

## Center for Regulatory Effectiveness

1601 Connecticut Avenue, N.W.

Washington, DC, 20009

Tel: (202) 265-2383 Fax: (202) 939-6969

[Secretary1@mbsdc.com](mailto:Secretary1@mbsdc.com) [www.TheCRE.com](http://www.TheCRE.com)

September 16, 2013

Martin Gaynor, PhD  
Bureau of Competition  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Dr. Gaynor:

The Bureau of Competition plays an important role in the resolution of issues dealing with hospital consolidation. Integral to this debate is the often quoted paper titled:

- “The Growing Power Of Some Providers To Win Steep Payment Increases From Insurers Suggests Policy Remedies May Be Needed” by Robert A. Berenson, Paul B. Ginsburg, Jon B. Christianson, and Tracy Yee. (2012) published by the Center for Studying Health System Change.

In a November 29, 2012 press release issued by AHIP, America’s Health Insurance Plans announced the filing of an *amicus* brief. The AHIP *amicus* brief included a quote from a precursor to the above cited study. In the precursor study, published in *Health Affairs*, Paul Ginsburg and Robert Berenson wrote that “providers’ growing market power to negotiate higher payment rates from private insurers is the ‘elephant in the room’ that is rarely mentioned.” (2010) By referencing the earlier study in its press release, AHIP illustrates that the study analyzed by CRE is the “latest and greatest” work in a series of studies by the authors on the topic.

The Center for Regulatory Effectiveness (CRE) was the initial proponent of the Data Quality Act (DQA). The regulations which implement the DQA state in no uncertain terms that all agencies of the federal government are prohibited from using any information that is not DQA compliant. Documents covered by the DQA even include agency press releases as set forth in the OMB regulations and in an *amicus* brief filed by CRE in the Ninth Circuit.

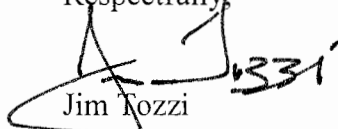
CRE has completed an exhaustive analysis of the most recent study published by the Center for Studying Health System Change (2012) and has concluded that the said study is not compliant with the Data Quality Act. A copy of the CRE study is attached.

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Unlike a number of sponsors identified in the AHIP *amicus* brief, CRE takes very seriously its responsibility to ensure that all its work products are DQA compliant. To this end the aforementioned study is posted on an Interactive Public Docket located at <http://thecre.com/hcf/> where the public and interested stakeholders can offer comments for all to see and review.

For all of the above reasons, the Bureau of Competition— and any other instrumentality of the federal government— should not and cannot rely on the above referenced study in any legal, regulatory or reimbursement proceeding.

Respectfully,

A handwritten signature in black ink, appearing to read "Jim Tozzi". The signature is stylized and includes a large loop on the left side.

Jim Tozzi

Member, Board of Advisors