
Although important steps have been taken, it appears that Brown & Toland's proposed integration plan is not fully operational at this time. We plan, therefore, to review closely Brown & Toland's compliance with the Order, as it implements the PPO product and undertakes any joint contract negotiations for that product, to assure that such implementation ultimately supports the need for joint negotiations. As part of that review, we request that Brown & Toland submit, 180 days from the date it begins to negotiate with payors for its PPO product as well as with its required annual compliance reports, those documents related to PPO physician service utilization review and enforcement of guidelines/protocols and benchmarks, as described at pages 7 through 13 of Brown & Toland's June 17, 2004 submission. Unless otherwise agreed to, that information should be provided as requested in the attachment to this letter.

Your submissions do not constitute a request for advice, either from the Commission or from the Commission's staff. Accordingly, and as provided by Paragraph IV(C) of the Order, Brown & Toland may not construe from the Commission's receipt of Brown & Toland's notification, or from the Commission's failure to initiate an enforcement proceeding, that the Commission has determined that subsequent negotiations would not violate any provision of the Order, or otherwise would not violate any law that the Commission enforces. The Commission will not be precluded from instituting appropriate action should it subsequently appear that the information provided is inaccurate or incomplete. In addition, the Commission may at any time reconsider or rescind its determination should it subsequently appear that such information is inaccurate or incomplete, or if Brown & Toland has taken action in violation of the terms of the Order, or of any law the Commission enforces. We shall, of course, timely notify Brown & Toland if, at any time in the future, we determine, upon compliance review or otherwise, that Brown & Toland's PPO product, or its behavior in marketing that product to payors, raise concerns either under the Order or under any law that the Commission enforces.

Sincerely,

Daniel P. Ducore
Assistant Director

David R. Pender
Acting Assistant Director

Attachment

Document and Data Request

1. All analyses of services provided by Brown & Toland PPO network physicians, as discussed at pages 9-12 of its June 17, 2004 submission, including, but not limited to, analyses of PPO network physicians' utilization practices (e.g., measurements prepared by the Utilization Management Department referred to at page 9), analyses of physicians' care across practice areas, coding patterns, referral patterns of primary care physicians, whether a physician appears to be under-serving his or her patient population, trends in ancillary costs, comparisons of a physician's delivery of care for HMO patients to PPO patients, PPO utilization reports, PPO E&M reports, report cards that compare physician performance against benchmarks and guidelines/protocols.
2. All similar analyses of Brown & Toland HMO network physician services.
3. For each physician, separately for PPO and HMO services, provide data on utilization indicators tracked, including number of patients seen, referral practices, average cost per referral, PCP average cost per patient/average cost per episode of care, hospital length of stay, coding patterns, overall network evaluations, evaluations by specialty, evaluations by physician group practices, evaluations compared to protocols, evaluations by benchmarks and evaluations by peer groups. Provide the data set in Excel format (consistent with Brown & Toland's data submission of March 25, 2005) or other mutually agreeable electronic format. Each observation should contain fields for physician, specialty, HMO/PPO indicator, year, indicators (multiple).