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February 24, 1995

VIA FEDERAL EXPRESS

Re: Hospice Network of New Jersey, Inc.

Hon. Anne K. Bingaman
Assistant Attorney General, Antitrust
Department of Justice
10th & Constitution Avenue, N.W.
Washington, D.C. 20530

Dear Assistant Attorney General Bingaman:

This letter is submitted on behalf of the Hospice Network of New Jersey, Inc. ("HNNJ" or the "Network"), a nonprofit corporation the members of which are Medicare certified hospices. As explained herein, HNNJ intends to enter into contracts with managed care plans and other third-party payers to facilitate the delivery of hospice care by the Network's members. HNNJ requests 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 these activities.

By way of background, hospices coordinate the delivery of care to persons who are terminally ill (defined generally as having a prognosis of six months or less to live) and who have decided to decline further medical efforts to impede or otherwise abate the course of their illness. Hospices coordinate an inter-disciplinary team of professionals who provide for the physical and emotional needs of both the patient and the patient's family. Hospice care provided by HNNJ's members consists of palliative and management services, including those physical, psychological, social and spiritual services required for certification under the Medicare program.

More complete information about HNNJ, its members, and its proposed activities is provided in this letter in numbered

paragraphs intended to correspond to the categories set forth at 58 Fed. Reg. 6133 (1993). In addition, HNNJ encloses with this letter the following documents:

a) Certificate of Incorporation of HNNJ;

b) Bylaws of HNNJ;

c) Proposed HNNJ Participating Member Agreement;

d) Copies of regulations specifying conditions of participation as a Medicare certified hospice;

e) Maps illustrating locations of and counties served by the initial members of HNNJ;

f) Chart showing known providers of hospice or "hospice like" services in areas served by the initial members of HNNJ.

1. HNNJ is a not-for-profit corporation organized and operated exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. HNNJ's principal place of business is 3 High Street, Glen Ridge, New Jersey, 07028-2306. As set forth in Article III of HNNJ's Bylaws, any Medicare-certified hospice provider, in good standing in the community it serves, having demonstrated a leadership role in hospice care, is eligible for membership in the corporation.

2. The initial members of HNNJ are as follows:

Cumberland County Hospice, Inc.
Samaritan Hospice, Inc.
Center for Hope Hospice, Inc.
Hunterdon Hospice, Inc.
Hospice of Morris County, Inc.
Valley Home Care, Inc. (d/b/a Valley Hospice)
The Hospice, Inc.

Each of the initial members is a not-for-profit corporation organized exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. Each initial member is currently a Medicare-certified hospice care provider in New Jersey. Each initial member has made a capital contribution of $5,000 to the

corporation, in addition to payment of its pro rata share of the Network's organizational expenses.

It is expected that additional not-for-profit Medicare-certified hospice care providers will become members of the Network. HNNJ ultimately hopes to have members in such other numbers and locations as will allow it to offer hospice care on a statewide basis. HNNJ has not yet determined the amount of the membership fee that will be paid by such additional members, but it is not expected to exceed the amount of each initial member's capital contribution.

3-4. HNNJ's purpose, relevant to this request, is to establish and coordinate a network of high quality, Medicare-certified hospice care providers to deliver hospice care to the public through contracts with third-party payers, especially managed care plans. At least initially, the Network's members will not be financially integrated, and price information will be assembled and conveyed to third-party payers through the use of the "messenger model" described below.

Hospice care is generally priced and delivered in terms of "levels of care." The standard or "basic" level of care would include the following services provided in accordance with the patient's plan of care:

1. Intermittent, non-shift home visits by registered nurses (typically for visits not exceeding 2 hours);
2. Home visits by social workers/counselors;
3. Home visits by home health aides;
4. Home visits by volunteers;
5. Chaplaincy services;
6. Family counseling services to family members during the time the patient is receiving hospice care;
7. Bereavement care and counseling for family members for thirteen months following the patient's death;
8. Physical therapy;
9. Occupational therapy;
10. Speech therapy;
11. Dietary consults;
12. Palliative medications relating to terminal illness;
13. Routine medical supplies;
14. Durable medical equipment (palliative);
15. In-home lab fees;

16. On call (i.e. 24 hours, 7 days a week) availability of registered nurses.

More intensive levels of care would include: (1) longer periods of care (up to continuous care) provided in the patient's home by home health aides, licensed practical nurses or registered nurses; (2) "respite care" provided in a residential facility under contract with the hospice (to provide brief periods of relief to the patient's family); and (3) inpatient care provided in an acute care hospital under contract with the hospice (to address symptom management or conditions unrelated to the terminal illness).

Each member of the Network will provide to a representative of HNNJ a list of prices at which the member would be willing to provide various levels of hospice care. The HNNJ representative with access to this information will be an independent agent, not employed by any Network member, and no Network member will have access to the pricing information provided to this Network representative by any other Network member. The HNNJ representative will then provide this information to and solicit contracts from third-party payers. If a contract offer is received, the HNNJ representative will promptly communicate the terms of the offer to the Network members. Each member will have fifteen days from the time it receives the offer to elect not to participate in the contract. This decision will be made independently by each member, without influence from any other member of the Network. Members also will be free to negotiate and contract individually with third-party payers who have offered contracts to the Network, or who have chosen not to negotiate with the Network.

