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February 9, 1994

Assistant Attorney General
Antitrust Division
United States Department of Justice
10th and Constitution Avenue N.W.
Washington, D.C. 20530

In re: Expedited Business Review Approval Request
Collaborative Provider Organization, Inc.

Ladies and Gentlemen:

Pursuant to the Department of Justice's Expedited Business Review Procedure announced on December 1, 1992 (58 Fed. Reg. 6132 (1993)), our law firm is requesting the Department's review of an Iowa non-profit corporation's anticipated activities in the area of health care. This request is made pursuant to the Expedited Review Procedure and 28 CFR §50.6. Our request is made upon the basis of the best information known to date and upon reasonable estimates of future activity. Where possible, the proposed entity will implement any suggested modifications which address any antitrust concerns of the Department.

We verify that this Expedited Business Review procedure has been invoked in good faith and we have made a diligent search for documents and information required to be submitted pursuant to 28 CFR §50.6 and, where possible, have provided complete disclosure of all responsive material.

1. Name; Address.

The name of the proposed entity is "Collaborative Provider Organization, Inc." The principal place of business would be Des Moines, Iowa. Collaborative Provider Organization, Inc. (hereinafter referred to as "C.P.O.") would be an Iowa non-profit organization organized under the Iowa Non-Profit Corporation Act (Chapter 504A of the Iowa Code, 1993). There would be no shareholders of the corporation; however, as permitted by the Iowa Non-Profit Corporation Act, there would be corporation members. No dividends or profits would be distributed to Members. Member classifications would be as follows:

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A. Class A Members. Class A Members would be limited to allopathic (M.D.) and osteopathic (D.O.) physicians meeting all of the following qualifications: (1) the physician shall hold an unrestricted Iowa medical license; (2) the physician shall be a member in good standing on the medical staff of an acute care hospital in the State of Iowa; (3) the physician shall have current and unrestricted Federal (D.E.A.) and State of Iowa Narcotic Registrations; and (4) the physician shall be in the active medical practice in the State of Iowa, either full-time or part-time.

B. Class B Members. Class B Members would be limited to acute care hospitals in the State of Iowa which are duly licensed by the State and are accredited by either the Committee of the Joint Commission on the Accreditation of Hospitals Organization (J.C.A.H.O) or the American Osteopathic Association (A.O.A.) or which are State certified for Medicare.

2. Persons Expected to Participate.

The Class A Members of the C.P.O. who are expected to participate in the venture would be approximately one hundred seventy (170) physicians in specialties as set forth on Exhibit "A" attached hereto. The Class B Members which are expected to participate are Des Moines General Hospital, a duly licensed 226 bed hospital located at 603 East 12th Street, Des Moines, Iowa (the "Founding Class B Member"), as well as possibly two or three small rural hospitals.

Class A Members would be required initially to file an Application Fee of One Hundred Fifty Dollars (\$150). Annual Membership Fees would be established by resolution of the governing board. Class B Members would pay an initial Application Fee of One Thousand Dollars (\$1,000) and thereafter an Annual Fee which in the aggregate for all Class B Members would equal the total fees paid by Class A Members. The Class B Annual Fees would be prorated among Members based on gross revenue attributable to all Class B hospital inpatient and outpatient care regardless of source.

The Class A Members would provide health care to the public in the form of professional services. The Class B Members would provide health care services to the public, primarily in the area of inpatient and outpatient hospitalization care.

3. Objectives of the Venture.

The objectives of the proposed venture would be as follows:

A. To create a health care provider organization with a substantial emphasis on primary care physicians. The term "primary care physicians" shall mean physicians specializing in and holding themselves out to the public as practicing predominantly in the areas of family practice, general practice, general internal medicine, as well as general pediatrics.

B. To contract or subcontract with other entities such as insurance companies, employers, Accountable Health Plans (A.H.P.s) and other groups for the furnishing of health care services. The C.P.O., with the assistance of a third party administrator, would negotiate with these organizations for the furnishing of these health care services.

C. Although the C.P.O. would initially be limited to contracting on behalf of C.P.O. Members for health care services, the C.P.O. may in the future establish a management service organization or other integrated delivery system such as an Accountable Health Plan (A.H.P.).

