting patients ability to choose their own physicians and at the same time do not provide transparency needed for patients (citizens) to make intelligent health care choices. Cost is perhaps the #1 concern of consumers (citizens) who are currently denied information about costs related to insurance coverage, prescriptions and generic alternatives, surgery options, and doctor charges and availability.

In our capacity as state legislators, we are concerned about the apparent abuse of market power by an increasingly concentrated group of managed care organizations ("MCOs"). Specifically, we have been informed that consumer access to good quality, competitively-priced outpatient care provided by qualified ambulatory surgery centers ("ASCs") is threatened by an insurance practice known

as “selective contracting.” Left unchecked, this practice could severely impact quality of care, patient access, and the exercise of independent physician judgment, in addition to interfering with overall health care competition.

We believe selective contracting occurs when powerful MCOs control patient access to treatment by channeling consumers to a narrow cadre of providers while limiting access to a wider range of treatment alternatives, often contrary to physician preferences. This practice has negative implications for patient welfare and may unlawfully restrain trade. In the short term, convenient and accessible health care facilities can be effectively “locked out” of a consumer’s choice of treatment alternatives, even though coverage has been purchased which supposedly provides out-of-network health plan benefits. In the long run, the abuse of MCO market power diverts patients and can undermine the bona fide competitive process, causing a further reduction in consumer choice and fewer competitive alternatives.

The increasingly negative effects of selective contracting in the marketplace can be reflected in various ways. The following list of issues, although anecdotal, illustrates the scope of the problem:

- failure of MCOs to cooperate with out-of-network ASCs in scheduling surgical procedures in a timely, businesslike manner, despite the stated availability of such benefits under a consumer’s health plan.
- failure of MCOs to provide comprehensible reimbursement data to consumers, an increasingly significant issue as the use of high deductible, “consumer driven” health coverage expands via Health Savings Accounts and otherwise.
- failure of MCOs to clearly explain available out-of-network plan benefits, including substantial out-of-pocket cost –differentials assessed against consumers for services delivered at hospital out-patient departments instead of lower-priced ASCs.
- anti-competitive reduction in consumer choice and market efficiency flowing from an increased concentration of economic power in a small cluster of third party payers.
- overreaching efforts to steer patients to in-network providers by aggressively manipulating enrollee out-of-pocket financial obligations, so that costs of clinically appropriate treatment at an out-of-network facility are not properly credited to the patient.

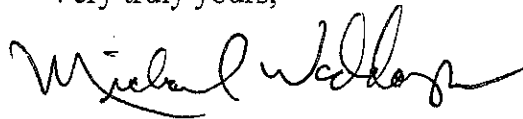
- efforts to “gag” physicians with penalties which may sanction a practitioner if he/she discusses the benefits of treatment at one facility (e.g., hospital vs. ASC, in-network vs. out-of-network) rather than another to promote informed decision-making by patients.

The growth of selective contracting by MCOs could create a dysfunctional health care marketplace which needlessly increases costs, impairs competition and threatens the delivery of good quality health care, both now and in the future. Consumer choice and market innovation are facing market restraints while MCO profits (lead by executive compensation) rise to nearly unconscionable levels.

As we read the national papers about multi-billion dollar compensation package for insurance company executives and predatory practices by big corporate healthcare companies we realize that the ultimate victim are working families and small businesses. Again, we are urging you to commence formal investigations of the business practices of the hospital and insurance industry. This is an urgent problem requiring a timely response.

Therefore, we ask you to invoke the appropriate powers of your office to review, investigate and recommend changes to these systemic flaws in the health care system to minimize injury to important public interests. Thank you for your attention. Please let us know if there are any questions or if we may provide further information.

Very truly yours,



Senators  
Michael Waddoups  
Gene Davis  
Peter Knudson