



DEPARTMENT OF JUSTICE

Antitrust Division

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August 15, 1996

James W. Teevans, Esquire
Rosenberg & Associates
30 Railroad Avenue
Suite 4
Point Richmond, California 94801

Dear Mr. Teevans:

This letter responds to your request on behalf of Sierra CommCare, Inc. ("Sierra") for the issuance of a business review letter under the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6, as revised in your most recent letter of July 31, 1996. Sierra proposes forming a health care provider network that will utilize the "messenger model" for contracting with HMOs, other health insurance carriers and self-insured employers as described in Statement 9 of the Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust, issued by the Department of Justice and the Federal Trade Commission on September 27, 1994 ("Statements"), pp. 94-96. Based on the information you have provided and our investigation, the Department has no present intention to challenge under the antitrust laws Sierra's proposed network.

The expected participants in Sierra are (1) Ridgecrest Community Hospital ("RCH"), an 80-bed general acute care hospital in Ridgecrest, California; (2) Drummond Medical Group ("Drummond"), a professional corporation in Ridgecrest, which has as members 18 doctors in various specialties including family practice, pediatrics and internal medicine; (3) Sierra Medical Group ("SMG"), a recently-formed professional corporation in Ridgecrest, which has as members two pediatricians and two family practice physicians; and (4) Dr. Vern Shull, Inc., a physician in solo practice in Ridgecrest, specializing in internal medicine. We understand that additional physicians may also join the network.

Sierra proposes to operate in the Ridgecrest, California area. Ridgecrest has a population of about 42,000 people and is in a rural part of the state. RHC is the only acute care hospital open to the general public within approximately 100 miles of

Ridgecrest. Sierra's physician members would constitute nearly all physicians in the Ridgecrest area.

According to Sierra's proposal, its members will participate in the network on a non-exclusive basis. It is represented that there would be no restriction on the ability of members to compete with Sierra's venture, and that members will not be discouraged from joining other networks or contracting directly with health plans.

Sierra plans to retain the services of an independent third party to administer the operations of the venture and act as a "messenger" between payers and individual members. The administrator will convey contract offers between payers and individual members without expressing the administrator's views or otherwise attempting to influence contract decisions. Each member of the network will independently, and on an individual basis, accept or reject submitted contract offers. In short, under the messenger model Sierra's members will refrain from joint price setting and other agreements that restrict competition.

Sierra will also establish policies and procedures to restrict the flow of competitively sensitive information among network members and from the venture to the members. The administrator will maintain the confidentiality of pricing and other proprietary or competitively sensitive information submitted by members. The members will not share their individual prices, their thoughts or decisions on contract offers, and other competitively sensitive information with each other.

Networks using messenger model arrangements that are properly designed and implemented rarely present substantial antitrust concerns. Sierra's network will include virtually all of the physicians in the Ridgecrest area, and the markets for physician services there are highly concentrated. Such circumstances present increased opportunities to collude on prices, tacitly or otherwise. However, Sierra's messenger model arrangements appear to be properly structured to avoid agreements on prices and other competitively sensitive matters. If the arrangements are carefully implemented, the network's operations should not result in price collusion or cause anticompetitive harm.

For these reasons, the Department has no present intention to challenge under the antitrust laws Sierra's proposed network activities. We express no view on Sierra's plans that were previously presented to us and withdrawn on July 31, 1996. In accordance with our normal practice, the Department remains free to bring whatever action or proceeding it subsequently concludes is required by the public interest if actual operation of Sierra's network proves to be anticompetitive in purpose or effect.

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This statement is made in accordance with the Department of Justice Business Review Procedure, 28 C.F.R. §50.6, a copy of which is enclosed. Pursuant to its terms, your business review request and this letter will be made publicly available immediately. In addition, any supporting data that you do not timely identify as confidential business information under Paragraph 10(c) of the Business Review Procedure will also be made publicly available.

Sincerely,

Anne K. Bingaman