

**MINUTES OF THE
PRIVATELY OWNED HEALTH CARE ORGANIZATION TASK FORCE**

Thursday, June 8, 2006 – 9:00 a.m. – Room W135 House Building

Members Present:

Sen. Michael G. Waddoups, Senate Chair
Rep. David Clark, House Chair
Sen. Gene Davis
Sen. John W. “Bill” Hickman
Sen. Peter C. Knudson
Sen. Mark B. Madsen
Sen. Ed Mayne
Rep. Jackie Biskupski
Rep. Stephen D. Clark
Speaker Greg J. Curtis

Rep. Brad L. Dee
Rep. James A. Dunnigan
Rep. Patricia W. Jones
Rep. Bradley G. Last
Rep. Rebecca D. Lockhart

Staff Present:

Constance C. Steffen, Policy Analyst
Allison Morgan, Policy Analyst
Catherine J. Dupont, Associate General Counsel
Joy L. Miller, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Task Force Business

Chair Waddoups called the meeting to order at 9:20 a.m.

MOTION: Sen. Davis moved to approve the minutes of the May 25, 2006 meeting. The motion passed unanimously. Sen. Hickman, Rep. S. Clark, Speaker Curtis, and Rep. Dunnigan were absent for the vote.

2. Utah Health Care Markets

Dr. David Argue, Economists Inc., responded to the public comment given at the May 25, 2006 meeting regarding the report, "Competition in Utah Health Care Markets." He stated there are many health care issues that exist regardless of the competitiveness of the markets such as the uninsured, rising health care costs of providers and health insurance premiums, shortages of doctors and nurses, and the rising cost of pharmaceuticals. He indicated that competition is the best mechanism for providing an efficient production and allocation of medical services. IHC competitors' complaints need to be taken in context. He said none of the respondents suggested that the factual information he gathered was incorrect. Consumers have a choice in health plans and a significant number of them avail themselves of those choices. He noted that some do switch to other health plans. These facts lead to the conclusion that the markets are performing competitively.

Dr. Argue addressed pricing for unique services at Utah Valley Regional Medical Center. IHC offers all payers the same discount for these unique services. Most plans find it administratively easier to have one rate rather than a separate rate for unique services and nonunique services, so it may appear that plans including only unique services have a different rate for those services than plans that have a blended rate for unique and nonunique services.

Dr. Argue discussed the definition of market power and said that he used patient origin analysis in the determination of markets and market share. He noted that in his report he failed to explain that the HHI (Herfindahl-Hirschman Index) is a tool to measure the likelihood of collusion among competitors, not the

unilateral exercise of market power by a single competitor. A high HHI means that there are few competitors or that some of the competitors are especially large. The HHI does not provide relevant information on understanding unilateral action. There is no empirical or theoretical basis for any specific HHI threshold to indicate the presence of market power. Factors other than concentration and market share need to be taken into account.

Dr. Argue addressed the issue of vertical integration. He said economic literature does not provide clear guidance as to the likelihood of competitive injury coming from vertical integration. The report's conclusions were based on an analysis of the facts specific to the markets. Vertical integration has not denied a choice of health plans or thwarted entry or expansion. He noted that SelectHealth still has to compete with other managed care plans to gain enrollees and construct a network. He expressed regret that he did not focus more of his report on the efficiencies of vertical integration. Findings of research cited in his report show that the clinical efficiencies derived from vertical integration are beneficial and produce gains of high quality at substantially lower cost.

Dr. Argue stated he found nothing in IHC's conduct consistent with leveraging. Bundled discount contracting was considered in Washington, Cache, and Utah counties. Consumers have a choice of broad networks without any bundled contracting as well as narrow networks that include some bundled contracting. Bundled discounting gives a lower overall cost for hospital services which results in lower premiums. If ASCs (ambulatory surgical centers) could lower provider costs even with bundling, payers would be using those ASCs. Lack of bundling does not ensure access of the ASCs to any network.

