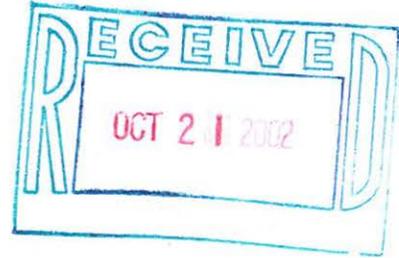


October 18, 2002

Client-Matter: 24698-030

VIA FEDERAL EXPRESS

Donald Clark
Secretary, Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room H177
Washington, D.C. 20580



Re: Staff Advisory Letter Request

Dear Mr. Clark:

This request for a staff advisory letter is submitted on behalf of six county medical societies located in adjacent counties in or near the San Francisco Bay area of Northern California.¹ These societies propose to create a messenger-model physician network, tentatively named Bay Area Preferred Providers ("BAPP"). This request is submitted pursuant to 16 CFR §1.1 and with reference to the August, 1996 Statements of Antitrust Enforcement Policy in Healthcare, Statement No. 8.

BACKGROUND

Numerous physician networks seeking to serve portions of Northern California have failed during recent years.² These were typically delegated model IPAs accepting capitation, and discovering too late that their costs exceeded their revenues. As a result of the disappearance of these IPAs from the market, portions of Northern California appear to be underserved by physician networks adequate to offer sufficient contracting opportunities for physicians seeking to participate in managed care arrangements.

The sponsors of BAPP have concluded that a messenger-model network with geographic coverage co-extensive with the seven counties represented by the sponsors (possibly adding Santa Clara as well) may create efficiencies for the payors that access the market through this network and may create contracting opportunities for physicians who choose to participate.

¹ Alameda-Contra Costa, San Mateo, San Francisco, Sonoma, Napa and Solano.

² See Exhibit A, attached.

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STRUCTURE AND OPERATION

The sponsors propose to organize BAPP as a California nonprofit mutual benefit corporation. Each sponsor will elect two directors and physician participation in BAPP will be entirely non-exclusive. The physician members of each sponsoring society will be invited to participate, and participating physicians will be required to provide funding for BAPP through application fees and periodic assessments as necessary to cover costs. BAPP will credential its participating physicians consistent with standards established by the National Committee on Quality Assurance, saving payors and providers the cost and time inherent in re-credentialing.

BAPP will function as a traditional messenger-model network. It will employ an individual who will serve as an agent or "messenger". This person will not be permitted to attempt to negotiate or otherwise influence pricing of services. BAPP will solicit minimum acceptable reimbursement levels from individual physicians or fully-merged physician groups. BAPP will develop a fee schedule depicting numbers of physicians offering to contract at different pricing levels. BAPP will maintain the confidentiality of this information with respect to the participating providers, and communicate the information to payors. BAPP will be authorized to bind participating providers to contracts at or above their minimum acceptable rates.

BAPP will communicate to the participating providers each payor offer. Contracts will be administered by BAPP only when 50% or more of the participating providers accept offers from a given payor. With the consent of the payor in question, BAPP members will be given the opportunity to opt in to BAPP contracts that they initially rejected. Where less than 50% of the participating providers accept the offer of a given payor, BAPP will distribute the proposed contract to all BAPP providers, allowing the payor to seek to negotiate arrangements with individual providers or groups independently of BAPP.

Information may be communicated by BAPP to participating providers about a given contract when requested, but any such information will be limited to objective information about specific contract terms. BAPP will make no recommendations encouraging or discouraging participating providers from accepting the terms of a given contract.

ANTICIPATED PARTICIPATION

Attached as Exhibit B is a chart setting forth the number of active practicing physicians within each of the counties covered by the BAPP sponsors, the number of actively practicing physicians who are members of each such sponsor, and the number of physicians currently expected to participate in BAPP from each such county. The anticipated level of participation is derived from internal polling by each of the sponsors, and does not represent a firm commitment

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to participate by those responding affirmatively, nor a firm commitment not to participate by those responding in the negative. It is, however, believed to be a reasonably reliable prediction of the level of participation. Although membership in each of the sponsoring societies is open to all physicians practicing within the county in question, the chart also indicates that total participation in county medical societies is generally not high, particularly in the larger counties.

The sponsoring societies have concluded that there are no geographic regions within their respective counties and no medical specialties that have disproportionately high representation or are likely to achieve participation rates significantly different from the county as a whole.

CONCLUSION

The sponsors of BAPP are aware that the messenger model does not lend itself to placement within the antitrust safety zone set forth in Statement No. 8 of the Statements of Antitrust Enforcement Policy in Healthcare. Nevertheless, they believe that a review of the market conditions as described above (which they believe are readily verifiable) and the business plan for BAPP as it currently exists, leads to the conclusion that BAPP has the potential to create a valuable addition to the healthcare market place in the greater San Francisco Bay area. The sponsors are also aware that their status as county medical societies may cause some level of concern over the possible influence which they may have over the participating physicians. The sponsors submit, however, that the business plan for BAPP as described herein creates reasonable protection against any material anti-competitive risk.

The sponsors request a staff advisory letter, to confirm that staff perceives no inherent violation of the Federal Trade Commission Act in the structure, sponsorship or operations of BAPP as described above.

Sincerely,



Martin J. Thompson

cc: Health Care Division

MJT:laj