

TESTIMONY OF GEORGE F. ADAMS

MY NAME IS GEORGE ADAMS. I AM SENIOR COUNSEL RESPONSIBLE FOR ANTITRUST MATTERS FOR CIGNA CORPORATION AND A MEMBER OF A GROUP OF LAWYERS WHO ADVISE THE ALLIANCE FOR MANAGED COMPETITION ON ANTITRUST MATTERS. THE ALLIANCE FOR MANAGED COMPETITION IS A GROUP OF INSURERS (AETNA, CIGNA, METROPOLITAN, PRUDENTIAL AND TRAVELERS) LOBBYING FOR EFFECTIVE MANAGED CARE LEGISLATION AT THE STATE AND FEDERAL LEVEL.

I AM TESTIFYING WITH REGARD TO ONLY ONE PROVISION IN SENATE BILL 307 - SECTION 10 (J) WHICH WOULD GRANT AN EXEMPTION FROM THE BILL TO NON PROFIT HEALTH CARE FACILITIES.

WE BELIEVE THAT IT IS INAPPROPRIATE TO GRANT AN EXEMPTION FROM THE ANTITRUST LAWS TO ANY CLASS OF PROVIDERS AT THIS TIME FOR TWO REASONS:

FIRST, AS EVERYONE IS WELL AWARE, THE ENTIRE RELATIONSHIP BETWEEN PROVIDERS AND PURCHASERS OF HEALTH CARE IS AT THE PRESENT TIME UNDER INTENSE STUDY BY THE CLINTON ADMINISTRATION, WHICH IN THE NEAR FUTURE WILL PROPOSE MAJOR CHANGES IN THE MANNER IN WHICH HEALTH CARE IS MADE AVAILABLE TO THE PUBLIC. IT IS EXPECTED THAT THE PROPOSALS WILL INCLUDE PROVISION FOR A NEW RELATIONSHIP BETWEEN PROVIDERS AND PURCHASERS OF HEALTH CARE THAT WILL SPECIFICALLY DESCRIBE THE NEW STRUCTURE OF THAT RELATIONSHIP, INCLUDING ANY PERMISSIBLE ALLIANCES BETWEEN PROVIDERS AND THE MANNER IN WHICH PROVIDERS WILL COMPETE WITH ONE ANOTHER FOR HEALTHCARE BUSINESS.

SPECIFICALLY, HEALTH CARE REFORM ENVISIONS THE FORMATION OF ACCOUNTABLE HEALTHCARE PLANS (AHPs) THAT WOULD CONTRACT WITH PURCHASING ALLIANCES TO PROVIDE HEALTH CARE SERVICES TO THE INDIVIDUALS ENROLLED IN THE PURCHASING ALLIANCE. THE ACTUAL HEALTH CARE SERVICES WOULD BE DELIVERED BY PROVIDERS WHO ARE EMPLOYED BY OR CONTRACT WITH A NETWORK FORMED WITHIN THE AHP. THE AHP WOULD MANAGE THE DELIVERY OF HEALTH CARE SERVICES, INCLUDING THE SELECTION AND INTEGRATION OF PROVIDERS, UTILIZATION REVIEW, QUALITY ASSURANCE, CLAIMS PROCESSING AND NETWORK MAINTENANCE. THUS, THE FORMATION OF AHPs AS WELL AS THEIR PROVIDER NETWORKS NECESSARILY CONTEMPLATES COLLABORATION AMONG PROVIDERS, WHICH WOULD INCLUDE HORIZONTAL INTEGRATION THROUGH MERGER, JOINT VENTURE OR CONTRACT AMONG PHYSICIANS OR AMONG HOSPITALS.

AS A PART OF THAT STUDY, THE ADMINISTRATION IS GIVING CAREFUL ATTENTION TO ANTITRUST CONSIDERATIONS AND HAS ASKED FOR COMMENT ON THE EXTENT TO WHICH EXISTING ANTITRUST LAW WILL IMPEDE THE ABILITY OF PROVIDERS AND OTHERS TO CONSOLIDATE INTO ALLIANCES THAT THE NEW STRUCTURE WILL PROPOSE.

WHATEVER THIS NEW PROPOSAL WILL BE, IT IS SURE TO HAVE GIVEN VERY CONSIDERABLE THOUGHT TO THE NEED FOR ANY EXEMPTIONS FROM THE ANTITRUST LAWS IN THE CONTEXT OF A COMPREHENSIVE HEALTH CARE BILL THAT WILL TAKE ALL COMPETITIVE FACTORS INTO CONSIDERATION. THESE WILL INCLUDE NOT ONLY ALL ASPECTS OF THE COMPETITIVE RELATIONSHIP BETWEEN PROVIDERS AS A GROUP BUT THEIR RELATIONSHIP TO BUYERS OF HEALTHCARE AS WELL.

