



Department of Justice

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JUSTICE DEPARTMENT WILL NOT CHALLENGE FORMATION OF PHYSICIAN NETWORK IN VIRGINIA

WASHINGTON, D.C. -- The Department of Justice today announced that it would not challenge a joint venture to create a physician network in the Southside Hampton Roads, Virginia area -- including Virginia Beach, Chesapeake, Portsmouth, and Norfolk.

Under the proposal, Preferred Physicians Medical Group (PPMG), will have 103 members -- 54 primary care physicians and 49 specialists practicing in 13 different physician specialties. The network physicians will share substantial financial risk in all network contracts, and PPMG plans to establish a variety of programs to ensure the quality and efficiency of its operations. Members of PPMG will be required to participate in all contracts negotiated on behalf of the network and will not contract individually with payers that have contracts with PPMG.

According to a business review letter issued by Joel I. Klein, Assistant Attorney General in charge of the Department's Antitrust Division, a joint venture between these physicians is not likely to have anti-competitive effects in the markets for primary and specialty care. The network's members represent less than 10 percent of the physicians in any specialty in the

Southside Hampton Roads area. Even with expected growth, PPMG does not plan to exceed 15 percent of the physicians in any specialty or ten percent of all physicians in that coverage area.

Under the Department's business review procedure, an organization may submit a proposed action to the Antitrust Division and receive a statement as to whether the Division will challenge the action under the antitrust laws.

A file containing the business review request and the Department's response may be examined in the Legal Procedure Unit of the Antitrust Division, Suite 215 Liberty Place, 325 7th Street, N.W., Department of Justice, Washington, D.C. 20004. After a 30-day waiting period, the documents supporting the business review will be added to the file unless a basis for their exclusion for reasons of confidentiality has been established pursuant to Paragraph 10(c) of the Business Review Procedure.

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DEPARTMENT OF JUSTICE
Antitrust Division

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Assistant Attorney General

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Alan C. Nelsen, M.D.
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Dear Dr. Nelsen:

This letter responds to your request 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 your proposal on behalf of Preferred Physicians Medical Group ("PPMG"). PPMG is a multispecialty network formed for the primary purpose of contracting on a shared risk basis with multiple payors in the Southside Hampton Roads, Virginia area.

As we understand from the materials that you have provided, PPMG currently has 103 members, 54 of whom are primary care physicians, the remainder of whom practice in several specialty areas. You have asserted that your membership represents less than ten percent of the providers in any given specialty (including general practitioners and family practice physicians) in the coverage area, which is comprised of the cities of Virginia Beach, Chesapeake, Portsmouth, and Norfolk, Virginia, and the surrounding residential areas. Even with planned growth, PPMG does not anticipate including in the network more than 15 percent of the providers in any specialty, nor more than ten percent of all the physicians in the Southside Hampton Roads area. PPMG will be a limited liability company, owned entirely by its physician members. Members of PPMG will participate in all contracts negotiated by PPMG and will not contract individually with any payer having a contract with PPMG.

All of PPMG's revenues will derive from risk contracts, and individual members will share risk based upon the group's overall performance. Contractual risk arrangements will include all-inclusive case rates, capitated rates, payments of a percentage of premium, or a withholding of 15% of the compensation due all network participants with distribution based upon the group's attainment of quality and utilization targets.

The network also plans to establish: (1) quality and utilization goals, (2) performance evaluation of individual participants and the network as a whole in meeting quality and cost effectiveness goals, (3) a remedial action program to modify individual participants' clinical practices where necessary, (4) a case management program, (5) preauthorization of some services, (6) concurrent and retrospective review of inpatient stays, (7) practice standards and protocols, (8) review of care in light of those standards and protocols, and (9) information systems to gather data and measure performance against cost and quality benchmarks and to monitor patient satisfaction. In addition, the network will provide payers with reports on cost, utilization and success in meeting network goals, will hire a medical director and support staff, and will require participating doctors to invest appreciable time in developing standards and protocols and in active monitoring of care rendered through the network.

Based on the foregoing description of the network's proposed operations, and assuming that PPMG's membership continues to constitute 20 percent or fewer of the physicians in each physician specialty with active hospital staff privileges who practice in the relevant geographic market, it appears that PPMG would fall within the safety zone for exclusive physician network joint ventures described in Statement 8 of the *Statements of Antitrust Enforcement Policy in Health Care*, issued by the Department and the Federal Trade Commission (August 1996).¹ We are aware of no extraordinary circumstances concerning PPMG. Consequently, the Department has no intention of challenging PPMG's proposal at this time. In accordance with our normal practice, however, the Department remains free to bring whatever action or proceeding it subsequently comes to believe is required by the public interest if PPMG proves to be anticompetitive in purpose or effect.

This statement is made in accordance with the Department of Justice 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 publicly available immediately. In addition, any supporting data that you have not identified as confidential business information under Paragraph 10(c) of the Business Review Procedure also will be made publicly available 30 days from the date of this letter.

Sincerely,

_____/s/_____
Joel I. Klein

¹ The size of geographic markets for particular physician specialties may vary. For some specialties the market may be no larger than a single city in the Southside Hampton Roads area. To the extent that membership in PPMG might exceed 20 percent of the physicians in a relevant geographic market, PPMG would fall outside the safety zone and its effects would have to be analyzed under the rule of reason, an analysis that would require more information than is presently available. However, based on present information about the composition of PPMG, it appears likely that the network will not exceed the 20 percent safety zone standard even if the relevant geographic market is limited to a single city.