



Department of Justice

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JUSTICE DEPARTMENT ALLOWS STATE MEDICAL ASSOCIATION SURVEY

WASHINGTON, D.C. — The Department of Justice indicated today that it has no current intention of challenging the proposal by the Washington State Medical Association to conduct a fee and reimbursement survey of physicians and physician assistants and to publish the survey results. The Department's position was stated in a business review letter from Charles A. James, Assistant Attorney General for the Antitrust Division, to counsel for the WSMA.

The WSMA plans to survey its members for two categories of statistics: physician charges for services and insurer reimbursement for services. With respect to the first category of physician charges, the letter said that the WSMA proposal complies with guidelines previously announced by the Department of Justice and the Federal Trade Commission. In accordance with the DOJ/FTC Health Care Guidelines, the survey will be managed by the WSMA professional staff, will utilize underlying data that is at least three months old at the time that the survey results are disseminated, and will aggregate the underlying data in a manner designed to prevent the identification and misuse of individual provider information.

According to the letter, the second portion of the survey involving insurer reimbursements raises the possibility of anticompetitive effects, in particular because the WSMA plans to identify average reimbursements paid by individual insurers. The letter noted that such a proposal could raise competitive concerns, including the possibility that the information could lead to boycotts or collusive pricing. In response to these concerns, the WSMA asserted that

there are procompetitive justifications for the survey and that it intends to take active steps to prevent use of the survey for anticompetitive conduct. In the letter, James said, "Based on [WSMA's] factual representations and intentions regarding the survey, and recognizing that our concerns may be balanced against procompetitive benefits and safeguards, we conclude that we currently would not challenge the WSMA's proposal based upon the second portion of the survey."

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 Antitrust Documents Group of the Antitrust Division, Suite 215, Liberty Place, 325 7th Street, N.W., Department of Justice, Washington, D.C. 20530. After a 30-day waiting period, the documents supporting the business review will be added to the file.

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