Dr. Argue said he looked at IHC's pricing policy as it relates to Dixie Regional and other rural hospitals. It is not consistent with market power. He commented that there is no basis for believing that IHC's vertical integration gives Primary Childrens Hospital a pricing advantage. Logic points to the uniqueness of Primary Childrens Hospital that creates any pricing advantage. If it is a "must have" hospital, it can set whatever price it wants. Payers either decide to include it or exclude it. SelectHealth gets the same price as everyone else. SelectHealth's size does not necessarily give it bargaining power over specific hospitals if the hospital itself has some unique attribute that allows it to receive favorable pricing.

Dr. Argue noted that his suggestion to use the court systems as a means of ensuring competitiveness in markets is not a cure-all but has some advantages. He reiterated that the health care markets are behaving competitively and the Legislature should not get involved. He stated that noncompetition agreements don't necessarily lead to harm to competition and in fact may have a superior outcome. However, those agreements need to be examined on a case-by-case basis.

Sen. Hickman expressed concern that because of vertical integration SelectHealth does not include ASCs in Washington County on its plans. Dr. Argue responded that SelectHealth does not include the ASCs, with the exception of certain ophthalmic eye centers. Blue Cross/Blue Shield has a broader product that includes some of those centers. Dixie Regional is the only hospital in the area and is a "must have" facility. Inpatient services will most likely be offered through Dixie Regional.

Rep. Dunnigan asked if the analysis showed there was revenue sharing or cost shifting between IHC and its hospitals and health plans. Dr. Argue indicated that he did not see any cross subsidization occurring.

Each entity covers its own costs and makes its own profits.

Rep. Jones asked if Dr. Argue had any recommendations that would lower the cost of health care while maintaining the quality of care. Dr. Argue responded that consumers have a desire to receive the best possible health outcome. A competitive market will allocate the resources to provide that best outcome.

Rep. Lockhart questioned if there were situations in Utah where there is market power based on the definition contained in the report. Dr. Argue replied that there may be some situations in rural areas such as Washington and Cache counties where there is limited, if any, competition for certain services. He pointed out that it is not illegal to possess or exercise market power. It is illegal to maintain and try to expand it.

Rep. D. Clark asked if all hospitals were required to disclose all prices they negotiate with each insurance plan, what effect would those disclosures have on price competition, would those disclosures of private negotiation lead to increased health care costs, and what would it do to competition. Dr. Argue commented the negotiation process that has developed between hospitals and physicians in managed care plans evolved through a competitive market. The confidentiality of those negotiations does not indicate a market failure. However, it is possible that the resulting prices that would come from published negotiations could end up higher.

Dr. David T. Scheffman, Economist, LECG, gave a brief summary of his background and experience. He worked many years at the Federal Trade Commission. He was retained by Blue Cross/Blue Shield to review Dr. Argue's report. He stated he did not agree with Dr. Argue's conclusion. Dr. Scheffman indicated that structural markets and concentration indicates there could be a problem. He noted that the HHI is not only about collusion, it is the measure of concentration. IHC is by far the biggest hospital chain and insurer. All other payers have to negotiate with IHC, their competitor. He questioned whether IHC, in its contracting practices, is favoring itself because it is negotiating with competitors. He agreed that there is competition, choice, and that consumers do switch plans. The issue is whether the contracting practices limit competition. Dr. Scheffman suggested that in order to obtain all the necessary information to reach an accurate conclusion, there needs to be a discovery of documents. Lawyers need to be involved in that process.

Rep. Lockhart asked why there has been no investigation by private attorneys in the state. Dr. Scheffman responded that many people want to complain confidentially. Litigation is very costly. He stated it would be more efficient to have the investigation done by a governmental entity. Rep. Lockhart stated individuals need to be willing to publicly make these complaints.

Rep. Jones indicated she would like a commitment from IHC that recent changes in policy would remain after the Task Force no longer exists.

3. Other Items / Adjourn

Sen. Waddoups asked that the task force members submit their recommendations of items that should be considered in future meetings.

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The next meeting of the Task Force was scheduled for June 29 at 9:00 a.m.

MOTION: Rep. Lockhart moved to adjourn the meeting. The motion passed unanimously.

Chair Waddoups adjourned the meeting at 1:05 p.m.