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June 9, 1993

VIA AIRBORNE EXPRESS

To the Honorable John W. Clark, Esquire
Acting Assistant Attorney General
Antitrust Division
10th & Constitution Avenue, NW
Room 3208
United States Department of Justice
Washington, D.C. 20530

Re: Request for Business Review Letter relating to the organization and operation of a group purchasing organization for health care services in the Houston, Texas Metropolitan Area - Houston Area Health Care Coalition

Dear Mr. Clark:

Pursuant to the Business Review Letter Procedures as set forth in 28 C.F.R. §50.6, the Houston Area Health Care Coalition (the "Coalition") respectfully requests that the Antitrust Division of the United States Department of Justice review and state its present enforcement intentions with respect to the formation and operation of a proposed group purchasing organization (the "Association") by the Coalition. The general purpose of the Association would be to coordinate the accumulation of health care providers' cost data, and subsequently, to create a purchasing group for the Association's members' health care services which will contract with health care providers (the "Providers") at scheduled reimbursement rates.

The Coalition believes that the inefficiencies in the delivery of health care services are attributable, at least in part, to the absence of significant competition among health care providers. The Coalition further believes that by the creation of the Association, the aggregation and dissemination of relevant data and contracting with health care providers at scheduled reimbursement rates, the market for quality health care services will improve due to the factors of efficiency introduced by the Association's program and result in a procompetitive effect on the industry.

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Description of the Coalition

The Coalition was established in 1983 to assist its members in identifying opportunities for providing quality health care to the members' employees and their dependents at cost efficient rates. A Corporate membership and an Associate membership are available based upon a member's business activities. The Coalition presently has forty-eight (48) Corporate members, a list of which is annexed as Exhibit A, and eighty-eight (88) Associate members, a list of which is annexed as Exhibit B..

Pursuant to the Coalition's Bylaws, membership is available to any person, business association or organization that meets, in part, the following criteria:

1. Corporate Membership -

- (a) The member has a place of business in the following counties in Texas: Austin, Brazoria, Colorado, Matagorda, Fort Bend, Galveston, Chambers, Harris, Liberty, Montgomery, Walker, Waller and Wharton (hereinafter referred to as the "relevant geographic market area");
- (b) The member's principal business does not include consulting, providing, insuring or brokering health care services or health insurance; and
- (c) The member pays dues annually, or upon Board approval, provides in-kind services.

2. Associate membership -

- (a) The member has a place of business in the following counties in Texas: Austin, Brazoria, Colorado, Matagorda, Fort Bend, Galveston, Chambers, Harris, Liberty, Montgomery, Walker, Waller and Wharton (hereinafter referred to as the "relevant geographic market area");
- (b) The member's principal business includes consulting, providing, insuring or brokering health care services or health insurance; and

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- (c) The member pays dues annually or upon Board approval, provides in-kind services.

The status of associate member does not allow the Providers to be involved in the operation of the Association to the extent that it can serve on committees, but it cannot vote upon any matters involving the operations of the Coalition nor can it have representation as to serving on or voting for the Board. The Associate membership simply allows these entities to learn the concerns of the Coalition's members.

The Coalition has taken steps to investigate the most cost efficient process to provide quality medical services to its members who choose to enroll in the proposed program. The Coalition's Board of Trustees, after reviewing various alternatives, adopted a resolution on March 23, 1993, authorizing the formation of the Association. The purpose of this correspondence is to request a Business Review Letter, to be issued by the Department of Justice, to facilitate this group formation and proposed operation.

The Proposed Association

As currently contemplated, the Association would be formed as a non-profit Texas corporation whose primary purpose will be to act as a group purchasing organization for health care services. The Association intends to enter into agreements with health care providers in the Coalition's relevant geographic market area for the delivery of health care services to the employees and dependents of the Association's members at predetermined reimbursement amounts similar to the reimbursement methodology of Medicare's Diagnostic Related Group ("DRG") and Relative Value Schedule. Any health care provider in the Coalition's area willing to accept the Association's reimbursement schedule and meeting objective quality criteria would be able to contract with the Association. Any such contracts would be on a non-exclusive basis and each health care provider would be free to contract with any other payor it desires, including directly with members of the Association. Additionally, any person, business association or organization meeting the criteria for membership in the Coalition would be eligible to join the Association upon payment of a yet undetermined membership fee (which would be to cover the Association's developmental and operational costs). Additional fees may need to be paid by the members if the costs of the Association exceed the regular membership fees paid. Those Providers who are currently associate members of the Coalition would be allowed membership in the

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Association but would not be allowed to control any decisions involving reimbursement rates.

The Association's activities will be controlled by a Board of Trustees that may include representatives of some of the Association's members. Of the approximately forty-eight (48) active members of the Coalition, it is contemplated that approximately twenty-five (25) of the Coalition's members will choose to become members of the Association and participate in this program. Future increases in membership in the Association will be contemplated based on the success of the Association.

