



DEPARTMENT OF JUSTICE
Antitrust Division

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September 14, 1994

Andrew Feldman, Esquire
Feldman & Kieffer
268 Main Street
Buffalo, New York 14202

Dear Mr. Feldman:

This letter responds to your request, on behalf of Preferred Podiatric Network Inc. (the "Network") and the New York State Podiatric Medical Association (the "Association") for the issuance of a business review letter under the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6, regarding plans to utilize the Network to act as intermediary to facilitate enrollment of Association members as providers in managed care plans.

The Association is a not-for-profit corporation whose members are physicians licensed for the practice of podiatry by the State of New York. The Network is a subsidiary of the Association, being formed to facilitate communication between managed care plans and non-integrated groups of podiatrists who desire to enroll as providers in such plans.

Based upon information you have provided, we understand that the Network will actively solicit contract offers from third party payers such as health maintenance organizations, preferred provider organizations and insurance and employer healthcare plans, on behalf of its members wishing to become participating providers in managed care plans. Membership in the Network is open to all members of the Association, who constitute approximately 54 percent of all podiatrists licensed to practice in the State of New York.

When soliciting contract offers, at the specific request of a third party payer the Network may provide to the payer, for information purposes only, general fee information such as podiatric service fee schedules or relevant value guides. This type of information may be gathered by the Network from participating podiatrists, but fee information will not be shared with or among the members. You have advised us that the Network anticipates that contract offers will be based upon fee schedules below the usual and customary charges of its members or will utilize prepaid capitation formulas determined by the payers. The Network will not negotiate with the payers on behalf of its members.

Upon receipt of a contract offer from a third party payer, the Network will promptly communicate it to its members. The Network will not undertake to negotiate the terms of the offer, and each member must decide independently, and without any influence from the Network, to accept or reject the offer within 15 days. Members are free, however, to negotiate directly with any willing payer on price or other conditions of the offer.

At the specific written request of payers, the Network may represent its members in negotiations concerning non-price matters such as utilization review and credentialing standards. All such negotiated terms are subject to ratification or acceptance by each member. The Network may also make available to members a "legal services hotline" so that counsel can provide advice on the legal effect of language in a contract offer. Counsel will not negotiate terms on behalf of any member, offer advice on price issues, or communicate information about other members' prices or contracting intentions.

Participation in the Network is on a non-exclusive basis. Participating podiatrists are free to join other networks, or participate in other third party payer programs, subject only to their ability to perform their obligations under any contract facilitated by the Network.

After careful consideration of the information you have provided, and as supplemented by our independent inquiry, the Department has no present intention to challenge the proposed activities of the Network on antitrust grounds. Under some circumstances, the Department would have concerns about a network affiliation among physicians comprising such a large percentage of specialists licensed to practice a medical specialty in a state. This level of participation makes it very likely that many participants will compete directly in their independent practices in relevant antitrust markets, which might facilitate price fixing and makes it possible that

some could exercise market power by acting in concert. For several reasons these concerns appear to be absent here.

First, we conclude that the Network will function as a bona fide facilitator of contract negotiations between managed care plans and its members. The Network will not negotiate fees on behalf of its members, and each member will be free individually to accept or reject any contract proposal developed by the Network. We understand that each member will make that decision independently, without consultation with competitors, or influence by the Network. Negotiations that the Network may undertake on non-price issues, such as utilization review and practice standards, may be pro-competitive, since they will be undertaken at the request of managed care plans and may assist the plans to develop effective standards of care and cost controls.

Second, procedures developed by the Network for gathering generalized fee information for the use of payers may be of value in communicating market information important to the formulation of reasonable offers. At the same time, safeguards against dissemination of specific fee information to participating podiatrists make it unlikely that such information will be used to facilitate collusion among members who compete with one another in their independent practices.

Finally, the Network is not exclusive. The freedom of Members to join other networks, or to contract directly with managed care plans should mean that the Network will not inhibit the development of other networks to foster managed care competition among podiatrists in New York.

Although, for these reasons, we have no present intention to challenge the operations of the Network, in accordance with our normal practice the Department remains free to bring whatever action or proceeding it subsequently comes to believe is required by the public interest if the Network proves to be anticompetitive in purpose or effect. In this regard, should Network activities result in express or tacit collusion among competing podiatrists on pricing or contracting issues, serious antitrust concerns would be presented.

This statement is made in accordance with the Department of Justice Business Review Procedure, 28 C.F.R. § 50.6. 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