IN CONTRAST, THE PROVISION IN SECTION 10 (J) IS LIMITED TO ONLY ONE CLASS OF PROVIDERS AND IS PART OF A GENERAL ANTITRUST BILL WHICH HAS NO PARTICULAR FOCUS ON HEALTHCARE. IT CANNOT BE PREDICTED WHAT KINDS OF PROBLEMS THIS WILL

CREATE WHEN THE NEW COMPREHENSIVE HEALTH CARE DELIVERY SYSTEM IS ADOPTED AT THE FEDERAL LEVEL, OR WHAT IMPACT IT WILL HAVE ON THE OVERALL STRUCTURE OF THAT NEW SYSTEM. SIGNIFICANT PROVISIONS DEALING WITH THE DELICATE COMPETITIVE BALANCE BETWEEN BUYERS AND SELLERS OF HEALTHCARE SHOULD NOT BE ADDED AS AN AFTERTHOUGHT IN A GENERAL ANTITRUST BILL BUT NEED TO BE THE SUBJECT OF COMPREHENSIVE STUDY AND ANALYSIS AS TO THE IMPACT THEY WILL HAVE ON THE SYSTEM OF HEALTH CARE DELIVERY TO WHICH THEY RELATE - WHICH CANNOT OCCUR UNTIL THE STRUCTURE OF THE NEW SYSTEM IS KNOWN.

THE SECOND REASON THAT WE BELIEVE THIS PROVISION IS INAPPROPRIATE IS THAT EXISTING ANTITRUST LAW - WHICH THIS BILL PURPORTS TO ADOPT FOR THE STATE OF PENNSYLVANIA - WOULD NOT PROHIBIT ANY CLASS OF PROVIDERS FROM INTEGRATING THROUGH MERGER, JOINT VENTURE OR OTHER SIMILAR ACTION THAT WILL IMPROVE THE QUALITY OF HEALTHCARE, SO LONG AS IT DOES NOT INVOLVE THE ABUSIVE EXERCISE OF MONOPOLY OR MARKET POWER AND INVOLVES SUFFICIENT INTEGRATION OF PROVIDER RESOURCES AND THE SHARING OF FINANCIAL RISK TO ENSURE ITS EFFICIENCY. THE KEY IS TO ASSURE THAT, AFTER THE COLLABORATIVE VENTURE IS FORMED, IT WILL NOT HAVE ENOUGH MARKET POWER TO RETAIN THE HIGHER PROFITS RESULTING FROM ITS EFFICIENCIES, BUT WILL BE FORCED AS A RESULT OF COMPETITION TO PASS THEM ALONG TO CONSUMERS IN THE FORM OF REDUCED PRICES.

BOTH THE DEPARTMENT OF JUSTICE AND THE FEDERAL TRADE COMMISSION HAVE FOR THIS REASON STRONGLY OPPOSED ANY REPEAL OF THE ANTITRUST LAWS THAT WILL PREVENT THOSE LAWS FROM ACCOMPLISHING THEIR LEGITIMATE PURPOSE OF ENSURING THAT COMPETITION AMONG ALL PARTICIPANTS IN ANY MARKET PLACE REMAINS HEALTHY.

FOR EXAMPLE, IN HIS STATEMENT DATED OCTOBER 15, 1992, KEVIN ARQUIT, THE DIRECTOR OF THE FEDERAL TRADE COMMISSION'S BUREAU OF COMPETITION AFTER REVIEWING THE MANNER IN WHICH THE ANTITRUST LAWS SUPPORTED THE DEVELOPMENT OF A COMPETITIVE HEALTH CARE SYSTEM, SAID THAT ALTHOUGH HOSPITALS MAY ASSERT THAT THE THREAT OF GOVERNMENT CHALLENGE HAS A "CHILLING EFFECT" ON PROCOMPETITIVE HOSPITAL MERGERS, MODERN ANTITRUST ANALYSIS DOES NOT STAND IN THE WAY OF GENUINELY PRO-CONSUMER MERGERS OR JOINT VENTURES AND THAT MOST HOSPITAL MERGERS FIT INTO THAT CATEGORY. HE NOTED IN HIS STATEMENT THAT THERE WAS NOT A SINGLE INSTANCE OF A FEDERAL GOVERNMENT CHALLENGE TO A HOSPITAL JOINT VENTURE.

SIMILARLY, IN HIS STATEMENT OF JUNE 24, 1992, CHARLES A. JAMES, THE ACTING ASSISTANT ATTORNEY GENERAL AT THE DEPARTMENT OF JUSTICE NOTED THAT THE ANTITRUST LAWS WERE NO IMPEDIMENT TO THE GREAT MAJORITY OF MERGERS AMONG HOSPITALS AND THAT OF 229 SUCH MERGERS BETWEEN 1987 AND 1991, ONLY FIVE WERE CHALLENGED ON ANTITRUST GROUNDS. NOT A SINGLE ONE OF THESE CHALLENGES INVOLVED A SMALL HOSPITAL (UNDER 100 BEDS).

I HAVE AVAILABLE WITH ME TODAY COPIES OF THOSE STATEMENTS WHICH CLEARLY DEMONSTRATE THAT THE ANTITRUST LAWS AS THEY EXIST TODAY FULLY RECOGNIZE THE NEED FOR CONSOLIDATION AND JOINT VENTURES AMONG PROVIDERS OF HEALTH CARE WHERE THE COMPETITIVE ENVIRONMENT REMAINS HEALTHY.

I ACCORDINGLY REQUEST THAT FOR THESE REASONS, AS WELL AS THOSE STATED TODAY BY THE INSURANCE FEDERATION OF PENNSYLVANIA, SECTION 10 (J) OF THIS BILL BE DELETED. I WILL BE PLEASED TO ANSWER ANY QUESTIONS YOU MAY HAVE.