

# ARNALL GOLDEN & GREGORY

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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April 27, 1995

VIA CERTIFIED MAIL

Assistant Attorney General  
Antitrust Division  
Department of Justice  
Washington, D.C. 20530

Re: Request for Business Review letter by Georgia Preferred  
Podiatric Medical Network, a subsidiary of Georgia  
Podiatric Medical Association

Dear Sir:

In accordance with 28 CFR 50.6, on behalf of Georgia Preferred Podiatric Medical Network (the "Network") an affiliate of the Georgia Podiatric Medical Association (the "Association"), we are requesting a business review letter from the Department to the effect that it has no present enforcement intention with respect to the proposed business conduct outlined below. We are making this request in accordance with the business review process outlined in the Department's expedited health care project review policy. This request is being made on behalf of our client based on information furnished by it. We have not made an independent investigation of this information, but we have no reason to believe it is not accurate.

The Association is a Georgia not for profit corporation which is the professional association representing podiatrists in Georgia. Of the 212 licensed podiatrists in the state 187 are members of the Association. The Network is a not for profit Georgia corporation sponsored by and affiliated with the Association. It currently has 91 members, all of whom are licensed podiatrists, also members of the Association. As described more fully below, the Network, as a "messenger model" network, will act as an intermediary on behalf of its members with third-party payors, such as managed care companies, health maintenance organizations, preferred provider organizations, corporate

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employers, union plans and indemnity plans. In addition, the Network will assist in the maintenance of the contracts between its members and third-party payors.

The formulation for the Network has been premised on similar networks which have received favorable Department responses under its business review procedure. Specifically, we believe that the Network is a similar entity to the New York State Podiatric Medical Association which received such a response from the Department on September 14, 1994.

## BACKGROUND

The Network is a Georgia non-profit corporation. The initial directors of the Network, each of whom is a practicing podiatrist, are:

Wes Daniel, DPM  
Allen Lazerson, DPM  
Tom Smith, DPM  
Tom Jacobs, DPM

## PROPOSED NETWORK

The purpose of the Network is to serve as a conduit for information relating to the solicitation and management of contracts between its members and third-party payors. The Network will be designed to achieve the following objectives:

- Identify and actively solicit contract offers from third party payors to purchase podiatric medical services, on behalf of their patient-beneficiaries, from individual podiatrists participating in the Network, and to communicate these contract offers, in confidence, to podiatrists participating in the Network who can then accept or reject them.
- Provide directly or through contracting parties credentialing information on Network members to third party payors as requested.
- Provide directly or through contracting parties utilization review and quality assurance monitoring as

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required under terms of a contract for services with third party payors.

- Provide directly or through contracting parties claims processing and administrative functions for the maintenance of certain contracts with third party payers.
- Resolve disputes between Network members and third party payors through binding arbitration if no dispute resolution is provided for under the terms of the contract with the participant.
- Provide a legal hotline for participating members to contact regarding terms of a contract offered to the membership.

Implementation of the Network will involve the following:

- Incorporation of the Network via Articles of Incorporation attached hereto as Exhibit A and Bylaws attached hereto as Exhibit B.
- Execution by Association members of individual agreements with the Network in the form attached hereto as Exhibit C. These agreements define the respective rights and responsibilities of the participating podiatrist, and the Network's functions and goals. To date 90 members have executed the agreement.
- Credentialing will be undertaken for each participating podiatrist either by other participating podiatrists or by an outside firm.
- Joinder fees (\$600.00 before 12/31/94 and \$1,200.00 thereafter) will be used to fund organization and administrative expenses, provide initial funding for third party payor contracts, centralized credentialing information, utilization review and quality assurance services, consulting and professional services, and similar services necessary to organize and implement the Network.

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- The Network will solicit third-party payors, seek to obtain and expand panel opportunities for its Members, and serve as a conduit for communication between the membership and third-party payors. Under certain circumstances, the Network may also function as a facilitator of contract negotiations, but each participating member will be free to accept or reject any particular contract offers as he/she chooses. The primary purpose of the Network is to expand practice opportunities for members and to facilitate communication and negotiation, while leaving each member podiatrist the ultimate decision maker on individual economic terms. The Network is nonexclusive so all participating podiatrists are free to join other panels and networks.
- The Network will become operational after receipt of a favorable Business Review Letter from the Department of Justice or other evidence that this plan complies with applicable laws.

#### PLANNED SAFEGUARDS

The Network plans to follow the guidelines issued in previous business review letters to ensure that competitor specific information is not disclosed and that the Network will not have the effect of facilitating anticompetitive practices. Accordingly, the Network will adopt the following guidelines:

- **CONFIDENTIALITY:** All information and data submitted by Network to a third party payor or obtained by Network during the course of soliciting contract offers will be informational only, as requested by said third party payor, shall not constitute a legally binding offer or in any manner be binding on Network or participating podiatrists, and will not be communicated to participating podiatrists (except to the extent included in the terms of a contract offer). Participating podiatrists will be bound not to discuss among themselves the terms of any contract offers among themselves.
- **PARTICIPATING PODIATRIST NOT OBLIGATED TO ACCEPT:** It is understood that participating podiatrists is not obligated to accept any specific contract offer or any

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minimum number of contract offers, and is free to negotiate directly any contract offer or contract terms with the third party payor to the extent said third party payor will entertain direct negotiations. Network will not engage Third Party Payors in any fee negotiations in any circumstances, and will not engage Third Party Payors in negotiations of contract terms other than as set forth below. Third party payor is free to accept or reject any participating podiatrists as a panel member or service provider.

#### NEGOTIATIONS SOLICITED BY THIRD PARTY PAYORS

In instances where third party payors ask Network in writing to represent the interests of participating podiatrists as a group on contract matters not involving fees, such as utilization review, credentialing standards, indemnity and hold harmless obligations, and the like, Network may at its discretion engage in such representation only in circumstances where the requesting third party payor agrees that any such negotiated terms must be ratified or accepted by each participating podiatrist and that Network itself shall have no legal power or authority to bind any participating podiatrist.

In addition to following the above guidelines, there are two other factors inherent in the Network's approach which it believes will prevent any anticompetitive effects from occurring. They are:

(i) The Network does not represent an ongoing, repetitive exchange of price information. This Network is incidental to the provision of information for providers to third party payors.

(ii) The Network serves only as a conduit for information for providers who can individually agree or reject contract terms, and participation in the Network is nonexclusive.

The Network believes that these two factors significantly reduce the possibility of any potential anticompetitive effects resulting from the Network. In fact, the Network believes its program will facilitate procompetitive behavior among participating podiatrists whose health benefits are funded by these third party payors.

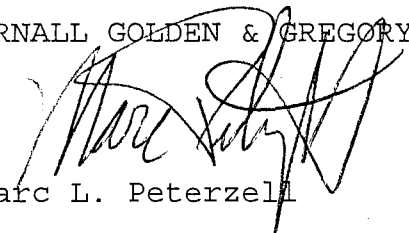
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Because the structure and the operation of the Network fairly parallel that of the New York State Preferred Podiatric Network, Inc., we request that you confirm this belief with a favorable review letter. If you require any additional information we will furnish it on request. Also, we request that if your response would be negative in whole or in part that you notify us by telephone before responding so we can either clarify the information or withdraw the request.

Sincerely yours,

ARNALL GOLDEN & GREGORY



Marc L. Peterzell