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October 6, 1993

The Honorable Anne K. Bingaman
Assistant Attorney General
Antitrust Division
United States Department of Justice
10th Street and Constitution Avenue, N.W.
Washington, D.C. 20530

Re: Request for Business Review Letter

Dear Ms. Bingaman:

Pursuant to 28 C.F.R. Subsection 50.6, the Bay Area Business Group on Health ("BBGH") requests that the Antitrust Division state its present enforcement intention with respect to BBGH's proposed group purchasing project for health care benefits. Such group purchasing for health care coverage has recently obtained favorable governmental interest in the states and on the federal level. Often referred to as health insurance purchasing cooperatives or corporate alliances, the purchasing group allows employers to aggregate their health benefit purchases in order to obtain lower premiums from health insurance companies or HMOs. California, for example, recently passed legislation authorizing the creation of a state pool (Health Insurance Plan of California) to purchase health benefits from insurers and HMOs for small employers, that is, employers with from 3-50 employees.[1]

Description of the BBGH

The BBGH is a non-profit tax-exempt California corporation operating as a health care coalition of private and public sector purchasers of health care benefits. BBGH's mission is to

1 California Assembly Bill 1672, effective July 1, 1993.

improve the quality of health care and moderate rising costs. Membership is open to employers who are interested in health benefits issues. BBGH members meet on a regular basis to discuss subjects of general interest regarding health benefit plans. BBGH also conducts surveys and research on such topics as prevention and quality indicators, including review of risk-adjusted mortality studies.

Current members interested in pursuing the possibility of group purchasing include 16 major employers headquartered in the San Francisco Bay Area and the California Public Employees Retirement System (CALPERS) headquartered in Sacramento, all of which provide health care benefits for employees, retirees and their dependents. These employers represent a wide variety of industries; except for three banks and for two insurance companies, none of the BBGH members compete in the sale of goods and services. A list of interested BBGH member companies is attached as Exhibit A.

The California employees of the BBGH member companies are dispersed throughout the state. In the six-county Bay Area (Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara), the aggregate number of employees and dependents participating in various health benefit plans[2] offered by BBGH employers is approximately 444,014 covered lives. This figure represents 13.5% of the 3,288,543 persons in the Bay Area who are eligible for private health insurance or HMO coverage.[3]

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2 All of the employers and CALPERS offer self-funded or insured indemnity plans, some with managed care components, in addition to HMO options to their employees. The 444,014 covered lives are enrolled in all forms of plans offered.

3 The percentage of the Bay Area population eligible for private health care coverage was determined as follows: As determined by the 1990 census, the population for the six Bay Area counties is 4,184,169. (Source: 1992 County and City Extra, Annual Metro, City and County Data Book, edited by C. M. Slater and G.E. Hall.) The number of persons in these counties covered by Medicare and Medicaid (599,043 and 296,583 respectively) were deducted from the general population figure to arrive at the number of persons eligible for private health care coverage. (Sources: U.S. Department of Health Services, Health Care Financing Administration, "Medicare Enrollment Summary by State and County", July 1991; California Department of Health Services, Medi-Cal Program, "Annual Statistics Report", July 1991.)

Using this same formula and approach, BBGH calculated the percentage of the population represented by its member companies in each of the four other major regions in California where its member companies have employees. In the combined Los Angeles, Ventura, Orange, San Bernardino and Riverside counties, BBGH employers provide health benefits for about 5% of the eligible population; in Sacramento County, approximately 24%; in San Diego County, approximately 5%. In the Central Valley region of California (Fresno, San Joaquin and Stanislaus counties), BBGH employers' health plans cover about 6% of the eligible population.

Description of the Project

BBGH intends to form a group to negotiate collectively with health maintenance organizations ("HMOs") in California for the 1995 plan year. Currently, there are approximately 35 full-service HMOs in the state with 10.8 million covered lives. (See Exhibit B for list of California HMOs.)[4] At this time, there are no plans to negotiate collectively with health insurers offering indemnity coverage or companies offering third party administration of self-funded plans. For your convenience, attached hereto is further background information on the development and implementation plans for this group purchasing project. (See Exhibit C.)

