



DEPARTMENT OF JUSTICE
Antitrust Division

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March 9, 1995

William L. Sippel, Esquire
Doherty Rumble & Butler
2800 Minnesota World Trade Center
30 East Seventh Street
Saint Paul, MN 55101-4999

Dear Mr. Sippel:

This letter responds to your request on behalf of Northwestern National Life Insurance Company ("NWNL") for a statement, pursuant to the Department of Justice Business Review Procedure, 28 C.F.R. § 50.6, of the Department's present enforcement intentions regarding NWNL's proposal to provide medical fraud detection services both to NWNL and to other entities. NWNL currently maintains its own fraud detection unit, called the Special Investigations Unit ("SIU"), which has developed specialized programs and procedures for uncovering medical claim fraud and abuse. NWNL would offer its fraud detection service, to be called the Integrity Plus Medical Fraud and Abuse Detection Program, to other insurers, health maintenance organizations, third party administrators, self-funded employer health plans, reinsurers, and similar entities.

As we understand the information submitted with your request, the SIU would be made into a separate section within NWNL's employee benefits division. This section would provide three basic types of service: first, it would provide training and training manuals to clients' claims processing personnel to assist them in learning how to detect possible instances of fraud and abuse; second, it would offer medical fraud detection and investigation services, reviewing claims submitted to it for indications of fraud, and providing information, without recommendation, to its clients, who would then unilaterally decide whether or not to pay the claims; third, it would provide

access to historical data maintained by the SIU concerning medical claims practices of health care providers, including a national data bank containing information about false, incomplete or misleading claims practices. The SIU's clients would be able to access the databank by code numbers corresponding to health care practice patterns to identify health care providers they may wish to monitor more carefully. The databank would be updated with information from investigations conducted by the SIU for other clients. Information about instances where indicators of fraud or abuse are uncovered by the SIU would not be included in the national data bank until after completion and resolution of each investigation. The SIU would provide service to NWNL's claims processing unit in the same manner as to other third party clients.

The Department would be concerned if the effect of the proposed conduct were to increase the likelihood that horizontal competitors could successfully collude, expressly or tacitly, on prices by, for example, agreeing on how much they would reimburse for a given procedure. A service that facilitated collective action to affect prices would raise antitrust concerns. Those concerns are not present in this situation, however, because NWNL has proposed safeguards to prevent the exchange of competitively sensitive information among NWNL, the SIU, and outside clients. Except as described above in relation to the maintenance of its fraud and abuse databank, information obtained in the course of reviewing claims for its clients would not be made available to NWNL or to any other SIU clients. NWNL would continue, separately from the SIU, to process its own claims and to resolve its own disputes with health care providers, and would neither share information with the SIU concerning current claims disputes, nor receive information from the SIU concerning claims disputes involving the SIU's other clients. As an SIU client, NWNL would receive information regarding instances of investigated potential medical fraud and abuse. Finally, the SIU would not act as a conduit for the flow of information on disputed claims or payment practices between or among its outside clients.

NWNL has cited congressional estimates indicating that as much as 10% of the entire health care budget, or about \$100 billion, is lost each year to fraud and abuse. The proposed activities of the SIU would help to reduce instances of medical fraud and abuse and thus could lower health care costs. The SIU will be compensated, in part, based on the savings it achieves by detecting instances of fraud or abuse.

This letter expresses the Department's current enforcement intention only. It applies only to the conduct described herein, and not to any other use by NWNL of the information obtained by the SIU in its fraud investigations. In accordance with our

normal practice, the Department reserves the right to bring an enforcement action in the future if the actual operation of the NWNL proposal 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, a copy of which is enclosed. Pursuant to its terms, your business review request, as supplemented, and this letter will be made available to the public immediately. Any supporting documents not deemed confidential pursuant to your request in accordance with Paragraph 10(c) of the Business Review Procedure will be publicly available within 30 days of the date of this letter.

Sincerely,

/s/

Anne K. Bingaman
Assistant Attorney General