

POPHAM HAIK

SCHNOBRICH & KAUFMAN, LTD.

INCLUDING THE LAW PRACTICE OF
MASON, FENWICK & LAWRENCE, ESTABLISHED 1861

U.S. OFFICES

DENVER, COLORADO
TEL 303-893-1200

MIAMI, FLORIDA
TEL 305-530-0050

MINNEAPOLIS, MINNESOTA
TEL 612-333-4800

METROPOLITAN SQUARE BUILDING
655 FIFTEENTH STREET, N.W., SUITE 800
WASHINGTON, D.C. 20005-5701
TEL 202-824-8000 • FAX 202-824-8199
CABLE ADDRESS: FENWICK • MCI TELEX: 248516
DONALD A. FARMER, JR.
DIRECT DIAL (202) ~~900-0725~~

AFFILIATIONS

BEIJING, CHINA
TEL 011861-5135261

LEIPZIG, GERMANY
TEL 01149-341-4918429

STUTTGART, GERMANY
TEL 01149-711-22363

November 23, 1994

Anne K. Bingaman
Assistant Attorney General
Antitrust Division
United States Department of Justice
Washington, D.C. 20530

Messenger Delivery

Re: *Business Review Request*

Dear Ms. Bingaman:

This is a request for a Business Review under 28 C.F.R. §50.6 concerning the business plans of AdvNet, Inc., which will provide an innovative package of information and services to consumers who wish to select providers of nursing home, subacute care and other health care services. AdvNet will create a convenient and reliable way for consumers to select a health care facility for themselves and family members, provide information on the quality of providers' services, and provide care tracking and personal services for consumers.

AdvNet, Inc. is a wholly-owned subsidiary of Beverly Enterprises, Inc. ("Beverly"). Beverly and its subsidiaries are the nation's largest provider of long-term care services, operating over seven hundred nursing facilities in thirty-four states. Earlier this year, Beverly acquired American Transitional Hospitals, Inc., which operates six subacute care facilities and has opened nine additional subacute care facilities in Beverly's nursing facility buildings. Beverly's wholly-owned subsidiary Pharmacy Corporation of America sells a wide range of pharmaceutical and related supplies to health care institutions, and to patients and residents in institutions.

AdviNet Business Review Request --page 2

As a leading nursing home operator for many years, Beverly has long been aware that persons responsible for the care of a family member or other person often spend substantial time and money gathering information about the health care facilities that may be available. Because many families are dispersed throughout the country today, the responsible party may be located far away from the appropriate facilities. Even after the necessary information is collected, the responsible party often finds it difficult to evaluate the information and select the best facility, and then monitor the care once the family member is admitted. For many years, Beverly has provided literature and counseling on the best way for responsible parties to deal with these difficult issues. From that experience and other research it is clear that consumers would benefit from a conveniently accessible network that provides organized, reliable information about health care alternatives nationwide. AdviNet will meet the need for that network.

AdviNet's services would be provided to consumers as an additional service offered in conjunction with existing employee assistance and employee health and benefit plans, insurance plans, associations and individual memberships. AdviNet will contract with the group plans or individual plan members ("customers") to provide information, referrals and care tracking services to the customers' employees or plan members ("subscribers") in return for a monthly or annual fee per subscriber. AdviNet subscribers will be able to access its services through a toll-free telephone number. When a subscriber calls that number, an AdviNet customer service representative will ascertain whether the subscriber is seeking a nursing home, a subacute care facility or some other type of facility, and the geographic area in which the subscriber is looking for a facility. The representative will then provide the subscriber with information on facilities in that area.

The customer service representative will have access to a computer containing information on licensed nursing homes and other health care facilities in every section of the country, with a display arranged by zip codes, and then alphabetically by the name of the individual facility. Providers who elect to participate in AdviNet according to the arrangements described below ("participating providers") would have their facilities' names highlighted or otherwise marked, but there would be no other "bias" in the computer display or the information provided to subscribers. The amount of information provided to the subscriber would vary as indicated below depending upon whether or not the facility is operated by a participating provider.

