

February 1, 1996

F. Kelly Davis, Esq.
Staff Attorney
HMO of Northeastern Pennsylvania
70 North Main Street
Wilkes-Barre, Pennsylvania 18711

Re: HMO of Northeastern Pennsylvania

Dear Mr. Davis:

I am responding to your August 21, 1995 letter to Gary Riviello of the New York State Department of Health (the "department"). You ask that the department provide you with any consent that may be necessary for HMO of Northeastern Pennsylvania (the "HMO") to be authorized as a foreign corporation to conduct certain business in New York. For the reasons which follow, the department's consent is not required.

You state that the HMO, which has a certificate in good standing from the state of Pennsylvania to operate a health maintenance organization in that jurisdiction, wishes to contract with New York State licensed physicians to provide medical services in New York to residents of Pike County, Pennsylvania, an arrangement which is necessary because Pike County, a rural area bordering New York, has insufficient physicians to provide the services required to Pennsylvania resident-enrollees. You represent that the only authority being requested is to contract for physicians' services so that, for example, authority to arrange for the provision of hospital services in New York State is not at issue.

New York Public Health Law (PHL) article 44 requires that a health maintenance organization arranging for the provision of comprehensive health services must obtain a certificate of authority from the Commissioner prior to commencing operation. Since the HMO will be arranging solely for the provision of physicians' services in New York State and will not be arranging to provide comprehensive health services in this state, the consent of the Commissioner under article 44 is not required. Nor is any other Department of Health approval necessary in order that the HMO be authorized as a foreign corporation to carry out its limited business.

Further, application of PHL §4410 to the instant facts leads to the conclusion that HMO of Northeastern Pennsylvania is not practicing medicine in New York State. The statute reads:

"The provision of comprehensive health services directly or indirectly by a health maintenance organization through its comprehensive health services plan shall not be considered the practice of the profession of medicine by such organization or plan."

HMO of Northeastern Pennsylvania is providing comprehensive health services in Pennsylvania through its comprehensive health services plan. Arranging for the provision of any or all of such services in New York is, under PHL §4410, not considered the practice of medicine in this state. Since the HMO is not practicing medicine, the corporate practice of medicine doctrine is not implicated.

Any application for authority under New York Not-For-Profit Corporation Law §1304 should expressly state that HMO of Northeastern Pennsylvania seeks authority solely to arrange for the provision of physicians' services to nonresidents of New York State, and should contain the following disclaimer language:

"Nothing contained in this application for authority shall authorize the corporation to establish, operate or maintain a hospital, a home care services agency, a hospice, a health maintenance organization, or a comprehensive health services plan, as provided for by Article 28, 36, 40 and 44 respectively, of the Public Health Law, or to provide hospital service or health related service, or to solicit any funds, contributions or grants, from any source, for the establishment, or operation of, any

hospital."

Please submit a proposed executed application for authority which meets the above requirements to Harriet B. Oliver, Esq. of my staff at New York State Department of Health, Division of Legal Affairs, ESP Corning Tower Rm. 2482, Albany, New York 12237. Upon review of that document we will issue a letter stating that department consent or approval is not necessary for its filing. You may present that letter, as well as this one, to the Department of State when you file the Not-For-Profit Corporation Law §1304 application.

Sincerely,

Henry M. Greenberg
General Counsel

HMG:HBO:kls