D. The C.P.O. would also actively seek to protect the rights of patients to choose their own physicians and hospitals.

E. The C.P.O. would help physicians and hospitals from being unfairly eliminated or locked out of health care markets by other competitors.

F. The C.P.O. would assist health care providers in furnishing high quality, cost-effective and competitive health services within the State of Iowa. This would be accomplished, in part, through the services of a Third Party Administrator, a Utilization Management Committee, a Quality Management Committee and a Credentials Committee.

G. The C.P.O. would offer a mechanism for physicians and hospitals to act as partners in creating structures of managed care and providing for risk sharing.

H. The C.P.O. would offer the opportunity for physicians and hospitals to interact directly with local businesses and employers to offer "bundled" sets of medical and surgical services under a simplified and unified bill.

I. The C.P.O. would offer the ability for physicians and hospitals to deal directly, constructively and efficiently with other managed-care entities.

As discussed above, the C.P.O. would have a definite primary care gate keeper emphasis consistent with trends throughout the United States as well as President Clinton's proposed Health Security Plan and other legislation pending in Congress. The C.P.O., however, would not exclude non-primary care providers.

The geographical market for the C.P.O. is anticipated to be the following counties within the State of Iowa: Polk, Story, Boone, Jasper, Dallas, Warren, Adair, Appanoose, Clarke, Davis, Decatur, Greene, Guthrie, Lucas, Madison, Mahaska, Marion, Marshall, Monroe, Poweshiek, Ringgold, Tama, Union, Wapello and Wayne counties. A map showing the market area is attached hereto as Exhibit "B".

Although interest has been expressed by additional health care providers such as psychologists, chiropractors, podiatrists and physical therapists, the C.P.O. will narrow its focus and concentrate its efforts at the present time in the areas of allopathic and osteopathic physicians as well as hospitals.

Membership in any particular class would generally be denied to a prospective member if the C.P.O. at the time of the Member's application determines, upon consultation with legal counsel, that granting membership would create antitrust or anticompetitive risk.

4. Products or Services.

The C.P.O. would not manufacture products but would assist health care providers in furnishing high-quality, cost-effective and competitive health services in the State of Iowa. The services rendered by the C.P.O. would consist of contracting on behalf of Members for either discounted fee for services or for a capitated fee structure which the

C.P.O. hopes will be more competitive and more cost effective than other competing health care providers. As discussed above, the C.P.O. could possibly in the future establish a more integrated delivery system, such as an Accountable Health Plan (A.H.P.) or even a Health Maintenance Organization (H.M.O.).

5. Extent to Which Members in the C.P.O. Currently Market Services.

Each prospective member in the C.P.O. presently negotiates their own individual contracts with insurance companies, employers and other organizations. Upon implementation of the C.P.O., the contracting would be done by the C.P.O. with the assistance of a third party administrator, thus allowing for greater efficiency and reducing repetitive contract discussions with multiple parties. Members of the C.P.O. will not have to spend considerable time in negotiating contracts individually which will, in turn, allow the health care provider to devote more time to delivery of health care. This should also simplify matters for the consumer (employers, insurance companies, etc.).

6. The Identity and Competitive Significance of Persons Who Participate in the Relevant Product and Geographical Market.

In the relevant market area defined above in paragraph 3 there are a total of approximately 1,428 osteopathic and allopathic physicians and 28 hospitals. Of the physicians in the relevant market, approximately 677 are primary care physicians (as defined under the C.P.O. proposed structure). The C.P.O. reasonably anticipates that no more than thirty percent (30%) of the primary care physicians in the relevant market would join the proposed C.P.O. At the present time thirteen percent (13%) of the primary care physicians in the relevant market have formally expressed an interest in C.P.O. membership. A breakdown of each specialty is shown in the attached Exhibit "A".

