DEPARTMENT OF JUSTICE
Antitrust Division

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Richard C. Lague, Esquire
Philip M. Stoffan, Esquire
Lague, Newman & Irish
600 Terrace Plaza
P.O. Box 389
Muskegon, MI 49443

Dear Messrs. Lague and Stoffan:

This letter responds to your request on behalf of the Mid-South Physician Alliance, Inc. ("the Alliance") and the Mid-South Health Plan ("the Health Plan") for a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6, concerning their plans to form an integrated health care delivery system in the Memphis, Tennessee area. For the reasons set forth below, the Department has no present intention to challenge the proposed activities under the antitrust laws.

Based on the information you provided, we understand that the Alliance and the Health Plan are incorporated as for-profit corporations headquartered in Memphis, Tennessee. The Health Plan will operate as a health maintenance organization ("HMO") licensed by the State of Tennessee. The Alliance will provide primary care and specialist physician services within 100 miles of Memphis, Tennessee ("the service area") pursuant to contracts with the Health Plan and other third-party payers. All of the stock of the Alliance will be owned by the Alliance's participating physician members, and those members will own a majority interest in the Health Plan.

The Alliance will negotiate contracts on behalf of its primary care and specialist physician members with the Health Plan and with other third-party payers. The Alliance will provide physician services either on the basis of its receiving a capitated payment or under a fee-for-service schedule for its member physicians with a "risk pool" withhold of at least 20 percent of the fees due each physician. The withhold will be distributed to the participating physicians only if the panel of doctors as a group meets established efficiency and quality parameters. If the group meets those requirements, the amount withheld will be distributed according to each doctor's compliance with established protocols and procedures.[1]

[1]The Health Plan will offer to provide third-party payers the usual range of HMO medical services for a capitated payment. In addition, the Health Plan may also offer the services of its physician panel either for a capitated payment to the Health Plan or under a fee-for-service schedule employing the same 20 percent risk pool withhold as the Alliance.

In establishing the payment terms under which it is willing to contract with payers, the Alliance will hire an independent consultant to gather and prepare an aggregate of information relating to utilization, quality standards, cost of purchased services, fees, charges and clinical outcomes. The consultant will use this information to create a data base, prepare a statistical analysis and develop a proposed fee structure and minimum acceptable contract terms. If the Alliance's Board of Directors votes to approve the proposed fee schedule and minimum acceptable contract terms, the Alliance will be authorized to enter into contracts that meet those minimum requirements and bind its member physicians to those terms. No physician participating in the Alliance, including Board members, will have access to any other member physician's fees, pricing or volume information, or any other information collected, aggregated or summarized by the consultant.

The Alliance's physician providers will participate in the network on a nonexclusive basis. Individual member providers will be able to affiliate or contract directly with competing multi-specialty networks, independent practice organizations, managed care plans and other third-party payers.

After examining the information that you have provided, and having conducted an independent investigation, the Department has no present intention of challenging the Alliance's proposal, as described in this letter, on antitrust grounds. The Alliance appears to be a bona fide joint venture whose members will share substantial risk either through capitated contracts or fee-for-service contracts with substantial withholds to ensure quality and efficient utilization of health care services. It does not appear likely that the proposed conduct would create or facilitate the exercise of market power or would result in anticompetitive effects.

The Alliance has submitted detailed information about the type of practice and location of the physicians it anticipates will join its network. The Alliance plans to recruit a maximum of 150 of the approximately 1,080 primary care doctors in Memphis and the five counties surrounding it.[2] These doctors will comprise no more than 30 percent of any type of primary care physician in Memphis or in any county within that area. Health care payers have told us that under these circumstances, they would have the option of fulfilling their needs for primary care physicians without contracting with the Alliance. The payers also have told us that primary care physicians in the Memphis area generally join as many networks as possible, and the payers expect that this will continue after the Alliance begins operating.

The Alliance also plans to recruit 233 of the 2,397 specialist physicians within the service area. For all but two of the physician specialties in its panel, the Alliance will have fewer than 30 percent of the specialist physicians in the service area.[3]

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[2]This will be the initial phase of the Alliance's formation. After this five county network is established, the Alliance will recruit approximately 169 additional primary care physicians for the balance of the full 100 mile radius service area. The Alliance is unable to provide specific information about these primary care physicians and their specific locations. Since this is a rural area, the Alliance anticipates that it likely will need to contract with more than 30 percent of physicians in some locations. The policy statements on physician network joint ventures recognize that a higher percentage of physicians may be necessary for networks in a rural area. Department of Justice and Federal Trade Commission Statements of Antitrust Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust, at 68-69 (Sept. 27, 1994). However, without more specific information about the additional physicians the Alliance expects to recruit, we are unable to make a judgment concerning this aspect of the Alliance's plan.

[3]The Alliance anticipates that it will contract with a single neurosurgery practice that constitutes 42 percent of the neurosurgeons in the service area, and it expects to contract with 32 percent of the rheumatologists in the area.

While we have not attempted to define precisely the boundaries of the relevant market for primary care physicians or for each of the physician specialties, we are satisfied that for any reasonable market, the concentrations of specialists and primary care physicians expected in the Alliance's physician panel are not likely to result in anticompetitive effects. To the contrary, Memphis area purchasers of health care services have told us that they view the formation of the Alliance as procompetitive since it will serve as an alternative to existing networks of providers formed by large hospitals in the area.

In sum, the Alliance appears to be a bona fide joint venture since its participating physicians will share substantial financial risk through capitation or fee-for-service contracts with 20 percent of the fees withheld to provide an incentive to achieve efficiency and quality objectives. The concentration of the different types of specialists and primary care physicians in the Alliance's anticipated panel is not likely to create market power or result in anticompetitive effects. Furthermore, the Alliance offers the potential of competitive benefits to consumers by providing an additional alternative to existing health care delivery systems. Consequently, the Department has no present intention to challenge the proposed activities of the Alliance and the Health Plan under the antitrust laws. However, in accord with our normal practice, the Department remains free to bring whatever action or proceeding it subsequently concludes is required by the public interest if actual operation of the Alliance or the Health Plan 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.

Sincerely yours,

/S/

Anne K. Bingaman
Assistant Attorney General