



**DEPARTMENT OF JUSTICE**  
Antitrust Division

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November 8, 1993

Robert E. Nord, Esquire  
Hinshaw & Culbertson  
Suite 300  
222 North La Salle Street  
Chicago, Illinois 60601-1081

Dear Mr. Nord:

This letter responds to your request on behalf of Saint Anthony Medical Center ("St. Anthony") for a statement pursuant to the Department of Justice Business Review Procedure, 28 C.F.R. § 50.6, of the Department's present enforcement intentions regarding St. Anthony's proposal to submit multi-provider preferred provider contracts to employers and other third-party payers for the provision of health care services. St. Anthony proposes to enter into subcontracts with physicians and/or another hospital and then to offer managed care contracts which combine St. Anthony and the subcontracting providers as joint preferred providers. You have represented that offering this package, which should be attractive to some employers and payers, should enable St. Anthony to compete more vigorously for managed care contracts.

St. Anthony is one of three general acute care hospitals located in Rockford, Illinois, each of which offers a full range of primary and secondary services and some tertiary care services. Under your proposal, all of the subcontracts would be non-exclusive (i.e., providers would be free to enter into other contracts). Subcontracts between St. Anthony and another hospital would allow for either, or both, "overflow" services and "patient-choice" services. That is, St. Anthony proposes to refer beneficiaries under the primary contract to the subcontracting hospital for services that St. Anthony is unable to provide ("overflow" services) as well as for services that St. Anthony does provide but which the patient would prefer to receive from the other hospital ("patient-choice" services). St. Anthony proposes to limit referrals for both overflow and patient choice to twenty (20) percent of admissions and to bear all financial risk for such referrals.

After careful consideration of the information you have provided, the Department has concluded that it has no present intention of challenging St. Anthony's proposal, as set out in this letter, on antitrust grounds. The proposed conduct has the potential to be procompetitive by enabling St. Anthony to compete more vigorously for managed care contracts. At the same time, however, the Department would be concerned if the purpose or effect of the proposed conduct would be to facilitate collusion or otherwise to reduce competition between or among market participants. The Department has concluded that the present proposal is unlikely to facilitate collusion or to result in a reduction of competition between St. Anthony and the subcontracting hospital. In reaching this conclusion, the Department relied on the non-exclusivity provision and

the twenty (20) percent limitation on "patient-choice" referrals. Both the non-exclusivity provision and the limitation protect against any likelihood that by entering into subcontract agreements with a competing hospital anticompetitive behavior will result. The non-exclusivity provision allows both St. Anthony and the subcontracting hospital to compete separately. Moreover, St. Anthony's twenty (20) percent limitation on patient-choice referrals to the subcontracting hospital ensures the subcontracting hospital's incentive to compete with St. Anthony since, in the absence of competition, the subcontracting hospital is limited to at most twenty (20) percent of the business.<sup>1</sup>

For the foregoing reasons, the Department has no present intention to challenge St. Anthony's proposed multi-provider preferred provider contracts. In accordance with our normal practice, however, the Department remains free to bring whatever action or proceeding it subsequently comes to believe is required by the public interest if the actual operation of the proposal proves anticompetitive in purpose or effect.

This statement of the Department's enforcement intentions is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within thirty days of the date of this letter, unless you request that any part of the materials be withheld in accordance with paragraph 10(c) of the Business Review Procedure.

Sincerely,

Anne K. Bingaman  
Assistant Attorney General  
Antitrust Division

Enclosure

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<sup>1</sup>Although St. Anthony proposes to apply the twenty percent limitation to "overflow" referrals as well, this letter is not conditioned on that limitation since the overflow provision appears to offer significant efficiencies and to present minimal, if any, risk of anticompetitive harm.