The actual "Payer Contract" will be made between the third party payer and the Network. However, HNNJ will not necessarily offer or insist upon receiving a uniform price. As noted, the HNNJ representative will simply communicate the third party payer's offer to the Network's members, gather the responses of the members concerning prices, and communicate those separate responses to the third party payer. The HNNJ representative will also maintain a confidential list of "standing prices" at which each member will offer to provide the various levels of hospice care, and will be authorized to accept contract offers at or above those price levels on behalf of each member. The third party payer will be free to accept or reject some or all of the price terms offered by the Network's members.

HNNJ does intend to negotiate all other non-price terms of the contract, including utilization review and quality improvement plans, peer review criteria, grievance procedures, referral protocols, and records maintenance procedures. Third party payers unable to reach agreement with HNNJ on such non-price terms will be free to negotiate directly with the members of the Network.

The Network considered but ultimately had to reject the development of a fully integrated joint venture at this time. Each of the members of HNNJ is a not-for-profit corporation which relies on charitable contributions for a significant portion of its revenue. Having little or no experience with the provision of hospice care on a capitated or risk-withhold basis, the Network's members do not have the financial resources to undertake the unknown risks that such a venture would currently entail. The Network also is not aware of any other similar hospice network with an established record of financial performance which it could use as a model. However, the Network intends to utilize the information and experience it gains from the proposed activities to develop and offer in the future hospice care through a financially integrated joint venture of its members. The Network also intends to immediately pursue certain aspects of operational integration to the extent feasible (e.g. common marketing, quality improvement, in-service training).

5. Each of the initial members currently delivers hospice care to the public. Since a member must be Medicare-certified, it is anticipated that future members will also be existing providers of hospice care to the public. However, since participation in the Network is non-exclusive (see #7 below), participation in the Network will not affect a member's continued delivery of hospice care outside the Network.

6. The relevant product market is hospice care. Hospice care consists of palliative and management services provided to patients who are terminally ill, including physical, psychological, social and spiritual services provided to such patients and their families. Some of the services which make up hospice care are delivered by independent, non-exclusive subcontractors, rather than employees of the hospice. Also, "hospice like" services (i.e. some but not all of the components of hospice care) are marketed as an alternative or substitute for the services of the Network's members by various agencies that are not Medicare certified hospice providers (e.g. by home health agencies, nursing services or temporary placement agencies).

Hospices obtain most of their referrals from the communities they serve, local physicians, hospitals and other agencies, and accordingly, compete in relatively local geographic markets. The boundaries of each geographic market are roughly defined by the State's counties. The local nature of competition means that the current members of the Network generally are not competitors. However, the Network does not wish to rely on this fact alone in support of its proposed activities.

The market for hospice services is largely unregulated, and HNNJ does not have any reliable data on the market share of its current members or any potential members. However, HNNJ believes that there exists substantial competition in each of the counties in the State. The chart enclosed with this letter sets forth the number of hospices and providers of "hospice-like" services of which the Network is aware in each county served by the Network's current members.

7. The Network will be non-exclusive. Network members will be free to join or affiliate with other networks or join other third party payer programs, provided, of course, that such participation does not compromise the member's ability to service a Network contract in which they are participating.

8. No member will have access to any price information communicated to HNNJ by any other member.

9. The Network currently has no customers. The ten largest potential customers are third party payers active in the New Jersey health care market:

Aetna Insurance Co./Aetna Health Plans
Prudential Insurance Co./PruCare
U. S. Healthcare
New Jersey Blue Cross and Blue Shield
Oxford Health Plans
Pennsylvania Blue Cross
Metropolitan/Travelers Insurance
CIGNA
Rutgers/HIP
First Option Health Plan of New Jersey

10. Entry into the hospice care market is easy. First, there are no regulatory hurdles. Hospice is not a licensed service under New Jersey law, nor is it subject to the State's Certificate of Need program. Second, hospice services

are primarily provided in the patient's home, and do not require the construction of a facility or other capital intensive investment. Third, "hospice like" services are offered by a variety of agencies other than Medicare certified hospice providers (e.g., licensed home health agencies, unlicensed nursing and placement services) which can enter the hospice market with relative ease and little capital investment.

11. The Network will realize a number of efficiencies and benefits. First, it will reduce transaction costs for third-party payers by enabling them to deliver hospice services in a number of local markets without having to negotiate and contract with hospices in each of those local markets. Second, the price information assembled by the Network and communicated to third-party payers will facilitate the communication of market information between purchasers and sellers. This also will reduce third-party payers' transactions costs, and enable them to formulate reasonable offers. Third, the utilization review and quality improvement programs which the Network intends to immediately undertake are likely to reduce the cost of delivering hospice care, improve its quality and create greater access to hospice services throughout New Jersey. Finally, as explained above, the Network believes that the information gained from the proposed activity will eventually lead to the delivery of hospice care on a capitated or risk-withhold basis, with the attendant financial benefits to consumers from those programs.

We have made every effort to ensure that this submission is complete. If any other information is required, please contact me by telephone or mail. Thank you for your consideration.

Very truly yours,

Richard J. Webb

RJW/ir
cc: Board of Trustees
Hospice Network of New Jersey, Inc.