ANDREWS DAVIS LEGG BIXLER MILSTEN & PRICE
A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELLORS AT LAW

MEMBER OF COMMERCIAL LAW AFFILIATES - AN ASSOCIATION OF LAW FIRMS WORLDWIDE

L. KARLTON MOSTELLER (1895-1966)

JOHN C. ANDREWS
J. EDWARD BARTH
C. TEMPLE BIXLER
JOHN J. BREATHWIT
CHARLES C. CALLAWAY, JR.
GARY S. CHILTON
CAROLYN C. CUMMINS
JAMES F. DAVIS
ALAN C. DURBIN
JOHN F. FISCHER
DON G. HOLLADAY

RICHARD B. KELLS
MONA SALYER LAMBIRD
TIMOTHY M. LARASON
WILLIAM J. LEGG
DOUGLAS C. McBEE
ROBERT B. MILSTEN
ROBERT D. NELON
BABETTE PATTON
MARK H. PRICE
D. JOE ROCKETT
JOSEPH G. SHANNONHOUSE, IV

JAMES W. SHEPHERD
R. BROWN WALLACE
WILLIAM D. WATTS
WILLIAM H. WHITEHILL, JR.

TIMOTHY D. DEGIUSTI
LYNN O. HOLLOMAN
MICHELLE JOHNSON
B. CHRISTOPHER ROOKER

SHELIA D. TIMS

OF COUNSEL
JOSEPH A. BUCKLES, II
KEITH T. CHILDERS
CAROLYN GREGG HILL
LEROY J. PATTON
JOHN P. ROBERTS

500 WEST MAIN
OKLAHOMA CITY 73102-2275
(405) 272-9241
FAX (405) 235-8786
WRITER'S DIRECT DIAL NUMBER

October 27, 1994

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

Dear Ms. Bingaman:

Pursuant to the Department's business review procedure (28 CFR 50.6) and its program announced December 1, 1992, (58 Fed. Reg. 6132 (1993)) to expedite that procedure with respect to certain antitrust issues, we are requesting your review of the proposed formation of an independent practice association and managed care organization by physicians in Oklahoma. We have attached the documents which we believe fully respond to the descriptions contained in the Department's procedures and represent that the information below is provided in good faith to enable the Department to accurately evaluate the proposed joint venture.

1. *The name of the venture, the address of its principal place of business, and its legal form and ownership structure:*

An independent practice association ("IPA") will be formed as a not-for-profit corporation under the name Oklahoma Physicians Network-IPA, Inc. ("OPN").[1] The principal address of the corporation will be 601 N.W. Expressway, Oklahoma City, OK 73118. OPN will be a non-stock corporation whose members will be physicians who practice medicine in Oklahoma. The Directors of OPN will be elected by and from the membership.

[1]The entity was incorporated under the laws of the State of Oklahoma on August 26, 1994. However, OPN does not plan to operate until this review has been completed. Copies of the Articles of Incorporation, Bylaws and the latest draft of the Participating Physicians Agreement are attached as Exhibits 1, 2 and 3, respectively.

Membership in OPN will be available to all physicians licensed to practice medicine in Oklahoma. Members will be required to meet credentialing requirements and maintain quality and utilization standards established by OPN. Further, members will be required to participate in OPN's educational and peer review programs and belong to either the Oklahoma State Medical Association or the Oklahoma Osteopathic Association. Members of OPN will provide medical services to patients covered by managed care contracts obtained by the IPA. The obligations of members will be governed by the Articles of Incorporation and Bylaws as well as the Participating Physician Agreements which each member will be required to sign.

In addition, PROklahoma Care, Inc. is to be formed as an Oklahoma corporation for the purpose of operating a managed care organization ("MCO").[2] The MCO will apply for licensure under Oklahoma's Health Maintenance Organizations Act, Okla. Stat. tit. 63, §§2501-2510 (1991). It is anticipated that the MCO will contract with various hospitals, physicians, physician groups or networks and other providers in Oklahoma in order to service the managed care contracts which it obtains. Initially, PROklahoma intends to contract with OPN for the majority of its required physician services. However, OPN will be free to contract with other managed care organizations and HMO's which compete with PROklahoma or service different segments of the market. OPN will be paid by PROklahoma on a capitated or fixed-fee basis, and it is anticipated that a similar payment structure would be negotiated with other MCO's or health care payers.