AdviNet's research indicates that prospective customers would strongly prefer a network providing information and services on a nationwide basis rather than the less extensive network that any one provider (including Beverly) could offer acting alone. For

AdviNet Business Review Request --page 3

instance, there are over 16,000 Medicare and/or Medicaid-certified nursing homes in the United States, and AdviNet has concluded that approximately 3,000 or 4,000 of such nursing facilities should be included in the network in order to provide substantially nationwide coverage. Therefore, AdviNet plans to invite a large number of quality providers to participate in AdviNet from the outset in order to provide a nationwide network of licensed nursing home facilities. AdviNet will seek additional participating providers if necessary to obtain coverage as close as possible to nationwide coverage. AdviNet also will welcome additional participating providers who meet the quality standards described below and otherwise demonstrate the ability to perform the obligations of participating providers.

A provider would be eligible to become a participating provider if it meets certain criteria, as set forth in the proposed Provider Participation Agreement, a copy of which is attached. The criteria include:

- (a) the participating provider must provide AdviNet with a description of its internal Quality Assurance Program;
- (b) the participating provider must complete periodic questionnaires that verify the validity of its license and the qualifications of its personnel;
- (c) no participating facility shall have had either:
 - (1) a serious ("Level A") government inspection deficiency within the prior twelve (12) months, or
 - (2) two or more government inspection deficiencies on the care issues listed in item (d) below within a 24-month period;
- (d) the participating provider must maintain programs to reduce the use of physical restraints, prevent and heal pressure sores, prevent contagious diseases and control infections, minimize unplanned weight losses by residents and prevent physical abuse;
- (e) participating providers must maintain suitable insurance;
- (f) participating providers must not be insolvent or bankrupt; and

AdviNet Business Review Request --page 4

- (g) participating providers with more than one facility must designate a high-level contact to deal with AdviNet and must agree to allow periodic on-site inspections by AdviNet.

Although AdviNet will begin operations with certain participating providers it has selected in order to assemble a viable quality network offering nationwide coverage, AdviNet will not exclude any provider from becoming a participating provider, as long as the provider meets the criteria for participation. To minimize administrative costs and confusion, new participating providers will be added only periodically, perhaps annually or quarterly. Participating providers will be advised that the listing of participating providers is not exclusive; that is, any provider that meets the criteria for participation periodically will be able to become listed as a participating provider.

AdviNet will have access to a database listing names, addresses and telephone numbers of all Medicare and/or Medicaid-certified nursing facilities in the United States and various other health care facilities, and will provide this information to subscribers for any listed facility on request. Providers participating in AdviNet may have provided additional information about their facilities, and the AdviNet customer service representatives will be able to provide that additional information to subscribers.

Participating providers will sign a Provider Participation Agreement with AdviNet setting forth the terms of their participation, but will not pay any fees to AdviNet. Except for the additional information that will be provided for participating providers, all listed providers, including Beverly's facilities, will be treated on an equal basis in an arrangement analogous to an airline computer reservation service owned by an airline.

In order to obtain the participation of other nursing home providers and to avoid any possibility that AdviNet's activities will facilitate collusion among providers, Beverly has established AdviNet as a separate subsidiary and prohibited its personnel from providing Beverly or any other provider with specific price information or other competitively significant information. AdviNet's offices will be in a different building from Beverly's offices and AdviNet's computer system will be totally secure from access by any Beverly employee. Additional safeguards that will prevent AdviNet from facilitating collusion among the participating providers are described in detail below.

The Provider Participation Agreement will provide, in addition to the terms described above, that the participating provider may choose to make pricing information available to AdviNet so AdviNet can make it available to subscribers subject to the conventional antitrust

AdviNet Business Review Request --page 5

safeguards described in this letter. The price information that a participating provider could make available to AdviNet will include the current daily room and board charges for each facility participating in AdviNet, plus any discounts the provider chooses to provide to AdviNet subscribers. AdviNet will encourage, but not require, participants to provide discounts to subscribers for room and board charges. AdviNet would maintain a computer database with the pricing information from the participating providers and make that information available to each subscriber for participating providers in the area requested by the subscriber.

AdviNet will aggregate the information on room and board charges and discounts and on services provided by AdviNet to subscribers. This information will be aggregated so as to provide periodic information to each customer, including the number of that customer's subscribers who have used AdviNet's services and the aggregate amount saved because of any discounts provided to that customer's subscribers. AdviNet also will aggregate the overall number of subscribers using AdviNet and the aggregate overall savings due to AdviNet subscriber discounts, and will make this information available to participating providers, customers and prospective customers.

