



DEPARTMENT OF JUSTICE
Antitrust Division

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July 6, 1994

Eugene E. Olson, Esquire
Connolly, O'Malley, Lillis, Hansen & Olson
820 Liberty Building
418 Sixth Avenue
Des Moines, Iowa 50309

Dear Mr. Olson:

This letter responds to your request on behalf of the Collaborative Provider Organization Inc. ("CPO") for a statement pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6, of the Department's current enforcement intentions concerning the CPO's proposal to establish a health care provider network in south-central Iowa. For the reasons set forth below, the Department has no present intention of challenging the CPO's proposed activities under the antitrust laws.

From information provided by you, we understand that the CPO will be formed as a non-profit Iowa corporation headquartered in Des Moines, which is located in Polk County, Iowa. The CPO, at least initially, intends to offer hospital and physician services to self-insured employers and other third-party payers in a 25-county area in south-central Iowa.¹

The Des Moines General Hospital, an acute care facility licensed for 226 beds, is expected to be the initial hospital member of the CPO. There are three other entities operating general acute care hospitals in Des Moines: Broadlawn Medical Center (173 licensed beds); co-owned Iowa Lutheran Hospital and Iowa Methodist Medical Center (1,053 licensed beds, combined); and co-owned Mercy Hospital Medical Center and Mercy Franklin Center (673 licensed beds, combined). Of the approximately 1,400 physicians practicing in the 25-county area, 177 have expressed an interest in becoming members of the CPO, including 154 of the 957 physicians practicing in Polk County. The CPO anticipates that two or three rural hospitals located in the 25-county area may also join the CPO. The CPO will be nonexclusive: Individual member providers are free to affiliate or contract with competing health care provider organizations and health insurance plans.

¹The CPO will operate in a 25-county area surrounding Des Moines: Polk, Story, Boone, Jasper, Dallas, Warren, Adair, Appanoose, Clarke, Davis, Decatur, Greene, Guthrie, Lucas, Madison, Mahaska, Marion, Marshall, Monroe, Poweshiek, Ringgold, Tama, Union, Wapello, and Wayne ("25-county area").

CPO members will not be directly involved in setting fees. The CPO will retain a Third Party Administrator who will survey CPO members and compile aggregate fee data to be used by the CPO in negotiating contracts for health care services. No CPO member will have access to another member's fees, pricing data or other financial information.

The CPO will establish utilization standards and other measures to help contain health care costs. The physician members of the CPO will share risk through their provision of services at a capitated rate or on the basis of discounted fee-for-service rates with a 20 percent "withhold" of their fees, to be distributed to them only if cost containment and utilization goals are met. In this regard, a physician member who fails to meet the CPO's cost containment and utilization goals will initially receive counseling and be given a reasonable opportunity to conform to them. If the physician is unable or unwilling to take appropriate corrective action after this educational process, the physician will forfeit the withheld portion of compensation, which will be returned to the payor.

After careful consideration of the information you have provided, the Department has concluded that it has no present intention of challenging the CPO's proposal, as set out in this letter, on antitrust grounds. The CPO appears to be a bona fide joint venture in which the participating physician members will share substantial financial risk by participating in capitated contracting arrangements, or offering discounted fee-for-service rates, with a substantial withhold that is payable to physicians only if cost containment goals are met. See September 15, 1993, Statement of Department of Justice and Federal Trade Commission Enforcement Policy on Physician Network Joint Ventures at 34-35, 40 & 43 ("Joint Enforcement Policy Statement"). The CPO therefore has the potential to be procompetitive by offering consumers of health care services in Des Moines and other areas of south-central Iowa an additional alternative health care delivery system. At the same time, however, the Department would be concerned if the purpose or effect of the CPO's proposed activities were to facilitate collusion or otherwise reduce competition between or among market participants. Based on the information you have provided, however, the Department has concluded that the CPO is unlikely to have such anticompetitive effects.

In conducting our competitive analysis of the CPO we note that the CPO's potential operation in the 25-county area will likely involve its participation in several different relevant geographic markets. We will not discuss each one in this letter, however, but instead will focus our attention on the Des Moines, Polk County area because that is where Des Moines General and most of the CPO's prospective physician members are located.

In the Des Moines, Polk County area, Des Moines General controls only 11 percent of the licensed general acute care hospital beds.² In addition, the information you provided notes that the CPO anticipates it will enroll less than 20 percent of all physicians licensed to practice in Polk County, including 20 percent or less of all the primary care physicians. The CPO also intends to enroll 20 percent or less of the physicians in 18 of 30 identified specialties, but would enroll a higher percentage of the physicians in 12 specialty areas.

²In its initial request, the CPO indicated that it might later subcontract with Alternative Health Plans ("AHPs") affiliated with Iowa Methodist Medical Center and Mercy Hospital Medical Center. The CPO, however, has to date undertaken no discussions with either AHP regarding the exact nature of its possible contractual arrangements and was not able to provide the Department with information the Department requested regarding such prospective contractual arrangements. Given that, the Department is unable to state its current enforcement intentions with respect to these areas of the proposal.

The Joint Enforcement Policy Statement establishes a "safety zone" for physician networks that include 20 percent or less of the physicians in each physician specialty within the relevant market. Joint Enforcement Policy Statement at 34. The Department does not believe, however, that the physician participation in excess of the 20 percent threshold in the 12 affected specialty areas presents significant anticompetitive concerns for several reasons. First, the CPO will include only 30 percent or less of the physician-specialists in six of these specialty areas. The representation above 30 percent in the other six specialties areas appears necessary to provide adequate coverage and choice for enrollees. Second, the CPO will be non-exclusive. Thus, its member providers, including its participating physicians, are free to affiliate with any current or future CPO competitor in the market. Finally, the CPO will not likely have a "spill-over" collusive effect in other areas of its physician members' practices because they will not have access to specific pricing data and will not be directly involved in negotiating fees.

For the foregoing reasons, the Department has no present intention to challenge the CPO. In accord with our normal practice, however, the Department remains free to bring whatever action or proceeding it subsequently concludes is required by the public interest if actual operation of the CPO proves anticompetitive in purpose or effect.

This statement of the Department's enforcement intentions is made in accord with the Department's 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 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,

Anne K. Bingaman
Assistant Attorney General