PROklahoma will be capitalized with a stock offering initially available only to members of OPN at a minimum participation level of $3,000.00. Oklahoma HMO licensing regulations require a minimum net worth of $750,000.00 for HMO's like PROklahoma. However, PROklahoma financial consultants advise that the minimum level of capitalization necessary for a prudent and viable operation is $6,000,000.00. At this level, approximately 33 percent of licensed

[2]Copies of the Articles of Incorporation, Amended Articles of Incorporation, Bylaws and the most recent draft of the proposed prospectus of PROklahoma Care, Inc. are attached as Exhibits 4, 5, 6 and 7, respectively. PROklahoma Care, Inc., was incorporated on October 12, 1994, but does not plan to operate until this review is complete. The principal address of PROklahoma, Inc. will be 601 N.W. Expressway, Oklahoma City, Oklahoma 73118.

physicians will need to purchase stock to adequately fund PROklahoma.

2. ***The persons or firms expected to participate in the venture and the nature of their contribution:***

It is anticipated that physicians throughout Oklahoma will become stockholders of PROklahoma and members of OPN. Because the IPA is designed to provide statewide coverage, it is likely that more than 30 percent of physicians licensed to practice in Oklahoma will become members. A private consultant has estimated that no less than 35 percent of physicians practicing in Oklahoma will be required to provide the necessary geographic coverage. The same is generally true with respect to any particular specialty because of the need to provide comprehensive medical care as well as complete geographic coverage. As mentioned above, approximately 33 percent participation will be required to adequately capitalize this venture. However, OPN does not intend to contract with more physicians than necessary to provide adequate comprehensive coverage for its medical service contracts.[3]

In addition, PROklahoma will contract with various hospitals throughout the State. The latest draft of the Participating Hospital Agreement is attached as Exhibit 8. It is not anticipated that PROklahoma will contract with more than the number of hospitals necessary to provide complete geographic coverage. However, as a result of various hospital mergers and alliances, it is unclear what limitations will be imposed on PROklahoma's ability

---

[3]While it is anticipated that the membership of OPN will be substantially similar if not identical to the stockholders of PROklahoma, OPN Bylaws (Article 3.02) authorize the Directors to impose additional membership requirements as necessary. The Directors of OPN recognize that an over-inclusive physician network could dilute anticipated economic efficiencies and raise antitrust concerns. Through its antitrust compliance program, OPN intends to monitor and, if necessary, limit the number of participating physicians to achieve the organization's economic goals and insure compliance with State and Federal antitrust laws. Further, the Bylaws of PROklahoma Care address these concerns as well (Article 7.06) and require the formation of an Antitrust Compliance Committee which together with credentialing requirements are designed to achieve the economic efficiency goals of the organization and ensure compliance with the antitrust laws.

to obtain the necessary hospital contracts. Depending on the level of participation from physicians in PROklahoma's stock offering, it may also be necessary to contract with other physicians or physician groups or networks outside of OPN in order to provide comprehensive or statewide coverage.

3. *The purposes and objectives of the venture, together with any limitations on the nature or scope of its activities or operations:*

The purpose of PROklahoma is to form a managed care organization to compete for and obtain health care delivery contracts. Through its contract (Exhibit 9) with an independent management services company ("MSO"), PROklahoma will pay ten percent of collected premiums for administrative fees thereby reducing administrative costs between 10 and 18 percent enabling PROklahoma to compete effectively in the health care financing market. (See also paragraph 4, below).

The purpose of OPN is to form a comprehensive physician network which can provide statewide coverage for the delivery of all physician services. Participation in OPN will be voluntary and non-exclusive. Members of OPN will be free to maintain their current affiliations with existing IPA's, preferred provider organizations ("PPO's"), physician, hospital organizations ("PHO's"), physician organizations ("PO's") and other joint ventures just as they will be free to affiliate with other joint ventures and networks in the future or to continue providing medical services on an independent or individual basis. It is the intent of OPN's Board of Directors, through its antitrust compliance program, to ensure that OPN is non-exclusive both in fact as well as by design.

According to a recent survey, 63 percent of Oklahoma physicians currently have one or more managed care contracts. Membership in OPN will impose no limitation which will affect these contracts. However, an estimated 10 percent of physicians surveyed have indicated they would not participate in a peer review program. This choice would exclude those physicians from OPN in that participation in the IPA's peer review program is mandatory.

