



DEPARTMENT OF JUSTICE
Antitrust Division

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February 18, 1994

Maureen E. Corcoran, Esquire
Pillsbury Madison & Sutro
235 Montgomery Street
P.O. Box 7880
San Francisco, CA 94102

Dear Ms. Corcoran:

This letter responds to your October 6, 1993,¹ request on behalf of the Bay Area Business Group On Health (BBGH) for a business review letter under the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department's current enforcement intentions concerning the BBGH's proposal to form a group purchasing project for health care benefits. Based on the information the BBGH provided, the Department has no present intention to challenge the BBGH's proposed group purchasing activities.

You have represented that the BBGH is a non-profit California corporation whose membership consists of employers interested in health benefits issues. The BBGH plans to form a purchasing group to negotiate collectively with health maintenance organizations (HMOs) for health care coverage in California for the 1995 benefit plan year. The BBGH intends to limit the program initially to negotiating bids for coverage of active employees and retirees under age 65, although the program may expand in future years to cover retirees over 65.

Sixteen private firms and the California Public Employees Retirement System have expressed interest in joining the BBGH purchasing group. The private firms include Bank of America, Chevron, Pacific Gas & Electric, Pacific Telesis, University of California, and Wells Fargo Bank. A substantial majority of all potential HMO customers, however, will not be represented by the BBGH purchasing group. Every BBGH employer member will be eligible, at its option, to join the proposed purchasing group. No member will be required to join the purchasing group as a condition of keeping its membership in the BBGH. Although some current BBGH members are direct competitors, the members' cost of purchasing HMO health benefits accounts for only a small percentage of the selling price of the products and services they provide.

¹You also provided additional supplemental information on October 29, 1993 and January 7, 1994.

The BBGH intends to offer HMOs the opportunity to bid on two standard benefit plans designed by the BBGH and its members. The BBGH proposes establishing a committee to negotiate on behalf of the purchasing group members. The members of the purchasing group will be forbidden from negotiating a better price from the bidding HMOs during or after completion of the group negotiations. Members of the purchasing group will, however, be allowed to contract outside the group with an HMO that did not submit a bid to the group. Once the HMOs submit bids to the BBGH, each member of the purchasing group will be free to decide independently whether to contract with any of the bidding HMOs.

The BBGH intends to ask the HMOs to bid a base price for each of the two benefit plans. The BBGH's independent actuary will adjust each HMO's base price bid by multiplying a risk adjuster specifically calculated for each member company to reflect the relative risk of that company. This risk adjustment formula is intended to reflect the relative actuarial risk of each company's population, based on such factors as age, sex, and its own negotiators will compute the actual final premium for each member company. In addition, at the end of the plan year, the HMOs will be asked to provide uniform data on clinical, financial, and administrative quality.

Based on the information you have provided, the Department has no present intention to challenge the BBGH's proposed group purchasing program. The BBGH has the potential to create efficiencies in the delivery of HMO services that could result in lower health care costs. In accordance with our normal practices, however, the Department remains free to bring whatever action or proceeding it subsequently concludes is required by the public interest if actual operation of any aspect of the program proves anticompetitive in purpose or effect.

This statement of the Department's enforcement intentions is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made available to the public immediately. Your supporting documents will be publicly available within 30 days of the date of this letter, unless you request that any part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely,

/s/

Anne K. Bingaman
Assistant Attorney General

Enclosure