Pricing information other than the aggregated information set forth above will be provided only to subscribers for the area specified by the subscriber. Information on future prices and discounts either will not be collected, or will be made available only to AdviNet personnel responsible for programming changes in AdviNet's computer data. Other than the aggregated information described above, providers will not be given any pricing information on other providers.

After providing information to the subscriber for listed facilities in the requested area, AdviNet customer representatives will, if the subscriber requests, make the initial appointment for the subscriber with either a participating or non-participating provider. The customer service representatives also will provide the subscriber with general information to assist in selecting a nursing home, and will answer general questions about nursing home services.

AdviNet will, at a participating provider's request, provide the participating provider with verification of a subscriber's membership in AdviNet. To the extent that a customer or subscriber provides AdviNet with sufficient information on a subscriber or family member's coverage by health insurance or some other payment source such as Medicaid or Medicare, AdviNet will make that information available to participating providers upon request.

AdviNet Business Review Request --page 6

AdviNet may conduct on-site visits of participating providers' facilities as provided in the Provider Participation Agreement in order to verify compliance with the Agreement. AdviNet also will conduct subscriber satisfaction surveys and make the individual results of those surveys available to the affected customer. Aggregated information based on these surveys may be made available to subscribers, participating providers and customers.

If a subscriber or family member for whom a subscriber is responsible is admitted to a nursing home operated by a participating provider, or if a nonparticipating provider otherwise agrees to share medical records and cooperate with AdviNet's care tracking services, AdviNet nurses will provide the subscriber with periodic summaries of medical records, and if the subscriber requests, provide advice and advocacy services related to the patient's care.

AdviNet's objective is to provide subscribers with information and services that will be useful to them as consumers of health care services without impairing competition among providers. Therefore, AdviNet will enforce the safeguards described above to prevent any anticompetitive effects.

We hope that your review will be forthcoming within the ninety-day period referenced in the September 27, 1994 "Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust" issued by the U.S. Department of Justice and the Federal Trade Commission. We certainly are willing to provide you with any information or explanation that would help you expedite this business review.

Very truly yours,



Donald A. Farmer, Jr.

Enclosure

PROVIDER PARTICIPATION AGREEMENT

THIS PROVIDER PARTICIPATION AGREEMENT ("Agreement") is made and entered into as of this _____ day of _____, 199__, by and between Advinet, Inc. ("Advinet"), a Delaware corporation, and _____, d/b/a _____ ("Provider").

WHEREAS, Advinet will offer to the public an information, advice and referral service for subacute care, long-term care and other health care services (the "Service");

WHEREAS, Advinet will offer the Service to and through employee assistance programs, employer groups, insurance plans, associations and individuals;

WHEREAS, Advinet desires to establish and maintain a network of quality health care providers which will offer subacute care, long-term care and other health care services to Advinet members and their families; and

WHEREAS, Provider desires to participate in the Advinet network upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the promises, agreements and representations set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Term. The initial term of this Agreement shall be from April 1, 1995 through December 31, 1995. This Agreement shall be automatically renewed for one-year terms from year to year thereafter unless and until terminated by either party as hereinafter provided. This Agreement may be terminated at any time by either party upon giving sixty (60) days prior written notice to the other party. In addition, this Agreement may be terminated for cause by Advinet: (a) immediately if Provider no longer satisfies the Criteria for Network Participation set forth in Paragraph 2 below; or (b) upon giving ten (10) days prior written notice to Provider if Provider breaches any of the other terms and conditions of this Agreement and does not cure such breach to Advinet's satisfaction within ten (10) days.

2. Criteria for Network Participation. To qualify to participate in Advinet's network providers, Provider must satisfy all of the following requirements initially and throughout the

term of this Agreement:

(a) Provider shall submit a written summary description of its internal Quality Assurance Program to Advinet. The description shall include frequency, follow up and outcome.

(b) Provider shall submit to Advinet a copy of its written facility grievance procedure used with residents and other customers.

(c) Provider shall complete the Participating Provider Information and Credentials Questionnaire (attached hereto) and submit it to Advinet.

(d) Provider's facility shall not have been cited (excluding citations which were later rescinded) by a state or federal regulatory or survey agency for a Level A deficiency (other than Tag #'s F-454* [physical environment and life safety from fire] and F-490 [administration] in the past twelve (12) months.

(e) Provider shall not have been cited (excluding citations which were later rescinded) by a state or federal regulatory or survey agency on two or more occasions within the most recent 24 months for any of the following deficiencies: physical restraints (Tag #F-221), pressure sores (Tags #F-319 and F-320), contagious disease and infection control (Tag #F-441), unplanned resident weight loss (Tag #F-331) or the residents' right to be free of abuse (Tag #F-223).

