

Transfer of Obligation to Perform Hospital Services

A hospital system that had entered into a Health Care Access Agreement (HCAA) to provide certain services and programs to the residents of a county sought to modify the HCAA and transfer its obligations to a third party. The county government retained a health economist now at AACG to forecast the county's future demand for certain acute and emergent care services and to determine whether that demand could be met. His expert report mapped out demographic trends and their implications for health care utilization, compared those to existing and planned capacity of the county's hospitals, and identified areas of care that would likely become underserved as a result of the hospital system's proposals.

Alleged Violation of Anti-Kickback Statute

The DOJ alleged that a large operator of nursing homes engaged in an unlawful scheme to steer the sale of durable medical equipment and home health and therapy services to related companies, including a company that DOJ characterized as a "sham company." An AACG expert analyzed the business ties among the companies at issue, including the procurement process by which those ties were established. His analysis demonstrated that the procurement had been proper, that the "sham company" in fact bore entrepreneurial risks for performing operations at substantial costs, and that the prices for services and equipment represented fair market prices.

Self-Disclosure of Outdated CPT Coding

Economists now at AACG assisted a health care provider that had become aware of the use of outdated CPT codes in its Medicare claim filings. They designed a stratified sample of patient billing records and demonstrated that the coding issue materially affected only a single area. Based on an extrapolation of the sampling results, they estimated the amount by which the provider had been overpaid.

Reinstatement of HMO

Based on the results of a statistical analysis, a state government alleged financial irregularities at a health insurer and barred that insurer from providing certain HMO services. An economist now at AACG assisted the health insurer with a critique of the government's statistical sample. He identified extrapolation errors and provided rebuttal testimony. The state reinstated the HMO plan.

Merger Analysis in the Health Care Industry

In multiple cases, AACG has assisted in the evaluation of health insurance mergers or acquisitions. In each of these cases, a large regional health insurer agreed to take over a health plan in another state. The state insurance commissions typically needed an evaluation of whether such acquisitions would harm consumers. In one case, due to the close association between certain medical institutions and the PPO and HMO insurers, the state insurance commission was particularly concerned that consumers of emergency room services and certain specialties such as cardiology could be negatively impacted.

In these cases, economists at AACG gathered information about the total number of lives covered by insurers within the state, the number of institutions providing various services in medical specialties, and the affiliations of each health care provider with the insuring institution. Through this type of market analysis, economists at AACG have provided an overall picture of the health

insurance market within each of the states and demonstrated the strengths and weaknesses of the competitive landscape before and after each of the proposed acquisitions.

In some of these proposed acquisitions or mergers, parties are interested in the effect of additional investments and/or job creation programs that are proposed as part of the merger/acquisition terms. AACG's economist evaluated the job creation and investment programs on regional economies.

Related Issues

Accuracy Claims of Medical Monitoring Devices

Former employees of a medical monitoring devices company alleged that the company, in violation of the False Claims Act (FCA), had overstated the accuracy of its devices. Plaintiffs had cherry-picked results from small-scale trials to buttress their case. Our health economist conducted a comprehensive review of all available trials and demonstrated that the accuracy of the company's devices was far higher than the whistleblowers had anecdotally alleged. Separately, an opposing expert had calculated damages based on reimbursement claims files. Our health economist found that the opposing expert had double-counted many claims, had misinterpreted sales returns as sales, had drawn unsupported conclusions from ambiguous data, and had made numerous factual errors.

Patent Litigation in Pharmaceuticals and Medical Devices

In various patent litigations, economists at AACG have studied the markets, demand, and costs associated with health-related products. These analyses have typically called for analysis of market shares, calculations of the extent of substitutability between products in the market, and detailed categorization/econometric analysis of fixed and marginal costs.

Pricing of Medical Products and Devices

For medical device manufacturers, AACG has analyzed sales volumes and gray market distribution.

Price-Fixing in Vitamins

For a class action antitrust matter in vitamins, economists at AACG assessed the structure of the market and the similarities and differences among plaintiffs to determine the extent of a viable class. The damages phase of this analysis called for an analysis of the price elasticities of products from producers to various levels of intermediate distributors and processors through to the final customer, due to claims from indirect purchasers.

Selected Experts

Daniel S. Levy, Ph.D. is an expert in sampling and statistical techniques related to mortality and morbidity. His health-related statistical work has been published in peer-reviewed journals and funded by government grants. He has developed new statistical techniques to determine the quality of, and potential biases in, incomplete health records used in calculating mortality rates. He has developed, tested, fielded, and analyzed health surveys for morbidity and mortality. He has estimated the total corporate liabilities due to exposure of populations to hazardous materials based on detailed demographic, exposure, and morbidity records. In addition, he has developed analyses to help assess liability and apportion damage among companies that have produced toxic material.

Dr. Levy has also performed economic and statistical work relating to pharmaceuticals and medical devices. He has provided expert testimony in statistics, sampling, economic issues, and health/injury matters before courts, state and federal commissions and agencies, and has served as an expert arbitrator. He has provided advice in False Claims Act matters and served as an expert witness.

Constantijn (Stan) Panis, Ph.D. is an expert in health care, demographic issues, statistics, and forecasting. He has served as economic expert witness in health care, labor, and class action cases. He is widely published, was an award-winning teacher in MBA and undergraduate programs, and co-founded a successful company that developed statistical software to disentangle causality, reverse causality, and selection effects in economic models. Prior to joining AACG, Dr. Panis was a senior economist at the RAND Corporation, where his research on health and health care utilization was funded by the National Institutes of Health, the Centers for Medicare and Medicaid Services, and other federal agencies. He served on the faculty of the University of Southern California and the University of California at Irvine, teaching undergraduate and graduate statistics and economics courses. His work has been published in the *Journal of Health Economics*, *Medical Care*, *Health Affairs*, *Health Policy Research*, and many other professional journals.

Timothy J. Tardiff, Ph.D. is an expert in economic and statistical methods used to analyze competition in health care and other industries traditionally subject to economic regulation. He was recently an expert economic for a state insurance regulator, analyzing the competitive and public interest impact likely to result from the acquisition of a Blue Cross Blue Shield provider by a larger multistate provider. He has also been an expert in a Department of Health and Human Services administrative proceeding, in which he evaluated the adequacy of the statistical sampling used to estimate the extent of allegedly improper Medicare billing. Dr. Tardiff has participated in an economic evaluation of a False Claims Act action against a major pharmaceutical distributor and nursing home chain alleging improper Medicare billing by establishing a sham durable medical equipment distributor. More generally, Dr. Tardiff has been an expert witness, consultant, and/or author of publications in economic and legal journals on issues such as product and geographic markets, determining whether competition is sufficient to constrain market power, evaluating claims of predatory pricing and other exclusionary conduct, and the economic basis for regulated prices.

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