OPN will pay participating physicians according to a formula derived from discounted fee-for-service charges, a fee schedule or on some similar basis to be determined by the MSO. Regardless of the distribution method, payments to participating physicians will be subject to a 20 percent "risk pool" deduction established to cover any cost overruns experienced by OPN. On an annual basis, any surplus in the risk pool will be distributed to participating physicians who have met OPN utilization and quality standards.

Administrative and management responsibilities will, for the most part, be provided by the MSO. It is anticipated that the MSO may collect fee information from individual physicians and other sources to develop a database from which the MSO can establish OPN's charges and internal distribution formula. No physician member of OPN will have access to the individual fee information collected or to the MSO's database. When necessary, information will be reported by the MSO in the aggregate. Further, individual physician members of OPN will not be involved with the MSO in determining the fee schedule or prices charged by OPN except to the extent approval by OPN's Directors is required.

Because of the statewide coverage which will be offered, it is anticipated that PROklahoma and OPN will focus on the larger employers and governmental entities, for example, whose employee or plan participant base require broad geographic coverage. At the outset, it is anticipated that all or a significant portion of OPN's income will be derived from its Health Care Services Agreement (Exhibit 10) with PROklahoma.

4. ***The products or services the venture will develop, produce, market or distribute:***

PROklahoma and OPN intend to offer a new product: comprehensive statewide coverage in all medical specialties and disciplines from a single contractual provider for managed care contracts. The quality of services delivered will be maintained through peer review, quality assurance and utilization review programs. (Technological aspects of this product are described in paragraph 11.) The economically beneficial costs of these medical services will be achieved through these programs, financial incentives designed to eliminate unnecessary costs including the fixed fee pricing of OPN's services and PROklahoma's products, and OPN's income distribution and "risk pool" plan. In addition, through its MSO contract, PROklahoma anticipates that at least 50 percent of the overhead and administrative expenses currently experienced by HMO's and indemnity companies operating in Oklahoma can be eliminated. In addition, OPN, by consolidating administrative functions in the IPA and through its affiliation with PROklahoma and the MSO, anticipates efficiencies which will result in lower costs. As a result, OPN and PROklahoma will be able to deliver not only a new product but also high quality health care to Oklahoma consumers at costs below those currently available.

5. ***The extent to which participants in the venture currently develop, produce, market or distribute products or services that will be developed, produced, marketed or distributed by the venture:***

There are approximately 6,000 physicians licensed to practice in Oklahoma, approximately 900 of whom are osteopaths. OPN participants will come from this group, an estimated 63 percent of whom currently participate in other HMO panels, PPO's, IPA's and PHO's. None of these joint ventures currently offers the statewide coverage that OPN will offer. However, the recent formation of several large hospital alliances and their affiliated managed care plans will make available managed care options on a broader geographic basis.

6. ***The identity and competitive significance (described in terms of market shares, capacities, etc.,) of all persons or firms that participate in the relevant product and geographic markets in which the venture will operate:***

The health care financing market, within which PROklahoma will compete, is regional if not national. Within this market, Prudential is the largest health insurance carrier with annual premiums, based on 1993 information, of $147,000,000 and a market share of 7.36 percent. The market share of the five largest insurance carriers is approximately 20 percent. In addition, Blue Cross and Blue Shield's 1993 premiums were approximately $330,000,000, exclusive of Medicare, representing a 16.5 percent market share. Many of these companies provide managed care and preferred provider plans in addition to private health insurance.

There are seven HMO's currently licensed by the State of Oklahoma. (Exhibit 11). According to the Department of Health, two other applications have been completed and are under consideration. Eight to ten other applications have been submitted but not completed. Collectively, the seven operating HMO's have less than an eight percent market share. Pacificare, Bluelinks and MultiMed operated by Blue Cross and Blue Shield have a combined market share of approximately 67 percent of HMO covered lives representing five percent of the total population. Prucare is the fourth largest HMO, and its market share among HMO's is approximately 30 percent. Twenty-six percent of all Oklahomans are covered by or are eligible for Medicare or Medicaid programs, and twenty-one percent are uninsured.

