UNITED STATESOF AMERICA
FEDERAL TMDE COMMISSION WASHINGTON, B.C. a980

March 25, 1988

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Dear Ms. Dowzisr

This Better responds to your reqsaest for an advisoq opinion1 concerning the legality under the antitrust laws of a

proposal by your client, Xntsacorp, to use a relative value schedule (RVS) developed by a physician group, along with conversion factors developed by Tntracoq, in providing a medical provider bill review service for third-party payers and eeli-insured employers. As is explained below, it does not appax

that Intracasp" suse of an RVS in the manner dis ussed in your letters is likely to violate the antitmst laws,'i
Iwtaacsrp engages in the bueihess of providing medical cost contaiment sesviees to third-party ahinistrators and self-insured employers throughout the United States. Among other semices, Intracorp provides a medical provider bill review service that gives advice to payors as to whether charges a

substantial or novel question of fact or law that has no clear Comission or court precedent; a proposed merger or acqisition is involved; or the matter is of significant public interest.
16 C.F,R, Sl*l(a), Because, as is discussed below, the

Comissisn has addressed the major issues raised by your recquest in other advisoq opinions, we have prepared a staff opinion letter pursuant to Section P,L(B) of the Conunission" Rules of

Practice. 16 C.F,R. Sl.l(b).

This advisory opinion is based on the facts set out in
your letters of August 17 and September 10, 1983, and Februaq 9, 1988, Tkis opinion is limited to the proposed progrm described in your letters and does not constitute approval for actions that are.different from those described, or for those not specified,

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Currently, Xntracoq collect8 a smmple sf medical provider bills and uses them to set the UCR mount for each procedure by

region within a state, Inteacoq devisee a single ~Lawdardof reasonableness for each procedure in each geographic area. However, a. customer may instmet Intracorp single

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The principal concern expressed by the Comfseion about relative value schedules has hen that WVSs developed and p&lished by a physician group could be used to faellitate an agreement mong the group" seders LQ adjllere to the RVS in charging for their senices or to use the RVS La collective negotiations with third-party payers hut the mounts Lo h paid to he physicians, This concern is not present when a third-party payer or its agent uses an RVS, ewn one developd by a physician group, to detemine unilaterally the mounts it will

pay far cove ed senices rendered to baeficfamies of the payer8s health plan*f order), The Department sf -stice also challenged promulgat%on sf RVSs by medical societies as illegal price fixing In violation

of the Sheman Act in three proceedings, A consent decree was obtained in two of the cases, United States v. Illinois Padiatq SocVy, Zne., 1977-2 Trade Cae, (CCW) 961,967 (N,D. %In, 1977)

(consent decree); United States v. Almeda County Veterlnraq Medical Ass%# 1977-2 Trade Cas. (CCH) 361,738 (N.De Ca%, 1977) (consent decree), In a third ease, a federal district court held

$hat an RVS did not violate the antitnst lawe, United States v. merican Soc" of Araesth~fiiologist~~ Xnc., 4"3 PF.Supp. 147 (S.D.N.Y. 1979).

Of esuase, a thlPd pasty" svaluntaq use of an WVS does
not remove the antitrust issues that arise from a pkgaician group" development sf an RVS, either independently or at the rewest of a third party.

Homver, physician developed RVSB may have some

drawbacks even for a third-party payor who decides independently to use them. For exmple, physicians who know that a particular

RVS is

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A third-party payer may deternine unilaterally the mounts
it will pay for covered medical senices, Antitsuet issues are raised only if it enters into prohibited price-related agreements with physician groups om with other third-party payers, The orders entered by the commission in the RVS cases do not in any way restrict third parties-use of relatBve value schedules. Moreover, the Comissisn made clear in an advisoq opinion letter ts the Aasleriean Society sf Internal Bedicine that an agreement in

restraint of trade does not result from a third-party payer8s unilateral decision tg adopt an RVS as the basis for its

ursement system, Therefore, a decision by Xntracsq,
acting as agent for a third-party payer, to adstitute a fee screen based on an RVS for a UCR screen based solely on

historical charges for particular procedures does not, etanding alone, apwar to raise antitmst issues*

A separate issued to h considered is whether Intracoqes providing identical advice to several third-party pagers pees

aq danger to competition msng the third-party payers, The Csmission has stated that agreements btween individual medical

care providers and an independent intemediaq acting as agent for third-party-payers about the prices to be charged by the

providers to the third-parties did not violate the antitrust laws, where there were ws agreement8 mong the third garti s
concerning %As prices to b paid for health care services.8
However, antitrust issues could be raised If Intracoqfa
customers agreed antong themeel es to accept fnlracoq" UCR
levels as their papent rates,8

There does not appar to be a substantial danger that
Intracoq" apntitr activities will

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compting third-party payers, These is no indication that 1ntraeo;lPg" customers have agreed msng themselves to adopt Lntraesq" fee levels. In addition, Tntracorp" suetomems do not necessarily use the sme price screens, since they are under no obligation to adopt Intracorg" seeomended fee levels and a

customer may ask Tntracorp to use a separate fee sereen set by it,
The &ve Legal advice is that of the staff sf the Bureau sf Comptition only, Under Section 1,3(c) oh the Csmissisn" Rules of PracLice, the Comission is not bound by this advice and resemes the right to rescind it at a later the,

We are placf~gcopies of your recguest and this respn~eon
the public record pursuant to Section 1-4 of the Comiasion*~ Rules of Practice,
Yours tm%yI

M, ~~laageth me
Assistant Director

Enclosures