



Department of Justice

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DEPARTMENT OF JUSTICE WILL NOT CHALLENGE PROPOSED NEW YORK HOSPITAL ASSOCIATION GAINSHARING PROGRAM

WASHINGTON – The Department of Justice announced today that it will not challenge a proposal by the Greater New York Hospital Association (GNYHA) to offer a gainsharing program to member hospitals in New York. The department said that the proposed program should not adversely affect competition because hospitals will not exchange any confidential information and because each hospital will independently determine physician gainsharing amounts. According to GNYHA, gainsharing programs are designed to encourage physicians to take into account their use of hospital resources in their decision-making process. The department said that under the program, physicians could receive a share of the savings generated from reducing costs for treating commercial health-insurance and Medicaid and Medicare managed-care patients if the physicians meet hospital-specific quality standards.

The department's position was stated in a business review letter to counsel for GNYHA, from Bill Baer, Assistant Attorney General in charge of the Department of Justice's Antitrust Division.

In issuing the letter, Assistant Attorney General Baer said, "Based on GNYHA's representations, the proposed information sharing program is unlikely to facilitate collusion or otherwise raise competitive concerns."

GNYHA is a trade association of hospitals and continuing care facilities in New York and several nearby states. GNYHA proposes to make available a voluntary gainsharing program to the approximately 100 hospitals that are its New York members.

Using publicly available and historical patient discharge data, an independent contractor of GNYHA will calculate a state-wide best practice norm for certain groups of treatments or procedures. The contractor will then use the data to measure the performance of individual physicians practicing at the participating hospitals relative to the best practice norm.

Each participating hospital will individually determine whether and how to use the performance data to determine physician gainsharing payments. Each hospital's payment amounts to physicians will be limited by a cap that each participating hospital must independently establish. The cap must comply with all applicable fraud and abuse regulations.

GNYHA reserves the right to exclude any hospital from the program if GNYHA believes that the hospital's proposed cap does not comply with those laws and regulations.

Under the department's business review procedure, an organization may submit a proposed action to the Antitrust Division and receive a statement as to whether the division currently intends to challenge the action under the antitrust laws based on the information provided. The department reserves the right to challenge the proposed action under the antitrust laws if it produces anticompetitive effects.

A file containing the business review request and the department's response may be examined in the Antitrust Documents Group of the Antitrust Division, U.S. Department of Justice, 450 Fifth Street, N.W., Suite 1010, Washington, D.C. 20530. After a 30-day waiting period, the documents supporting the business review will be added to the file, unless a basis for their exclusion for reasons of confidentiality has been established under the business review procedure.

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