



## DEPARTMENT OF JUSTICE

Antitrust Division

**JOEL I. KLEIN**

Acting Assistant Attorney General

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Michael S. Weiden, Esquire  
Quarles & Brady  
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P.O. Box 2113  
Madison, Wisconsin 53701-2113

Dear Mr. Weiden:

This letter responds to your request 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 your proposal on behalf of RWHC Network, Inc. ("the Network"). You propose that the Network will operate as a Wisconsin not-for-profit corporation to contract on behalf of its members, small rural Wisconsin hospitals, with insurance companies, employers, and managed care plans for the provision of primary hospital health care services. While initially seeking discounted fee-for-service contracts, the Network's goal is to work toward implementation of capitated or other risk-bearing contracts in the future. For the reasons stated below, the Department has no present intention to challenge the Network's proposed activities.

As we understand from the materials you have submitted, membership in the Network will be limited to current members of the Rural Wisconsin Health Cooperative ("the Cooperative"), which is a 17 year old not-for-profit corporation that acts as an advocate and a provider of a wide variety of services for the improvement of rural health care. Although the University of Wisconsin Hospital & Clinics is a member of the Cooperative, it will not become a member of the Network. A total of 21 hospitals would be eligible to become members of the Network. All are small, rural, not-for-profit Wisconsin hospitals ranging in size from 8 to 78 beds, with the average size being 38 beds.

You propose that membership in the Network would be non-exclusive and renewable from year to year. Members would remain free at all times to contract individually with health care plans and other payers or to join other provider networks. The Network would facilitate members' contracting with insurance companies, employers and other payers through the use of a third party administrator, most probably

the Cooperative. The administrator would collect and analyze data from each member hospital, create data bases, prepare statistical analyses, and furnish recommendations to enable the Network to negotiate contracts for health care services. All such information would be proprietary and confidential, and the Network would adopt rules assuring that, except for the final statistical analysis and recommendations of the administrator, no member would have access to any disaggregated information held by the administrator. Thus, no member would have access to another member's patient fees or pricing information or other financial information such as salary and fringe benefits paid to associates or employees. You assert that the rural hospitals that own and operate the Cooperative have always been careful to adopt mechanisms to regulate and aggregate information that might create antitrust concern if shared by competitors, and that this sensitivity would continue in the operation of the Network.

It is anticipated that initially contracts negotiated by the Network would provide for services to be offered on a discounted fee-for-service basis; however, the Network's goal would be to work toward provision of services on a capitated basis in order to ensure that Network members remain efficient, cost-effective competitors in the hospital services market. Network members would also consider other forms of integration in addition to capitated contracts in the future.

It is the Network's contention that each of its proposed member hospitals serves a different geographic area and that even though some of those areas are adjacent, the proposed member hospitals do not compete with each other for patients. Rather, you maintain that for patients who use any given Network hospital, the practicable alternative to using that hospital is to travel to larger, more sophisticated regional medical centers that are not a part of the Network.

Based upon your representations regarding the absence of competition among the Network's member hospitals, we conclude that the Network, if operated as described above, is not likely to cause any anticompetitive effects. The Network appears to be a *bona fide* joint venture designed to facilitate health care contracting between small, rural hospitals that are not actual or potential competitors and managed care organizations and other large third-party payers. Under such circumstances, the joint contracting activities proposed by the Network would have no adverse impact on competition. This conclusion is consistent with the fact that no managed care plan or other third party payer has expressed concern that the Network is likely to result in competitive harm.

Therefore, the Department has no present intention of challenging the proposed network. In accordance with our normal practice, however, the Department remains free to bring an enforcement action in the future should the operation of the Network prove anticompetitive in purpose or effect.

This statement 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 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,

Joel I. Klein