Under the BBGH plan, any BBGH member is eligible at its own option to join the BBGH HMO purchasing group; no BBGH member is required to join the purchasing group to remain a member of BBGH. If a member chooses to join the purchasing group, it would agree to participate in the coming year's program. It would not be obligated to participate in any future year, but could make that decision each year as the new purchasing program gets started. However, any member who joins the group would agree not to "opt out" during the year. BBGH wants to be able during the negotiation process to identify the number of employers, and represented covered lives, that would be available to contract with the HMOs. In addition, in order to maintain the integrity of the bidding process, it is necessary that no participating company attempt to negotiate a better price from the bidding HMO's during or after the group negotiations are complete. Members of the BBGH purchasing group that back-solicited the bidding HMOs would be precluded from contracting through the group. Members may drop out during the

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4 The covered lives, 444,014, in all the health plans offered by BBGH members, including indemnity and HMO plans, represent only 4.1% of the total HMO enrollees in the state.

course of a year for good cause, such as demands that arise during collective bargaining negotiations. A member, however, may contract with an HMO that did not enter into the bidding process.

Prior to implementing the plan, BBGH has developed a preliminary uniform HMO benefit package with two copayment options. Participants who join the group will agree to offer the HMO plan design to their employees and retirees, in addition to other medical plans offered, such as indemnity plans or point of service plans. The uniform plan includes benefits currently offered by most major employers and complies with federal HMO Act requirements and California requirements. The goal of the uniform plan is two-fold: 1) to simplify the choices an employee has to make when selecting a medical plan; and 2) to eliminate plan designs created by an HMO that can result in selective risk avoidance through elimination of high risk benefits. A copy of the draft benefit design is attached as Exhibit D.

When the group is formed, each participating member would identify those HMOs that it would like to have included in the negotiation process. BBGH would prepare a request for a proposal for a bid on the uniform benefit package from those HMOs. Any HMO not receiving a request to bid could request to be included. If any member wishes that HMO to be added, BBGH will negotiate with that plan as well.

BBGH would establish a committee to negotiate on behalf of the purchasing group with the HMOs for the coming plan year. The HMOs would be asked to provide a base price for the two copayment options of the uniform benefit package.[5] In addition, the HMOs would be asked to provide uniform data on clinical, financial and administrative quality at the end of the plan year.

The HMO base prices would be multiplied by a risk adjuster calculated for each company by an independent actuary. The risk adjustment mechanism calculates the level of risk assumed by a health plan for employees in each company as compared to the

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5 Employers may deviate slightly from the standardized plan design, for example, by carving out mental health coverage or a prescription drug benefit or by requesting a higher copayment. Each of the options requested would be priced by the bidding HMOs.

average population of the employers in the purchasing group.[6] The risk adjustment formula would reflect the relative actuarial risk of each company's population, based on such factors as age, sex, family status. The BBGH negotiators will compute each company's actual premium by multiplying the HMO base price times the company's risk adjuster. Thus, the premium rate paid to each offered HMO by the individual employer will reflect the relative risk of the employer.

Based on the prices quoted by the HMOs for the uniform benefit package and other factors such as the quality of the HMO, each member of the purchasing group is free independently to decide whether (1) to contract with any or none of the HMOs submitting a bid, (2) to renew an existing contract with an HMO at the quoted price, but freeze enrollment at current levels so that no new employees may sign up for that plan, or (3) to terminate an HMO contract because the rate was not competitive or the quality was not satisfactory.

Effect of Project on Competition

The potential ability of the BBGH group to negotiate lower prices and initiate value-based purchasing by pooling purchases represents a procompetitive benefit associated with the project. More significantly, BBGH hopes to improve the quality of care through requesting uniform data on quality that will allow comparisons among the plans. Such information will provide the consumer with simplified and comparable price and quality information when selecting a health plan. The group purchasing project also provides cost savings by achieving transactional efficiencies for the employers in the form of the group negotiators. Furthermore, the adoption of a uniform benefit plan by a large number of purchasers should allow the HMO to be more efficient in delivering health benefits because it can standardize its operations to a greater degree than is possible when each employer requests a separate plan design. Finally, the elimination of individual negotiations with each employer and the uniform requirements for data will create transactional efficiencies for the HMOs.

In sum, this group buying project will provide the potential to increase the quality of services offered to plan members, reduce the costs of HMO coverage by encouraging

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6 The risk adjuster concept is part of the proposed Clinton health reform proposal. See page 83 of the working group draft of the President's health reform proposal.

competition and provide transactional efficiencies with little potential for anti-competitive effects.

Should you require any additional information, please contact me or John F. McLean of our firm.

Very truly yours,

Maureen E. Corcoran

Maureen E. Corcoran

Attach.

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