



DEPARTMENT OF JUSTICE
Antitrust Division

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Gerald M. Feder, Esquire
Feder & Associates, P.C.
The Dupont Circle Building
Suite 600
1350 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Feder:

This letter responds to your request on behalf of the Hotel Employees and Restaurant Employees International Union Welfare Fund ("the Welfare Fund") for a statement by the Department of Justice ("the Department") of its current enforcement intentions with respect to a historical claims report that the Welfare Fund proposes to provide to the Silver State Medical Administrators ("SSMA"), a preferred provider organization ("PPO") with which it contracts. Based on information you provided on February 3, 1994, as supplemented by a call on March 30, 1994, and a subsequent letter dated April 5, 1994, the Department has no present intentions to challenge the Welfare Fund's proposed conduct.¹

You have represented that the Welfare Fund is a self-funded multiemployer employee welfare benefit trust fund, established pursuant to collective bargaining agreements between labor organizations and employers in the hotel and restaurant industry. Among other benefits, the Welfare Fund provides health benefits to participants and their dependents throughout the United States. The Welfare Fund is comprised of various fund units, covering eligible participants and beneficiaries in different geographic locations. The largest fund unit, Fund Unit 150, covers over 85,000 participants and dependents in the Las Vegas, Clark County, area. Since 1987, the Welfare Fund has contracted with SSMA for the provision of physician services to its Fund Unit 150 participants.

The Welfare Fund has recently developed a Resource-Based Relative Value Scale ("RBRVS") fee schedule to reimburse SSMA physicians who provide services to Fund Unit 150 participants. The Welfare Fund believes that the fee schedule will reduce its physician

¹In your February 3, 1994 letter, you asked the Department to review the Welfare Fund's contractual arrangement with SSMA. However, the Welfare Fund has been contracting with SSMA for the past seven years. Under the Department's Business Review Procedure, the Department "will consider only requests with respect to proposed business conduct . . ." 28 C.F.R. § 50.6 (2). Therefore, the Department declines to review this aspect of the Welfare Fund's request.

payments by 10 percent. To assist the SSMA in its contract negotiations with physicians, the Welfare Fund proposes to provide the SSMA, in writing, with the total amount that it paid for each procedure to each SSMA physician between September 1, 1991 and August 31, 1992. The SSMA intends to compare this data to the amount the physician would have received under the RBRVS fee schedule and share this data with individual participating physicians during contract negotiations. The purpose of the one-time data exchange is to enable each individual physician to make an informed decision whether or not to accept the RBRVS fee schedule. The SSMA has agreed with the Welfare Fund not to disclose to any physician another physician's payments.

Based on the information you have provided, the Department has no present intention to challenge the Welfare Fund's proposal to provide historical payment amounts to SSMA. The Welfare Fund's limited information exchange has the potential to enable individual physicians to make more informed decisions about selling their services to the Welfare Fund through the SSMA. In accordance with our normal practices, however, the Department remains free to bring whatever action or proceeding it subsequently concludes is required by the public interest if actual operation of any aspect of the program 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. 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,

/s/

Anne K. Bingaman
Assistant Attorney General