

ROBERTS & NEWMAN

A NON-PARTNERSHIP ASSOCIATION OF ATTORNEYS

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August 2, 1995

VIA CERTIFIED MAIL
AND RETURN RECEIPT

Ms. Anne K. Bingaman
Assistant Attorney General
Antitrust Division
U.S. Department of Justice
Main Justice Building
10th & Constitution Ave., NW
Washington, D.C. 20530

RE: Request for Business Review Letter
Allergy & Asthma Consultants, Inc.

Dear Ms. Bingaman:

The purpose of the letter is to request, on behalf of Allergy & Asthma Consultants, Inc. (hereinafter referred to as "AAC"), the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.G. § 50.6. More specifically, we request a statement of the Department's current enforcement intention with respect to the proposed formation, business conduct and operations of a proposed physician network joint venture consisting solely of allergists serving primarily Massachusetts, and secondarily its neighboring states of Rhode Island, Connecticut, New York, Vermont, New Hampshire, and Maine.

I. Organization

AAC intends to form a for-profit corporation under the laws of the Commonwealth of Massachusetts. The Corporation will be headquartered in Massachusetts. The corporation will have 200,000 shares of authorized common no-par value stock. The corporation will issue stock only to AAC's participating physician members, all of whom will be medical doctors specializing in allergy, asthma, and related medical problems. The corporation will be governed by a Managing Board of Directors, and will have standing committees, such as, credentialing, finance, and quality assurance/utilization review. (Exhibit A)

Initially, it is anticipated that there will be seven physician stockholders ("Physician Members") of AAC, consisting of

two (2) sole proprietors, four (4) single-physician corporations, and one (1) three-physician corporation. (Exhibit B) These Physician Members have primary and satellite medical offices located throughout Massachusetts (Exhibit C) The nine physician providers who make up the initial seven Physician Members of AAC represent approximately 10% of the approximately 92 practicing physician provider specialists allergists in the Commonwealth of Massachusetts, and even a smaller percentage of all physician providers of allergy, asthma and related allergy medical services. (Exhibit D). Allergy services also are provided by some primary care physicians (pediatricians, internists, and family care physicians), and a substantial number of otolaryngologists and pulmonologists, as well as physicians who limit their medical practice to allergy and related diseases ("allergists").

After AAC is formed, AAC intends to recruit additional Physician Members for the balance of the service area (e.g. western and southern Massachusetts, as well as, if applicable, neighboring states) in order to service the beneficiaries of the contracting health care plans. However, the number of physician providers shall not exceed the permitted "safety zone" for a physician non-exclusive network as established by the Department of Justice & Federal Trade Commission, entitled "Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust" (Sept 30, 1994, reprinted in 4 Trade. Reg. Rep. (CCH) ¶ 13,152) as amended from time to time.

II. Activities

AAC will market specialty physician medical services in the field of allergy, asthma and related services to health benefit plans (HMOs, other health insurance carriers, large self-insured employers, and multi-physician primary care organizations) serving primarily Massachusetts, and secondarily the neighboring states of Rhode Island, Connecticut, New York, Vermont, New Hampshire, and Maine. AAC will negotiate and enter into contracts with these plans/organizations on a regional and/or state-wide basis, under which AAC members will provide medical services to the beneficiaries of the health plans/organizations. AAC will provide physician services either on the basis of its receiving a capitated payment or under a discounted fee-for-service schedule for its member physicians with a "risk pool" withhold of at least twenty (20%) of the fees due each physician. The withhold will be distributed to the participating physicians only if the panel of doctors as a group meets established efficiency and quality parameters. If the group meets those requirements, the amount of the withhold will be distributed according to each doctor's compliance with established protocols and procedures.

AAC proposes several safeguards designed to address concerns about sharing price information. In establishing the payment terms under which AAC will contract with payers, AAC will hire

independent health care consultants to gather and prepare an aggregate of information relating to utilization, quality standards, cost of purchased services, fees, charges, and clinical outcomes. The consultants will use this information to create a data base, prepare a statistical analysis and develop a proposed fee structure and minimum acceptable contract terms. If the AAC Board of Directors votes to approve the proposed fee schedule and minimum contract terms, the AAC will be authorized to enter into contracts that meet those minimum requirements and bind its member physicians to those terms. No physician participating in AAC, including board members, will have access to any other member physician's fees, pricing or volume information, or any other individual physician's information collected by the consultants. In addition, each AAC participating physician will be expressly prohibited from disclosing any information regarding usual and customary charges or the charges the physician has agreed to accept under any other managed care arrangement to any other AAC physician.

In addition to the forgoing, AAC plans to market a service to provide monitoring, quality assurance and utilization review of patients with allergic and asthmatic diseases to health care benefit plans. To that end, AAC will develop utilization review, quality assurance standards, practice parameters, and other practice management information. The information gathered will be used as an educational tool in conjunction with training seminars to help modify practice patterns of referring primary care physicians who consistently over hospitalize for asthma and allergy related medical services, and/or who seek modern methods of treating the allergic and asthmatic patient.

Also, AAC desires to enter into contracts for group purchasing of such products as extracts, and other related medical supplies and equipment, on behalf of its physician providers in order to facilitate the delivery of less-costly health care services.

AAC physician providers will participate in the network on a nonexclusive basis. Individual member providers will be able to affiliate and contract directly with competing multi-specialty networks, primary care groups, independent practice organizations, physician hospital organizations, managed care plans and other third party payers.

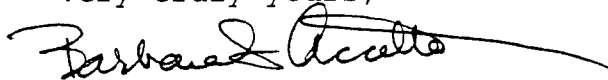
III. Competition

It should be noted that in addition to the many competing multi-specialty networks, primary care groups, independent practice organizations, physician hospital organizations, and closed paneled HMOs which currently exist in the Commonwealth of Massachusetts, I understand that there may be two other new allergy physician joint venture networks being formed by other competing allergy physician providers.

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Thank you for your consideration. Should you have any questions, please call the undersigned at (617) 965-9900, or Jeff Miles in Washington at 326-5008.

Very truly yours,

A handwritten signature in cursive script, reading "Barbara S. Accetta". The signature is written in black ink and is positioned above the typed name.

Barbara S. Accetta, Esquire

cc: John Miles, Esquire