The relevant market area is highly competitive regarding health care, especially in the greater Des Moines, Polk County area. Within Polk County there are the following hospitals:

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<u>Name</u>	<u>Licensed Beds</u>
A. Broadlawns Medical Center	173
B. Des Moines General Hospital	226
C. Iowa Lutheran Hospital	343
D. Iowa Methodist Medical Center	710
E. Mercy Hospital Medical Center	555
F. Veterans Administration Hospital	155
G. Mercy Franklin Hospital	118

Two of the above hospitals (Methodist and Lutheran) have merged effective November 22, 1993 under a new corporate structure known as "Iowa Health System." Mercy Hospital has recently announced the acquisition of Mercy Franklin Hospital.

Descriptions of existing or proposed organized delivery systems, Accountable Health Plans or other similar ventures in the relevant market area are set forth in the attached Exhibit "C", which is an excerpt from the October, 1993 Edition of **Focus on Health Care** published by the Iowa Hospital Education and Research Foundation.

7. Restrictions on Ability of Participants to Compete With the Venture.

As can be seen by the attached Articles of Incorporation as well as the proposed By-Laws of the C.P.O. (Exhibits "D" and "E" attached hereto), the C.P.O. is non-exclusive and there is no limitation on the ability of any Member to join other organizations or other competing entities. Paragraph F of Article IV of the proposed By-Laws provides:

"Application or approval for membership in the corporation shall not prevent any person or entity within any class of membership from participating in any preferred provider organizations, physician hospital organizations, organized delivery systems, independent practice associations, or other health care provider organizations or any other contractual relationship in addition to the corporation."

Paragraph B of Article IV provides that:

"...a Member may elect not to participate in any contract if, within ten (10) business days of the Member's receipt of a copy of such contract, the Member sends a written notice to the corporation, by certified mail, return receipt requested, of the Member's election not to participate in the contract."

8. Restrictions on the Flow of Information From the
Venture to Its Members.

Section 3 of Article VIII of the proposed C.P.O.
By-Laws provides as follows:

"The Board shall have the authority to retain a Third Party Administrator (T.P.A.) to create a data base, prepare statistical analyses and furnish recommendations to enable the corporation to negotiate contracts for health care and to help carry out the purposes for which the corporation was formed, all consistent with Antitrust Laws and other applicable Federal and State laws. All information obtained by the T.P.A. shall be proprietary and confidential. As a condition of membership, each Member covenants and agrees that, except for the final statistical analysis and recommendations of the T.P.A., no Member shall have access to any disaggregated information held by the T.P.A. or any accounting firm, actuary or research firms providing services to the T.P.A."

Paragraph G of Article IV provides as follows:

"No Member shall have access to another Member's patient fee or pricing information or other financial information, including, but not limited to, salary and fringe benefits for associates or employees. Furthermore, no Member shall have access to any data or information gathered by a Third Party Administrator (T.P.A.) as described below in Article VIII, Section 3."

9. Ten Largest Customers (Projected) for Services to be Offered by the Venture.

The C.P.O. will either (i) coordinate the offering of health care services to small and medium-sized employers and companies having 25-50 employees or to subcontract with the two presently identified Accountable Health Care Plans (A.H.P.s) established separately by Iowa Methodist Medical Center and Mercy Hospital Medical Center; or (ii) the C.P.O. may in the future create a third A.H.P. in the market and coordinate the offering of services to small and medium sized employers and companies having 25-50 employees. If a third AHP is established by the C.P.O., marketing would be done primarily through independent insurance agents as well as offering the health care services directly to employers in conjunction with one or more tertiary care hospitals. The annual purchases of the C.P.O.'s services is unknown at this time.

The proposed C.P.O. has not yet retained the services of a Third Party Administrator, actuary, consultant, or management company. Therefore, it is very difficult to project financial costs in connection with the venture. The founding Class B Member, Des Moines General Hospital, has recently implemented a Preferred Provider Organization for its employees which offers some insight into the financial aspects of health care organizations in general terms.

The Des Moines General Hospital Preferred Provider Organization (P.P.O) has 535 persons who are covered, including dependents of employees. The P.P.O. is administered by Benefits Administration of America, Inc., which charges an administrative fee of approximately \$14,000 per month. Claims paid by the Hospital for participants average approximately \$86,000 per month. These costs, however, are not entirely typical of all employee groups in the market area. Employees of hospitals, and their dependents, tend to be high health care utilizers. It has been projected that health care employees and their dependents will utilize health care services 25%-30% more than other comparable non-health care employee groups.

