

FEDERAL TRADE COMMISSION  
WASHINGTON, D. C. 20580

OFFICE OF THE SECRETARY

JUN 7 1983

Irwin S. Smith, M.D.  
President  
Health Care Management Associates  
P.O. Box 476  
Moorestown, New Jersey 08057

Dear Dr. Smith:

This letter responds to your request for an advisory opinion concerning a proposed "Cooperating Provider Program" ("CPP") by Health Care Management Associates ("HCMA") for the organization, financing, and delivery of health care services. HCMA is a private, for-profit firm incorporated under the laws of the State of New Jersey. Its purpose is "to provide professional consulting and administrative services in order to promote cost-containment in the health care industry." You also have informed us that "no actively practicing provider, hospital, payer (employer or insurer) has any direct or indirect financial, controlling, or non-controlling interest in HCMA."

The Commission understands that HCMA wishes to establish and operate the Cooperating Provider Program "to promote competition . . . by encouraging the awareness of cost [of health care] on the part of the user and to 'pressure' individual physicians, hospitals and other PPOs [preferred provider organizations] to be cost competitive . . . ." The Cooperating Provider Program is a variation on the so-called "preferred provider organization," or "PPO," with HCMA serving as the intermediary between health care providers wishing to "sell" their services and third-party payers<sup>1/</sup> wishing to "purchase" those providers' services on behalf of their insureds or beneficiaries.

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<sup>1/</sup> Third-party payers, such as insurance companies, service benefit companies or employers, are entities that either reimburse patients for all or part of the cost of medical and health care services or make direct payments to providers of those services on behalf of patients.

HCMA intends to contract individually with health care providers such as allopathic and osteopathic physicians, podiatrists, oral surgeons, clinical psychologists, and possibly also optometrists, dentists, nurse midwives, and physical therapists. HCMA will not enter into cooperating provider agreements with any groups or organizations of independently practicing competing providers; it may enter into such agreements with integrated group practices, professional partnerships, and institutions employing salaried professional staff. "Cooperating providers" will agree to provide health care services to insureds or beneficiaries covered by third-party payers that contract with HCMA to offer the Cooperating Provider Program. Cooperating providers will total not more than 10-15 percent of all local area providers, with this participation rate relatively uniform across specialties.

Cooperating providers will have a choice between two methods of reimbursement determined by HCMA: 1) the lesser of the charges submitted by the cooperating provider or a maximum payment schedule for services determined by HCMA; or 2) the cooperating provider's "usual, customary and reasonable" fee for the service, less a percentage discount (up to a maximum of 15 percent) as set forth in the third-party payer's contract with HCMA. Each cooperating provider will decide independently whether to contract with HCMA and will continue to set his or her charges for services independent of any other cooperating providers. Nothing in the Cooperating Provider Program or the cooperating provider agreement will affect the charges that a cooperating provider may make to patients not covered by the Cooperating Provider Program. Reimbursement to a cooperating provider under the Cooperating Provider Program for services covered by the program will constitute payment in full to the cooperating provider.

HCMA will prepare and periodically update a directory of "cooperating providers" for distribution to persons covered by third-party payers under the Cooperating Provider Program. Third-party payers using the Cooperating Provider Program will incorporate in their coverage provisions certain financial incentives for persons covered under the Cooperating Provider Program to encourage use of the services of cooperating providers. Beneficiaries remain free, however, to obtain covered services from providers who are not "cooperating providers," albeit at the cost of incurring some additional, out-of-pocket expense that would not exist if a cooperating provider were used.

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HCMA will negotiate contracts for Cooperating Provider Program services with third-party payers, such as commercial insurance carriers and self-funded or self-insured employer groups. These payers make all claims payments, and underwrite any insurance risk. HCMA does not act as an insurer in the Cooperating Provider Program. HCMA also will provide utilization review and quality assurance services under the Cooperating Provider Program. As payment for its services, HCMA will receive an annual fee negotiated with each third-party payer. Cooperating providers will make no payment to HCMA, although a "nominal annual membership fee" may be initiated at a later date.

HCMA plans to market the Cooperating Provider Program initially in Burlington, Camden, and Gloucester Counties of New Jersey, with possible expansion to adjacent counties in the future. The primary market for the Cooperating Provider Program consists of those persons in this geographic area who are covered under commercial and self-insurance programs, estimated to be approximately 30 percent of the total employed population of the area.

Nothing in the program prohibits or limits participating providers from contracting with or participating in the programs of any other PPO, HMO, or other third-party payer. Similarly, third-party payers participating in the Cooperating Provider Program remain free to engage in other programs.

The proposed Cooperating Provider Program, in essence, would be a form of vertical arrangement between individual sellers of services (cooperating providers) and purchasers of services (third-party payers, on behalf of their insureds or beneficiaries) for the sale and purchase of health care services. HCMA proposes to facilitate these transactions by performing certain functions much like an agent or broker. HCMA is not itself a primary party to the underlying transaction. Also, the Cooperating Provider Program involves no agreements among either competing providers or third-party payers concerning any aspect of their involvement in the program.

Based on the description of the Cooperating Provider Program outlined above and further detailed in your submissions, it is the Commission's opinion that operation of the program would not constitute a horizontal or vertical price fixing arrangement or an unlawful joint sales agency arrangement. Nor does the Cooperating Provider Program, as described, raise a colorable claim of boycott or concerted refusal to deal under the antitrust laws. Finally,

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the program, as described, contains no suggestion of a specific intent to monopolize, nor does HCMA appear to be capable of acquiring, maintaining, or improperly using monopoly power. It appears, moreover, that the Cooperating Provider Program proposed by HCMA is likely to be procompetitive, both by generating competition between cooperating providers and other local providers and by increasing competition among third-party payers. It is the Commission's opinion that this program would not violate the Federal Trade Commission Act or any provision of antitrust law the Commission enforces.<sup>2/</sup>

The Commission retains the right to reconsider the questions involved, and to rescind or revoke its opinion with notice to the requesting party in accordance with Section 1.3(b) of the Rules of Practice, if the implementation of the Cooperating Provider Program results in anticompetitive effects, the purposes of the program no longer remain legitimate, or the public interest otherwise so requires.

By direction of the Commission.

SIGNED & MAILED}

Emily H. Rock  
Secretary

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<sup>2/</sup> This Advisory Opinion, like all those the Commission issues, is limited to the proposed conduct described in the request being considered. Therefore, it does not constitute approval for actions that are different from those described, or those not specified, in the request. Nor does this Advisory Opinion conclude or imply that to avoid illegality under the antitrust laws a PPO must be structured and operated in every respect like HCMA's Cooperating Provider Program.