U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JUN 12 1992

Joseph F. Haas, Esquire
Arnall Golden & Gregory
55 Park Place
Atlanta, Georgia 30335

Dear Mr. Haas:

This letter responds to your request on behalf of Hyatt Imler Ott & Blount, P.C. ("HIOB") for a statement pursuant to the Department of Justice Business Review Procedure, 28 C.F.R. § 50.6, of the Department's present enforcement intentions regarding HIOB's proposal to compile, analyze, and publish data concerning the prices charged by hospitals in the State of Georgia for specified hospital services.

We understand that HIOB is a professional corporation of certified public accountants, located in Atlanta, Georgia, and has a number of Georgia hospitals among its clients. According to your submissions, HIOB believes that there is a need for statistical information to which hospital administrators can refer in assessing market conditions for the provision of the many services that are offered by hospitals. To meet this need, HIOB intends to publish information provided on a voluntary basis by individual hospitals. Participation in the HIOB program would be entirely voluntary on the part of any hospital.

Under the program, each participating hospital would report annually to HIOB the list price that the hospital had in effect at the end of its last fiscal year for each of 500-750 specified individual hospital services. The reported services would be selected from among the more than 6,000 individually priced services typically appearing on a hospital's charge master list, and which, in the aggregate, typically would account for about 50% of a hospital's total revenue. A hospital would not report any information relating to expected future prices.

Within three months of receiving such price data from participating hospitals, HIOB would publish reports analyzing the data. These reports would enable each participating hospital to compare its own list price for a given service to the high, low, and average list prices of hospitals comparable to it, as defined by peer groups to be established by HIOB. The criteria for such peer groups would include, but not be limited to, the hospital's bed capacities, their status as urban or rural hospitals, and the geographic area of Georgia in which they are located. Besides employing a standard set of peer groups in its reports, HIOB contemplates defining other peer groups in customized reports to be prepared in response to requests by participating hospitals. HIOB will not disclose the identities or specific prices charged by any of the hospitals participating in its program, and to prevent this information from being inferred from the reports HIOB will not use any peer group that contains fewer than five hospitals. HIOB proposes to make the peer group price information contained in its reports available to hospitals and non-hospital parties, such as third-party payers, governmental agencies, and consumer groups.

After careful consideration of the information you have provided, as supplemented by our own independent inquiries, the Department presently does not intend to challenge HIOB's proposed information exchange program on antitrust grounds. The Department would be concerned if the effect of the proposed conduct were to increase the likelihood that participating hospitals would successfully collude, expressly or tacitly, on prices. We understand that list prices of individual services typically are not negotiated and incorporated into contracts between hospitals and third-party payers. List prices may provide the basis for developing such contract prices, however, which may take the form of per diem rates, rates for individual diagnostic related groups (DRG) or discounts from billed charges. An information exchange that facilitated collective action to increase prices would raise antitrust concern.

Certain aspects of your proposal provide safeguards against such collusion. HIOB's report will not disclose the identities of the participating hospitals, and you have stated that the design of the relevant peer groups will not permit the identification of hospitals belonging to any such group. The prices contained in the report will be historical, and will be list prices only. Information relating to discounts from these prices will not be reported. These factors, as well as the inherent complexity in prices for specific hospital services, which number in the thousands, make it less likely that the HIOB reports would facilitate collusion among hospitals in Georgia.

This letter expresses the Department's current enforcement intention only. It applies only to the conduct described herein, and not to any other use by HIOB of the information it acquires from the hospitals, such as in the course of consultations with individual or groups of hospitals. In accordance with our normal practice, the Department reserves the right to bring an enforcement action in the future if the actual operation of the HIOB proposal 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, 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,

Charles A. James
Acting Assistant Attorney General