10. Requirements for Entry Into Any Relevant Product or Geographic Market and the Identity of Persons Believed to be Positioned to Enter Into the Market.

The key to the operation of the proposed C.P.O. will be a sound base of primary care physicians serving in a gate keeper role supported by non-primary care specialists. In addition, primary care hospitals will be an important factor as well as a contractual relationship for services with tertiary hospitals in the greater Des Moines area. It is also anticipated that there will be several rural community hospitals seeking membership which will also help the C.P.O. serve rural areas of Iowa. Knoxville Community Hospital in Marion County and Lucas County Hospital have both expressed an interest in joining the C.P.O.

11. Business Efficiencies That are Likely to Flow From the Venture.

Business efficiencies of the C.P.O. would include the following:

A. Each physician member will be relieved of the burden of dealing with provider contracts individually. The C.P.O. will perform this service with the assistance of a Third Party Administrator.

B. Through the assistance of a Third Party Administrator, the C.P.O. can perform services more efficiently and in a more businesslike manner. Many of the prospective C.P.O. Members do not have the level of expertise or time necessary to cope with the myriad of provider contracts being negotiated or offered in the relevant market area. Many prospective members are sole practitioners or are in small practice groups isolated in rural areas.

C. The C.P.O., through the assistance of the Third Party Administrator and other consultants, will track clinical outcomes and be able to more efficiently and economically provide appropriate health care services.

D. The C.P.O., through the committee structures and Third Party Administrator and other consultants, will manage resource utilization and help reduce unnecessary services and help enhance quality care.

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E. The C.P.O. would review the credentials of all Members. A committee of C.P.O. Members would be established for this purpose.

F. The C.P.O. would help ensure that a patient would have a choice of their own physician and would be able to stay with that physician during the course of treatment where possible. By reducing referrals to other physicians or other groups, where medically appropriate, the C.P.O. hopes to eliminate unnecessary services and thus reduce costs.

12. All Documents Reflecting the Formation of the Venture.

Attached to this letter as Exhibits "D" and "E" are the following:

A. Articles of Incorporation of Collaborative Provider Organization, Inc. These Articles were filed with the Iowa Secretary of State on November 30, 1993. Although the Articles have been filed, the organization has not formally been organized and no officers have been selected and no persons have been accepted for membership in the organization. The initial Board of Directors established in the Articles of Incorporation has met and has authorized the Request for Expedited Business Review as contained in this letter.

B. Proposed By-Laws of the Organization. The By-Laws are in preliminary draft form and have not been adopted. The organization does not anticipate adopting By-Laws until completion of the Expedited Business Review.

13. Documents Concerning the Business Plans or Strategy for the Venture.

The C.P.O. at this time does not have a marketing or business plan other than what has been described in this letter.

14. Documents Prepared Within Two Years Reflecting the Business Plans of Any Venture Participant.

The C.P.O. at this time does not have a marketing or business plan other than what has been described in this letter.

15. Documents Discussing or Relating to Legality or
Illegality Under the Antitrust Laws of the Venture or
Competition or the Price of any Product or Service.

No such documents exist; however, the issue of antitrust has been discussed in the organizational meetings with prospective members and as a result, a decision was made to request an expedited review procedure.

16. Documents Showing the Person or Firms Expected to
Exchange Information.

As previously discussed, paragraph G of Article IV provides that:

"No Member shall have access to another Member's patient fee or pricing information or other financial information, including, but not limited to, salary and fringe benefits for associates or employees. Furthermore, no Member shall have access to any data or information gathered by a Third Party Administrator (T.P.A.) as described below in Article VIII, Section 3."