Some HMO's have obtained physician services by contracting with substantial group practices. For example, MultiMed has contracted with the Oklahoma City Clinic P.C., a large multi-specialty clinic, as well as several other group practices in surrounding communities. As a result, MultiMed employs at least 160 physicians in Central Oklahoma. Similarly, Community Care operating in Northeastern Oklahoma plans to contract with 20 physician groups and 187 primary care physicians. Pacificare, the largest HMO in the State, has contracted with the largest group practice organization in Tulsa as well as with numerous group practice organizations and individual physicians in surrounding communities.

In addition to these managed care plans, there are approximately 50 PPO's operating in Oklahoma. Many of these are operated by indemnity companies. However, the largest PPO in the State is operated by the Baptist Hospital group. It is estimated that the market share of PPO's is less than 12 percent. Consequently, the total market share of managed care plans is estimated to be 20 percent. Managed care contracts account for 20 percent of the average physician's patient load for those physicians participating in managed care programs.

There are approximately 150 hospitals in Oklahoma and 15,000 licensed beds. Many hospitals and hospital groups have organized or are organizing PHO's. Members of OPN will be free to continue to participate in these organizations and to join additional organizations in the future. The competitive environment among hospitals in the geographic market is rapidly changing. Through mergers, acquisitions, affiliations and alliances, hospitals are consolidating and this market is becoming significantly more concentrated.

In Oklahoma City, a recent alliance of four hospitals led by Baptist Medical Center brought together over 600 physicians into the Oklahoma Health Alliance LLC. (Journal Record 8/27/94, Exhibit 12). This alliance intends to offer managed health care products to be marketed by the State's largest PPO. Baptist Medical Center recently received public financing to acquire Southwest Medical Center in Oklahoma City and three regional hospitals in Northeastern Oklahoma in addition to those involved in Oklahoma Health Alliance. (Daily Oklahoman 10/12/94, Exhibit 12).

The four Catholic hospitals in Oklahoma City and Tulsa recently formed Oklahoma Community Health Care Alliance which includes 40 of the State's hospitals. (Daily Oklahoman 6/19/94, Exhibit 12). Subsequently, Arrowhead Health Network was formed joining these hospitals and the Columbia/HCA owned Presbyterian Hospital in Oklahoma City and several hospitals in surrounding communities including two communities within 75 miles to the north and to the south. Another hospital alliance includes 14 hospitals in the Oklahoma City metropolitan area. (Journal Record 8/30/94, Exhibit 12).

These hospitals provide numerous managed care plans to Oklahoma health care consumers. In addition, large group practice alternatives are available. As mentioned above, there are large multi-specialty group practices in both of the major metropolitan areas. Further, Physicians, Inc., another managed care organization, was organized and is owned, in part, and controlled by physicians. Through its indemnity company, Access Insurance Co., Physicians Inc. provides an indemnity product to approximately 10,000 enrollees utilizing an estimated 200 physicians in Northeastern Oklahoma.

Competition in this health care financing market is rapidly intensifying. With the exception of Physicians, Inc., traditional health care providers and hospital affiliations dominate this market. It has been estimated that this competitive environment will continue to intensify and that managed care organizations will obtain 50 to 60 percent of the health care financing market within five years. Certainly at the outset and for some time to come, PROklahoma's share of this market will be extremely small, less than one percent (see paragraph 9). Competitive forces from existing managed care providers as well as potential competition from new entrants will preclude the exercise of market power even if PROklahoma's share were to increase substantially.

In the physician service and network markets, OPN must necessarily have in excess of 30 percent of Oklahoma's physicians included in its network for the reasons discussed at pages 3-4. Competition from the substantial number of existing, well established networks will be strong. In addition, the concentration of the hospital service market has enabled hospitals to gain increasing influence and control in their efforts to vertically integrate with existing medical staffs in forming PHO's. Organizers of OPN believe it is important for Oklahoma physicians to have an alternative network in the face of foreclosure by hospital PHO's and similar managed care panels.

7. *Any restrictions on the ability of participants in the venture to compete with the venture, individually or through other entities:*

There will be no restrictions on the ability of OPN members to compete either directly or indirectly with the OPN, neither will OPN be precluded from contracting with MCO's other than PROklahoma. As discussed above, many prospective members of OPN are presently affiliated with existing IPA's, PPO's, PHO's and HMO's. Membership in OPN will not interfere with those existing relationships nor will it preclude other affiliations in the future.

8. *Any restrictions on the flow of information from the venture to its owners:*

As described in paragraph three and in the attached organizational documents, through employment of an MSO, OPN will protect the individual price and similar market information which may be necessarily collected. If required, the MSO will report this information in aggregate form or in a form which will preclude the disclosure of any individual price or similar financial information.

9. *The 10 largest customers (actual or projected) for any products or services that will be offered by the venture in the relevant geographic market and an estimate of their annual purchases:*

As mentioned, OPN intends, at the outset, to contract with PROklahoma. Neither entity is operational, therefore, annual purchases of their proposed products are difficult to estimate. Financial analysts have estimated that PROklahoma will experience negative cash flow for the first 25 months of operation. Another consultant has estimated that to break even, PROklahoma will need approximately 9,200 enrolled members and that this will take over 13 months to accomplish. This represents less than one percent of the total population according to 1993 census figures and just over one and one-half percent of all Oklahomans covered by health insurance or a managed care program.

PROklahoma intends to initially target large employers such as the State of Oklahoma whose employment base extends throughout the State or across broad geographic areas. The annual purchases of these entities is unknown. However, the total market has been estimated to be approximately $200,000,000,000. The State of Oklahoma employs approximately 77,000 individuals and local governments employ another 146,000. Twenty-one percent of the population is uninsured. In addition, marketing efforts will focus on the 75,000 small business employers throughout the State.

10. ***The requirements for entry into any relevant product or geographic market in which the venture will operate, together with the identity of other persons or firms believed to be positioned to enter within one of two years:***

Requirements for entry into the health care financing market are not significant. It is only necessary that a new entrant have sufficient capital and obtain either an HMO license from the Oklahoma Department of Health or an insurance license from the Oklahoma Department of Insurance. No license is required for a PPO. Ease of entry and increased competition is evidenced by the fact that Bluelinks, licensed last year, was the first HMO to apply for licensure since 1985 and another ten to twelve applications are currently pending at the Oklahoma department of Health. The capital resources of PROklahoma's competitors (e.g. Blue Cross and Blue Shield, Prudential and Cigna Insurance Companies, Baptist Health Corporation, the Catholic hospitals and Columbia/HCA) are substantially more significant than those available to PROklahoma through its stock offering. The identity of potential entrants is unknown, although national managed care organizations could easily enter this market as well.

In the physician service and network markets, the requirements of entry are relatively minimal. Legal expenses incurred in forming the joint venture are not substantial. Operational expenses are normally paid from operating income and because only a portion of a member physicians patients are covered by the joint venture, additional capital expenditures are not usually required in order to service the new patients. As discussed above, 20 percent of the average physician's practice is derived from managed care contracts although that number should increase as the market share of all managed care contracts continues to increase in the future. PHO's, PO's, IPA's and other networks are continuously forming and there is no reason to anticipate that this activity will decrease anytime soon. In addition, existing competitors are continually introducing new products. Blue Cross and Blue Shield, for example, is soliciting bids for a new provider network to be offered in early 1995, and it appears that this product will be attractive to health care consumers and successful.

11. ***Any business synergies, efficiencies or other benefits likely to flow from the venture:***

OPN intends to obtain cost savings by combining administrative functions in the MSO independently and together with PROklahoma. The MSO has projected administrative costs to OPN and PROklahoma at 50 percent of the amount incurred by other managed care organizations in Oklahoma. These savings will be used, in part, to reduce the cost of health care services. In addition, health care premiums in Oklahoma have been traditionally high compared to similar markets where health care costs most often exceed costs in this State by as much as 30 percent. Through more appropriate pricing, OPN and PROklahoma intend to reduce the excessive premiums currently being charged.

Further, OPN intends to develop a computer system for patient files which will provide physicians a paperless system for diagnostic and evaluative reports, and instant "on line" access to patient records and related information. Finally, OPN will establish and closely monitor quality assurance, peer review and utilization review programs together with PROklahoma. These programs are designed to deliver the highest quality health care at the most efficient and economic prices. It is anticipated that the educational aspects of these programs will not only enable OPN to deliver high quality, cost effective health care, but also will positively contribute to the overall efficiency of a member's practice outside OPN.

Thank you for your consideration. If you need additional information, please contact me.

Sincerely,

ANDREWS DAVIS LEGG BIXLER
MILSTEN & PRICE

John F Fischer

John F. Fischer

JFF:cls
enclosures