

February 13, 1996

John R. Murphy, Esq.
Stroock & Stroock & Lavan
7 Hanover Square
New York, New York 10004-2696

Re: First Option Health plan of New York, Inc. (FOHP);
Proposed Physician Hospital Organization (PHO) Agreement

Dear Mr. Murphy:

As we discussed by telephone on February 9, 1996, the Department has not approved proposed agreements submitted whereby a PHO would contract with an HMO to arrange for the provision of physician and hospital services as components of an HMO's provider network. This is because neither statute nor regulation provide for or authorize PHOs, or for their direct participation in HMO provider arrangements.

Regulations at 10 NYCRR §98.5 do provide for independent practice associations (IPA), as intermediary entities pursuant to contract with a single HMO, to arrange for providers to participate in an HMO's provider network. Pursuant to the regulations, the creation of an IPA requires the prior approval or consent of the Department's of Health, Insurance and Education. The approvals of Insurance and Education address the issues of risk assumption and the prohibition against the corporate practice of medicine, respectively. Since those PHOs (and preferred provider organizations (PPO)) which we have encountered in HMO applications have proposed to function essentially as would an IPA, and as the latter are provided for in regulation whereas there are no licensing or other authorizations in law for PHOs or PPOs, we have permitted only approved IPAs and licensed providers of health services to arrange for providers to participate in HMO provider networks.

We recognize the beneficial role PHOs may serve in maintaining good working relationships between hospitals and

physicians employed by or privileged at those hospitals. The Department has consented to the formation of IPA corporations in which a PHO serves as a corporate member or shareholder.

-3-

I hope the foregoing adequately clarifies the Department's position, and the legal status of PHOs with respect to HMOs.

Sincerely,

John E. Franzen
Associate Attorney

cc: G. Riviello
J. Kaelin
P. Albertson

JEF:bxh