Section 3 of Article VIII provides that:

"The Board shall have the authority to retain a Third Party Administrator (T.P.A.) to create a data base, prepare statistical analyses and furnish recommendations to enable the corporation to negotiate contracts for health care and to help carry out the purposes for which the corporation was formed, all consistent with antitrust laws and other applicable Federal and State laws. All information obtained by the T.P.A. shall be proprietary and confidential. As a condition of membership, each Member covenants and agrees that, except for the final statistical analysis and recommendations of the T.P.A., no Member shall have access to any disaggregated information held by the T.P.A. or any accounting firm, actuary or research firms providing services to the T.P.A."

17. The Purpose and Objectives of the Information Exchange.

The purpose and objectives of the information exchange involving the Third Party Administrator or other related consultant is to create a data base, prepare statistical analyses and furnish recommendations to enable to C.P.O. to negotiate contracts for health care and to help carry out the purposes for which the corporation was formed. By gathering this information, the Third Party Administrator will be in a position to provide a final statistical analysis and recommendations as to how the C.P.O. and the members can compete more aggressively in the market (e.g. provide health care services at a cost lower than other competitors).

18. The Nature, Type, Timeliness and Specificity of the Information to be obtained.

The Third Party Administrator will assimilate information concerning utilization, quality standards, cost to purchase services, both corporate and individual, fees, charges, and clinical outcomes. The Third Party Administrator will compile this data and compare it with standards for individual persons and potential purchasers of services. Although several potential Third Party Administrators have been identified, no final decision has been made pending the Expedited Business Review.

19. The Method by Which Information Will be Exchanged.

See answers to paragraphs 16, 17 and 18 above.

20. The Characteristics of the Market.

As described above, the market is extremely competitive. In Polk County, Iowa, Iowa Lutheran Hospital and Iowa Methodist Medical Center have merged effective November 22, 1993 to form an organization having the most licensed beds in the central Iowa area. Mercy Hospital recently announced the acquisition of the former Westside Hospital (now known as Mercy Franklin Hospital). Both Iowa Methodist Medical Center and Mercy Hospital Medical Center have announced the formation of Accountable Health Plans and they are actively recruiting physicians to those plans.

Furthermore, there is cross-staffing at hospitals within the greater Des Moines area and it is very common for a physician to have staff privileges at several, if not all, of the area hospitals. Some of these characteristics are described in Exhibit "C", which has previously been mentioned in this letter. Furthermore, managed care organizations (such as HMOs) are increasing their share of the relevant market.

21. The Identity and Competitive Significance of Persons That Participate in the Relevant Market But Will Not Participate in the Information Exchange.

The total number of physicians in the relevant market area is 1,428. Of this number, approximately 677 are primary care physicians. At the present time, approximately fifty-two percent (52%) of the Class A Physician Members of the proposed C.P.O. will be primary care physicians. The balance will be non-primary specialists. The vast majority of physicians in the relevant market area will not be participating in the C.P.O. The assumption is that they already are or will be participating in comparable organizations (whether it be an AHP, HMO, physician hospital organization or other similar entity). These non-member persons would not be participating in the information exchange.

22. The Ten Largest Customers in Any Market That Will be Involved in the Exchange of Information.

No specific companies or customers have been identified by the proposed C.P.O.; however, it is anticipated that small to medium sized employers and companies having 25-50 employees will be the primary emphasis of the C.P.O.

23. Describe All Safeguards That are Planned to Prevent Disclosure of Specific Information to Competitors.

As stated above, the Third Party Administrator will create a data base, prepare statistical analyses and furnish recommendations in a confidential fashion. Except for the final statistical analysis and recommendations, no Member shall have access to any disaggregated information held by the Third Party Administrator or any accounting firm, actuary or research firms providing services. It is anticipated that

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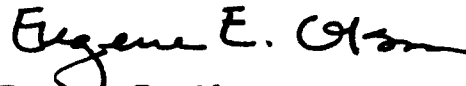
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the C.P.O. would establish rules and regulations prohibiting the disclosure of information to competitors. By the terms of the proposed By-Laws, all Members must abide by the rules and regulations. Furthermore, no Member shall have access to another Member's patient fee or pricing information.

Please contact the undersigned if you have any questions concerning this matter.

Thank you for your consideration.

Very truly yours,



Eugene E. Olson
For the Firm

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Enc.