(f) Provider shall adopt and use programs or systems which deal with the following care issues for facility residents: reduction of physical restraints, prevention and healing of pressure sores, contagious disease and infection control, unplanned resident weight losses and residents' right to be free of abuse.

(g) Provider shall carry general liability and professional liability insurance in amounts customary to the industry in which it is engaged.

(h) Within the prior 12 months and during the term of this Agreement, Provider (including any owner or parent corporation) shall not have filed for protection under any federal or state bankruptcy or related law, been insolvent, made a general assignment for the benefit of creditors, failed to pay its bills as they have become due on a continuing

* All "Tag #'s" refer to Form HCFA A-682 (4-92) Rev. 250.

basis or had a receiver of its assets appointed for any reason.

(l) Where Provider is operated by a multi-facility group or corporation, the home office or headquarters of such group shall be asked to designate a high-level contact person to coordinate activities with Advinet (the "Corporate Office Designee").

3. Suspension from Network. During the term of this Agreement, Provider shall notify Advinet immediately by phone or fax upon its receipt of any serious adverse action, i.e., Level A deficiency (other than Tag #'s F-454 [physical environment and life safety from fire] and F-490 [administration]), from a state or federal regulatory or survey agency. Upon notification of such adverse action, Provider's facility shall be immediately suspended from the Advinet referral network. Advinet will reinstate Provider to the referral network only upon Advinet's receipt of written verification (by letter or HCFA 2567) from the state or federal agency or a court that such determination of adverse action has been rescinded or overturned on appeal and provided that Provider continues to satisfy the Criteria for Network Participation set forth in Paragraph 2 hereof.

4. Grievance Procedures. Advinet will handle customer grievances raised by Advinet members about Provider's services as follows: (a) Customer grievances received by Advinet concerning Provider's facility will be documented and forwarded to the facility administrator for resolution. The administrator shall specify on the Advinet form what actions, if any, were taken to resolve the concern voiced by the Advinet member and return the form to Advinet promptly. (b) Any grievance still considered unresolved by the customer will be communicated to the Corporate Office Designee for resolution. The Corporate Office Designee shall document on the Advinet form what actions, if any, were taken to resolve the concern and return the form to Advinet promptly. Advinet will maintain this documentation in the Provider's facility file.

5. Care Tracking Service. Advinet's services to its members may include semi-monthly and/or monthly care tracking for subacute and long-term care stays. To allow Advinet to perform this service, Provider shall provide Advinet with information and copies of requested medical records relating to an identified Advinet resident including the following: (a) discharge plan; (b) care plan; (c) physician orders; (d) medication orders; and (e)

therapy evaluations and summaries. Requested information must be submitted on a timely basis to Advinet. Advinet will supply Provider with an Authorization for Release of Medical Information (copy attached) which will permit the release of this information to Advinet.

6. Priority Admission. In states where it is not prohibited by law, Advinet members shall receive priority admission to Provider's facility. Advinet recognizes that bed availability in the facility may depend upon the prospective resident's gender and care acuity needs. Provider shall notify Advinet promptly if state law changes so as to prohibit the facility from offering priority admission.

7. Customer Satisfaction Surveys. Advinet shall contract with an independent third party to conduct customer satisfaction surveys with Advinet residents and their families. The surveys will evaluate Advinet's services and Provider's services to the Advinet member. Advinet shall forward a copy of the survey responses to Provider and/or the Corporate Office Designee, if any. Provider shall respond in writing to Advinet if any customer satisfaction survey response is determined to be negative by Advinet.

8. Financial Data Collection. Advinet shall contract with an independent third party to collect certain financial data from Provider. This information shall be submitted monthly by Provider on the Advinet form and pertain only to its Advinet residents. Examples of required data are: (a) general data (i.e., patient name, address, Advinet group number, etc.); (b) total billed charges; and (c) the amount of discount, if any, credited to the patient's account. Advinet will provide certain reports to Provider with Provider-specific information. Neither Advinet nor its data collection agent will share this information specific to Provider with any other participating providers. Summary information will be provided by Advinet to its customers and prospective customers.

