



DEPARTMENT OF JUSTICE
Antitrust Division

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Assistant Attorney General

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March 29, 1995

Joseph L. Bianculli, Esquire
1001 North Highland Street
Arlington, VA 22201

Dear Mr. Bianculli:

This letter responds to your request on behalf of Hillhaven Corporation, pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6, regarding the proposed Wisconsin Subacute Preferred Provider Network ("network") to be offered by Hillhaven and three other firms that operate nursing home facilities in Wisconsin. For the reasons set forth below, the Department of Justice has no present intention of challenging under the antitrust laws the proposed network.

Hillhaven operates fourteen nursing home facilities in Northern and Eastern Wisconsin; at each of those facilities, Hillhaven offers some subacute-care medical and rehabilitation beds. You have explained that managed-care health plans ("customers") currently contract with Hillhaven, or with other providers (such as hospitals) for subacute-care beds. Some customers contract for that service at a particular facility only when one of their enrollees requires it, but other customers prefer to contract for that service on a prospective basis.

Hillhaven believes that some health plans that anticipate the need for subacute-care beds would like to be able to contract prospectively with a single statewide network of subacute-care providers. Hillhaven cannot offer such a network by itself, since it does not operate any nursing home facilities in three significant Wisconsin localities: Madison, Eau Claire and La Crosse.

In order to offer managed-care customers a statewide network of freestanding subacute-care facilities, in competition with hospitals that offer subacute-care beds, Hillhaven proposes to enter into a joint venture with a separate nursing home operator in each of those three localities. Hillhaven will provide its expertise to the other three participants to assist them in developing and offering a subacute-care service at their nursing home facilities in those three local markets. Hillhaven also will establish a "network price" for subacute-care services and provide its central referral process for the network. Each of the four joint venturers will remain free, however, to offer its subacute-care services independently of the others, at a price to be determined solely by that nursing home operator.

Since the participants in the proposed joint venture do not operate nursing home facilities in any of the local markets served by the other participants, the proposed joint venture does not pose any significant competitive issues. Consequently, the Department of Justice has no present intention to challenge the proposed Wisconsin Subacute Preferred Provider Network.

In accordance with our normal practice, however, the Department remains free to bring whatever action or proceeding it subsequently comes to believe is required by the public interest, if the proposed network proves to be anticompetitive in purpose or effect.

This statement is made in accordance with the Department of Justice Business Review Procedure, 28 C.F.R. § 50.6, a copy of which is enclosed. Pursuant to its terms, your business review request and this letter will be made publicly available immediately. In addition, any supporting data that you have not identified as confidential business information under paragraph 10(c) of the Business Review Procedure also will be made publicly available.

Sincerely,

/s/

Anne K. Bingaman
Assistant Attorney General