

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

OF THE SECRETARY

MAY 9 1983

Edward J. Lynch
Executive Vice President
Rhode Island Professional Standards
Review Organization, Inc.
The Weld Building
345 Blackstone Boulevard
Providence, Rhode Island 02906

Dear Mr. Lynch:

This is in response to your request for an advisory opinion concerning a proposed program for private peer review to be undertaken by the Rhode Island Professional Standards Review Organization ("RIPSRO"). By letter of January 5, 1983, you asked the Bureau of Competition whether RIPSRO and its participating physicians would violate the antitrust laws by performing peer review for private employers' health benefits programs. You clarified your request by telephone with Bureau of Competition Assistant Director Arthur N. Lerner, sending supplemental materials to him, including a draft of the contract to be used in the program. Since your request raises an issue of significant public interest, under Section 1.1 of the Commission's Rules of Practice an advisory opinion from the Commission itself, rather than from the Bureau of Competition, is warranted.

Based on the information provided, the Commission understands that RIPSRO is a nonprofit organization of physicians in Rhode Island that intends to perform certain services as part of its private peer review program "to assure that only medically necessary care is provided and that this care meets professionally recognized standards of quality." Services RIPSRO will perform under the program include: 1) preadmission review of hospital admissions for elective surgery; 2) concurrent review of in-hospital health services, including certification or non-certification of admissions, assignment of recommended appropriate length of stay, and periodic recommendation concerning continued stay; 3) retrospective review of certain hospital admissions; 4) monitoring of hospital discharge planning; and 5) quality review studies. The Commission also understands that

RIPSRO has no current plans to perform any fee review under this program.

According to your submission, determinations made by RIPSRO through its reviewing physicians and registered nurses will be advisory in nature. RIPSRO has no legal or contractual authority to bind any party -- including the contracting employer, insurer, health care provider, or beneficiary -- concerning its determinations. Final decision regarding payment of all health care benefit claims will rest with the employer and/or the applicable insurer.

In considering your request, the Commission has reviewed the Supreme Court's recent ruling in Union Labor Life Insurance Co. v. Pireno, ___ U.S. ___, 102 S.Ct. 3002 (1982). The professional peer review activities in that case were held not to be exempt from the antitrust laws as part of the "business of insurance." The Commission also has considered the recently enacted federal Peer Review Improvements Act of 1982, which facilitates private peer review, even mandating it in certain circumstances. Although there is no direct judicial precedent on the legality under the antitrust laws of a peer review program such as the one you have proposed, the Commission has taken into account both its advisory opinion letter of April 8, 1982 on fee review to the Iowa Dental Association (copy enclosed) and the business review letter of March 2, 1977 from the Department of Justice, indicating that it did not intend to oppose under the antitrust laws the operation of peer review committees by the International Chiropractors Association.

Based on the Commission's review of your proposed peer review program, the Commission is of the opinion that operation of the program as described would not violate Section 5 of the Federal Trade Commission Act or any other provision of law the Federal Trade Commission enforces. The program does not appear to involve any price-fixing, concerted refusal to deal, agreement not to compete, or other conspiracy in restraint of trade. The program could, in fact, promote competition, thereby providing substantial benefits to consumers. Contracting insurers and employers can use the information generated by RIPSRO's peer review program in deciding whether to pay for medical care in particular instances, and consumers can use this information in deciding whether to receive or "purchase" medical care. To the extent that the peer review program helps participating prepaid

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health care plans reduce costs, it also will increase the competitive incentives for other third-party payers to participate in effective cost-containment programs. In addition, RIPSRO's peer review program can help health care providers practice in a cost-conscious manner, and give them greater incentive to do so.

This advisory opinion, like all those the Commission issues, is limited to the proposed conduct your submission describes. Thus, as noted in the Commission's opinion letter concerning the Iowa Dental Association's fee review program, ". . . great care must continually be taken in carrying out the program to assure that its purpose remains legitimate and that it does not produce significant anticompetitive effects and thereby run afoul of the antitrust laws." You should, for example, avoid any misuse of the peer review program to discriminate against innovative competitors whose practices, although legitimate and appropriate, may pose a competitive threat to other physicians involved in the peer review program.

Finally, the Commission retains the right to reconsider the questions involved and, with notice to the requesting party in accordance with Section 1.3(b) of the Commission's Rules of Practice, to rescind or revoke its opinion if implementation of the proposed peer review program results in anticompetitive effects, if the program is used for improper purposes, or if the public interest otherwise so requires.

By direction of the Commission.

SIGNED & MAILED

Emily H. Rock
Secretary

Enclosure