9. Advinet Services to Providers. During the term of this Agreement, Advinet shall provide the following network services to Provider:

- A detailed listing of facility services and amenities offered by Provider to be provided to Advinet members seeking resident placement in the Provider's geographic location.
- A staff of customer service representatives (CSR) available via a toll-free

telephone number who will interface between the Provider's representatives and Advinet's members seeking placement into a subacute care, long-term care or other health care service in a particular community. The CSR's will provide the interested Advinet member with basic identifying information for Provider's facility (e.g., name, address, contact person) and will offer to schedule an initial appointment for the interested Advinet member or family to visit the facility. The CSR's will answer general questions concerning services available in the desired health care setting and generally assist the Advinet member in shopping for the desired health care services.

- Ongoing customer assistance to Advinet members which may include continuing communications between the Advinet member and Provider for purposes of general information, care tracking and conflict resolution.

10. Discounts. Advinet encourages, but does not require, Provider to offer to Advinet's members and their families a discount from Provider's usual room and board charges for residents placed in the Provider's facility. Initially, Provider agrees to offer a ___% discount off Provider's usual room and board charges to Advinet members and their families. Such discounts shall apply to private pay and private insurance residents including those originally admitted as eligible for Medicare coverage. If Provider desires to change the percentage discount, if any, offered to Advinet's members, Provider shall give Advinet written notice of such change at least thirty (30) days in advance of its effective date. Neither Advinet nor its data collection agent will share this information specific to Provider with other participating providers.

11. On-Site Visits. Provider agrees that Advinet or its designee, possibly an independent nursing consultant, shall be allowed access to the facility for an occasional on-site visit which Advinet or the nursing consultant will schedule with Provider at least forty-eight (48) hours in advance. The purpose of the on-site visit will be to verify the data Advinet maintains concerning the facility and its services, to allow the facility's staff an opportunity to ask questions concerning Advinet's services and procedures, and to provide feedback for Advinet to share with its members about the facility.

12. Consent to Disclosure. Provider recognizes that Advinet will collect pricing and other competitively sensitive information that might raise antitrust issues if not handled carefully. Therefore, Provider and Advinet agree that Advinet in its sole discretion may disclose to the federal government, including specifically the Department of Justice and/or the Federal Trade Commission, and any state government agencies and the public, as Advinet deems appropriate or necessary, any facts relating to Provider's participation in Advinet's network to allow government review and obtain any legal protections available under applicable federal and state antitrust and related laws.

13. Indemnification. Provider agrees to save, indemnify, defend and hold harmless Advinet, its officers, directors, employees and agents, from and against any and all claims, demands, liabilities, losses, costs and expenses, including interest, penalties and reasonable attorneys' fees, incurred or arising directly or indirectly from any breach of contract or duty owing to a resident of Provider's facility placed through the Advinet system or as a result of any negligent act or omission by Provider in providing health care services to any Advinet member or family member placed through the Advinet system, including any billing disputes between Provider and the Advinet member.

14. Amendments and Waivers. Any amendment or modification of this Agreement shall be valid only if set forth in writing and executed by both parties. Any waiver of any of the provisions of this Agreement shall be valid only if expressed in writing in a document executed by the party against whom the waiver is sought to be enforced.

15. Assignment. Provider shall not assign this Agreement, nor delegate any duties or obligations hereunder, without the prior written consent of Advinet. This Agreement shall be binding upon and inure to the benefit of any and all successors, representatives and permitted assigns of the parties.

16. Notices. Any notices and communications provided under this Agreement shall be given in writing and shall be considered duly given when delivered personally or, if mailed, by certified or registered mail, postage prepaid, return receipt requested, then seventy-two (72) hours after deposit with the United States Postal Service, if addressed properly as follows:

If to Advinet:

Advinet, Inc.
Attn: President
P. O. Box 3021
Fort Smith, AR 72913-3021

If to Provider:

Attention: _____

17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

18. Legal Expenses. If suit is commenced by either party to enforce any of the terms of this Agreement, the prevailing party in such litigation shall be entitled to recover its costs and reasonable attorneys' fees incurred in such suit from the other party .

19. Integration. This Agreement constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes any and all prior oral and written representations, agreements and understandings made between them, all of which are hereby merged into this Agreement.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties by their duly authorized representatives have executed this Agreement as of the date first above written.

ADVINET, INC.

By: _____

Title:

"PROVIDER"

d/b/a _____

By: _____

Title:

Name of Provider's parent corporation or
individual owner:
