Bureau sfCompetition
FEDERAL TRADE GOMMlSSION
WASHINGTON, 0.8.20%0

August 28, 1986

Cecil M. aeves, Esquire Page, Scrantom, Harris, McGlamry b mapman, B ,C, I043 nird

payment in fu11.41 and not seek any reimbursement from the employee sr beneficiary, atkcr than for any deductibles or copayments provided for under the member's benefits plan.

Asrsrcaciation agrees, among other things, to: negotiate
contracts 808 membership with local employers whereby the Latter agree to include in their health benefits programs incentives for employee% and beneficiaries to use participating physicians; keep the physicians apprised of membership in the Association and require membershemplayees to have appropriate identification of

their coverage; verify coverage of serviees for the physician; and prepare and update a directory of participating physicians for use by members and their employees, me Association also

will establish a utilization review program, "to be performed by an organization or entity selected by the ASSOCIATION," "which s3all seek to avoid unnecessary or unduly costly hospital and medical services while ensuring

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Trade Commission and thus violates

by purchasers of healt3 care eerviees, rather thaa by providers, only observation of the Assaciatisnb operations -- whichr sf

course, may vary over time -- would demonstrate whether or not at any particular time it in fact is medically controlled, mis, therefore, ia not the type of issue that properly can be determined in advance as a matter sf law,

One point af clarification about this issue is in order,
however. me question, as phrased .in your letter, suggests that
the existence of physician control itself amounts to a violation
a(antitrust standards set forth in the Commission" Statement sf
Enforcement Policy, "and thus violates the spirit sf the Sherman
and ePayton Anti-Trust Acts," In the Commissionk sopinion, as
explained in detail in the Statement s.0803 622.32m�(ITj�-0.2385 Tc 16.25 0070.5 610.28

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Ysu have asked whether the Association may contract with the
grauP, PGI, rather than with individual physicianst to
provide mediea rvices to persons covered under the Assseia-
tion" pprogram As explained ?ow, such contracting may
raise serious antitrust concerns.

Tn eonsidering the legality of an agreement between the
Association and PGPI it is necessary first to anahw8313.92 633.5991 T4rh8.399

certain activities of PGT, particularly those relating to
the prices charged by member p%ysieians, may constitute agree-ments that restrain trade, and absent sufficient productive

laws recently was provided in another staff advice letter, to Michael A. Bunsheon, Esquire, a copy of which is enclosed, Antitrust concerns could also be raised if BGI, FJnich has about half of the local area physicians as menibers, were to prohibit or limit its mamSers~psrtieipationin third-party payment programs ~ tkerthan through PGI, Such a prohibition or limitation might prevent other PPO programs unwilling to deal with PG% from entering the market by precluding them from access to local physicians, whose services would be necessary for any auch program*

Assuming Skat PGX" activities did constitute unlawful agreements, the Association, as a result of contracting wfgh PGI,

also could be party to illegal conduct, A purchaser who, by contract OP agreement, facilitates an illegal conspiracy among providers might be viewed as a eo-eonsplrator rather than a

14/ Certain of PG%k activities, such %s its parfo~manccsf utilization review services, appear to be

Antitrust risks also potentially exist with regard to

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effect*, FOP example, your ZjQ ragardfng tTe Xegk~ft~-~+ txe ~sssciationagreeing with the definition of a pre-ferred provider organization, whereby the Association would not contract with any individual physicians or PPO consisting of-%esa than five *ysleians, references an area of antitrust concerns, me ~sssciatianitself may lawfully decide that it is in ita awn best interest not to contract witk individual physicians or small

groups, but rather to require that any "preferred provider organization" with k4ki~kit e~ntrastsbe comprised of at Peast

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several questions raised in your
essentially the same general question: *at are the limitations fmpaed by the antitrust 1 the activities of an organization like the Association thae is a ca&inatiaw sf purchasersp w%tk respect 'to its ability to Limit with whom, or " see the terms under w%%eh, it will con t. with physicians to provide services under the PPO program.

organizations of gurehasers, such as cooperative buying asgaeiatians, can serve legitimate, procompetitive purposes and, *-many eases, may be expected ts facilitate rather than to impair eomgetition. For example, such arrangements may allow the
to benefit from ccsnamies of scale in their
purchases, facilitate di-s~ernLd~-tron- of-fatemat IBn BB
aEad or s~wicesor -prod 59i

urchasers af medical services, no more than 14-4s of the area*s pulation, appears to preclude the possibility that the
has or could obtain market power, the Association
should be aware of the potential application of the antitrust laws to its act%vftios should it Ian of operation change so that it did obtain market power, However, absent such market pwerl or an antieompetitive puapose, the Association generally - may decide which providers or categories sf providers it chooses $0 ~~ntdd~t with, and on w3at terms, without raising antitrust concerns, mis w~uPflinclude the freedom to contract with PGL or individual physicians, or with both (except to the extent that

such contracting is part of an anticompetitive provider conspiracy, as discussed above), and the Association would be

permitted to contract on different terms with different categories of providers.

This letter sets out the views of the staff of the Bureau of Competition, as authorized by the Csmmissisnb rules, ft has not been reviewed or approved by the Commission, As the Comission8e Rules (5 1.3(c)) explain, the staff" advice is rendered "without prejudice to the right of the Commission Patem to rescind the advice and, where appropriate, to commence an enforeemens proceeding - "

Sincerely,

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M, Elizabeth Gee
Assistant Diedi07 Tm�(Gee)Tj�-22m�(adv90 11.75 142