



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Karen Schimke
Executive Deputy Commissioner

March 21, 1996

Re:

Dear

The Bureau of Managed Care Certification and Surveillance has forward to this office a copy of your February 22, 1996 letter responding to questions concerning commercial application for expansion into and a copy of the executed agreement between and a not-for-profit corporation organized by five hospitals serving the was asked to provide a detailed written description of its relationship with . The relationship between and is not legally permissible.

is not an independent practice association (IPA) however you state that its purpose is to seek business arrangements on behalf of its members that will utilize the medical resources of the members as medically necessary. You further state that contracted with "to develop its medical delivery system in ." The prohibition against the unauthorized corporate practice of medicine precludes any corporation from providing or arranging to provide professional services unless licensed or otherwise authorized in statute or regulation. In light of this may only contract with licensed providers, professional corporations or IPAs to arrange for the provision of services. has no legal authority to arrange by contract for the delivery or provision of health services by individuals, entities and facilities licensed or certified to practice medicine and other health professions, and, as appropriate ancillary medical services and equipment.

WellCare may contract directly with the hospitals based upon negotiations with the hospitals' designated representative, but the contract must be executed by the hospitals (providers). It is not acceptable for provider contracts to be between the provider's agent and the HMO.

In light of the late stage of the managed care procurement process it is unlikely that a new IPA could be formed and contracts between such IPA and providers could be approved and executed in time to satisfy the RFP requirements and timetable. It is therefore recommended that _____ and the hospitals enter into individual provider agreements. If _____ has hospital provider agreements previously approved as to form by the Department review and approval could be expedited. The proposed executed hospital provider agreements must be submitted to the Department of Health immediately.

The response to the Department's request for clarification of the relationship between _____ and _____ further states that _____ is compensating _____ for "network development and administration" and that upon licensure _____ will function as _____. Please explain the type of licensure that would be sought for _____. These functions outside of the context of an IPA administering its own network could only be delegated by an HMO through a management contract. Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) §98.11(g) provides:

"The governing authority of the HMO shall be responsible for establishment and oversight of the HMO's policies, management and overall operation and shall not enter into any agreement limiting such responsibility, except pursuant to a management contract ... The responsibilities of the governing authority include adoption and enforcement of all policies governing the HMO's management, contracting, health care services delivery, quality assurance and utilization review programs and all other HMO operations."

Finally, the February 22 response implies that each hospital will form an IPA or other risk sharing entities. In New York State only IPAs and participating providers may share risk with HMOs. IPAs may administer provider payment and withhold arrangements.

If you have any questions please call me at (518)473-1403.

Sincerely,



Laura A. Jonas
Senior Attorney