The following are those functions and material facts which are pertinent, and which, if deemed appropriate in terms of this request, will be adopted as bylaws and/or procedures to be utilized by the Association:

1. The main purpose of the Association is to establish a cost-efficient alternative to purchase and provide health care services to employees (and their dependents) of the members of the Association.
2. The Association would contract with Providers to provide medical services at set prices, and would have separate contracts with the members of the Association to utilize the Providers' services.
3. The management of the Association would either be composed of a separate board of disinterested outsiders, a board made up of employees of different members of the Association or a mixture of the two groups.
4. The bylaws of the Association would prohibit individual members from directly negotiating with the Providers on behalf of the Association but not from negotiating directly with Providers on their own behalf.
5. Members would not be required to utilize the services of the Providers through the Association and would be free to associate with any parties outside the Association that they choose. The Association intends to negotiate favorable rates for the provision of health care services. In return, the Association will make available to its members rates which reflect the benefits of the negotiated rates. The final approval for rates and/or

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contracts negotiated with Providers will be determined by the Board of Trustees of the Association.

The Establishment of Rates

To initiate the Association's proposed Program, the Coalition believes data from Providers regarding the costs associated with DRGs must be compiled to adequately determine cost efficient but competitive prices for health care services. To avoid any allegation that the compilation of this data constitutes any type of price fixing or anti-competitive practice, the Coalition is proposing that the Association enter into an agreement with a consulting entity with expertise in the health care industry (the "Consultant"). The Coalition has already begun the interviewing process to choose a Consultant. The primary purpose of the Consultant will be to assemble a data base of prevailing charges in the relevant geographic market area of the Coalition for those DRGs that will be available for coverage in this program. Once this cost information is obtained, the Consultant will analyze and make recommendations to the Association so that the group may consummate economically viable contracts.

The Association anticipates establishing its scheduled rates in the following manner:

- (1) A survey of average historical costs for various procedures will be conducted at approximately sixty-five (65) health care facilities in the Coalition's relevant geographical market area;
- (2) This cost information obtained by the survey would be combined, without specific facility identification, with input from the Providers to allow a schedule of reimbursement rates to be developed;
- (3) The reimbursement rates will be distributed to Providers so they may determine whether to contract with the Association; and
- (4) The Coalition anticipates that the reimbursement rates would approximate current Provider rates and, further, that the rates, once established, would be effective for a one year period, and adjusted annually thereafter.

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The health care facilities' respective data will be held confidential and no Provider will have access to the data submitted by any other Provider.

Legal Background

Generally, group purchasing organizations of this type have been deemed pro-competitive and have withstood complaints levied by those who have not joined such groups. In addition, the courts have generally held that organizations that offer quality health care services at a cost effective price are pro-competitive and have not raised a concern in the antitrust area. The purpose behind the proposed Association is to merge these two ideas so that the employees and dependents of the members associated with the Association have the opportunity to enjoy quality health care services they may not ordinarily receive at cost-effective prices.

The qualifying conditions under which the Association would be created without violation of the antitrust laws are as follows:

1. The Association would not account for so large a portion of the purchase of the relevant goods or services in the industry so as to create a power of monopsony in the Association (i.e., that the Association will not be in a position to force others to agree to the rates below competitive levels). Generally, to insure that monopsony power does not exist, the total projected volume of the Association must be less than thirty-five percent (35%) of the available competitive activity within that area or industry. It is anticipated that the employees and dependents of the initial members of the Association would constitute .69% of the 1.6 million people who comprise the of the working population in the relevant geographic market area if all forty-eight (48) corporate members in the Coalition became members in the Association.
2. The Association will not facilitate collusion resulting in price fixing or otherwise the reducing of competition among its members, especially in an association comprised of members in which some ordinarily may be direct horizontal competitors.

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3. Communications of competitive and sensitive information between the Association and individual members will be kept confidential and not shared with other members.
4. The Association will have no control over its members' design, implementation or operation of their respective benefit packages, and each member will retain the unilateral right to negotiate its own agreements with the Providers.

The Association intends to structure its proposed activities to conform squarely within these guidelines.

The Coalition anticipates that the Association would not be responsible for the payment of health care provider claims, but that such payments would be made directly by the members.

The health care providers who choose to contract with the Association would agree for a period of one (1) year to accept as total reimbursement a predetermined charge per procedure for each enrollee of a member of the Association to whom it provides services based upon the DRG performed. Due to the fact no members of the Association whose primary business activities encompass the providing of health care services will be allowed to establish reimbursement rates, no antitrust concern should arise with respect to the dissemination of health care cost information to members or other activities related to this program.

The following are material facts supporting the contention that the intended activity will not result in depressed competition within the health care industry ("monopsony power"):

1. The approximate number of corporate members of the Association is forty-eight (48) companies; this number represents less than one percent (1%) of the impacted group within the relevant geographical market area as a whole.

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2. The corporate membership of the Association, while projected to be twenty-five (25), constitutes even a smaller number of the entire employee population in the relevant geographical market area.
3. To insure that monopsony power does not exist, in accordance with the guidelines offered by the Department of Justice, the total projected volume of the Association will be less than thirty-five percent (35%) of available health care services capacity in the relevant geographical market area.
4. All members and Providers will be able to independently contract with each other even though there is an Agreement executed between the Provider and the Association.

Conclusion

In view of the above discussion and analysis, it is hereby submitted that the proposed activities of the Association meet all of the antitrust concerns of the Department of Justice. It is, therefore, respectfully requested that the Department of Justice issue a statement of its present intention not to seek enforcement action to enjoin the proposed activities of the proposed Association, and that the Coalition may proceed with the formation and operation of the proposed Association.

Very truly yours,

GODWIN & CARLTON, P.C.

By: 
Andrew N. Meyercord

cc: Ralph T. Smith, Jr.