



American Association of  
HEALTH PLANS

## AMA USES FLAWED REPORT TO SUPPORT ANTI-CONSUMER BARGAINING POWERS

### Agenda Would Create ‘Doctor Cartels’ That Drive Up Costs

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*Amid a sluggish economy and rising health care costs, the American Medical Association has announced that it will aggressively pursue an exemption from anti-trust law that would allow doctors to form bargaining cartels. This exemption – an unprecedented suspension of a fundamental consumer protection law – would give doctors excessive leverage in salary negotiations, punishing consumers with higher costs while threatening the ability to enforce existing quality and safety standards in the health care system.*

*Many consumer advocates and anti-trust experts – including the U.S. Department of Justice – have forcefully warned that granting such an exemption would have highly negative consequences for health care consumers, who would face higher health care costs at a time when the price of health care is already skyrocketing.*

*Despite these facts, the AMA has released a new report to bolster its argument. The report, “Competition in Health Insurance, A Comprehensive Study of U.S. Markets,” is neither comprehensive, nor does it paint an accurate picture of health care competition in today’s system. In fact, as the following points make clear, the report uses selective and incomplete data to advance its conclusion that the health care marketplace is not competitive.*

*Given the inaccurate and misleading conclusions of the AMA report, policy and government leaders should ask tough questions about why the AMA is proposing a law that would reduce, not strengthen, competition in the health care market, driving prices higher and reduce choices for consumers.*

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#### **THE AMA REPORT USES INCOMPLETE AND CONTRADICTIONARY DATA TO PAINT A MISLEADING PICTURE ABOUT HEALTH CARE COMPETITION**

The report ignores much of the health care market, basing its argument on a narrow segment of the industry, namely coverage limited to HMOs or PPOs, and ignores the many other methods of financing the delivery of health care.

Even the report’s own data is often highly contradictory. For instance, in the District of Columbia, the PPO enrollment figure *exceeded the entire population.*

While the AMA concludes that “in many parts of the country, health insurance markets are dominated by a few companies that have significant power over the marketplace,” the report’s data suggests otherwise, listing 17 different “dominant” health plans.

Indeed, the report's own data show that:

- there are many geographical areas with relatively *low health plan concentration*;
- there is a tremendous variation across geographic areas, meaning that there is no basis for a blanket exemption from anti-trust law that would apply across all markets; and
- even the U.S. Justice Department has said that nationwide, there is no single dominant health plan, or even a few "dominant" health plans.

### **THE AMA USES A STANDARD FOR 'OVERWHELMING' MARKET POWER THAT DIVERGES WIDELY FROM THE ACCEPTED LEGAL DEFINITION**

The AMA bases its argument on the contention that "health insurance markets are dominated by a few companies that have significant power over the marketplace." The AMA uses a 30% figure as a floor for the amount of market power needed.

However, most courts define monopoly (too few consumer choices) or monopsony (too much market power) power as controlling at least *60-70% or more* of a properly defined market.

### **IN DEFINING THE PHYSICIANS' MARKET, THE AMA LEAVES OUT THE VAST MAJORITY OF PHYSICIANS' INCOME**

The vast majority of physicians receive income from many other sources not discussed in the AMA report.

The report furthermore ignores the bulk of health care dollars spent in the United States, including, Medicare (\$215 billion), Medicaid (\$197 billion), worker's compensation, CHAMPUS, indemnity, self-administered ERISA plans, and self-pay patients.

The report's "HMO" or "PPO" only market definition is far too narrow, since:

- employers and employees can and do easily switch from HMO to PPO products, and vice versa;

- POS products form a "bridge" between HMOs and PPOs, further supporting the position that treating HMOs and PPOs as separate product markets is misleading; and
- indemnity plans, which nowadays are virtually always "managed" to some degree, cannot be properly excluded from the market definition.

The report omits entirely *any data from self-administered health plans or plans where the administrators are not insurers*, thus inflating all of the concentration estimates.

The courts almost uniformly reject the AMA's narrow market definition, instead including in the market *all* methods of health care financing, including HMO, PPO, indemnity and self-insurance.

### **THE AMA'S RELIANCE ON RURAL AREAS TO MAKE ITS POINT IS HIGHLY MISLEADING**

The report suggests that HMO and PPO concentration may be particularly high in rural areas (p.22), but that conclusion ignores three facts:

- There are few HMOs and PPOs in rural areas because the population is too small to support physician or hospital networks.
- Furthermore, the study leaves out indemnity plans, which are a major source of health care coverage in rural areas.
- The most serious competition problem in rural areas arises from health provider (hospital and physician) concentration. In many areas, there is only one hospital and only a few physician providers. If there is an antitrust concern in these markets, it is due to provider concentration, not health plan concentration.

### **THE AMA REPORT CONTAINS SERIOUS METHODOLOGICAL FLAWS**

The PPO sample includes only 416 out of 1,060 PPOs (p. 8).

The report omits about 2 million beneficiaries that "are covered by small PPOs scattered throughout

the country” (p. 9). Thus, by its own terms, the report has under-represented small PPOs. Including these figures undoubtedly would have resulted in lower concentration levels.

The report notes that the data conflicted in various places (p. 10), and in one area (District of Columbia) made no sense in that the PPO enrollment figure *exceeded the entire population*.

Where there were conflicting data, the report used the larger enrollment figures (p. 10), skewing the findings to better fit the AMA’s argument.

### **THE AMA’S OWN DATA INDICATE THE MARKET IS ACTUALLY VERY COMPETITIVE**

The AMA’s own data show that with respect to the (too narrowly-defined) HMO/PPO market, among the 40 metropolitan statistical areas (MSAs) with population over 1 million that the AMA examined, 21 are not highly concentrated, according to the formula that both the Justice Department and the Federal Trade Commission use to measure market concentration.

In the 19 MSAs that the AMA claims are highly concentrated in the HMO/PPO product market, the AMA lists *17 different “dominant” plans*, refuting the notion that there is a single, or even a relatively small number, of dominant health plans nationwide.

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