

Rural health network cooperatives

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Mr. Gerald Holley
Washington County Attorney
Post Office Box 647
Chipley, Florida 32428-0647

Dear Mr. Holley:

This is in response to your recent request regarding the viability of section 381.04065, Florida Statutes. You also ask whether an area health cooperative created pursuant to these statutes would receive protection from federal anti-trust attack, given the approval by the Agency for Health Care Administration. Moreover, you question whether the cooperative could collect fees and costs if it were successful in defending such a suit.

In sum, this office must presume the constitutionality and viability of duly enacted statutes. Section 381.04065, Florida Statutes, specifically provides that the consolidation of network hospital services and cooperative agreements will not violate Florida's antitrust laws. Moreover, the Legislature has expressed its intent that such arrangements be protected from federal antitrust laws, if approved by the Agency for Health Care Administration. Whether a cooperative that successfully defends a suit for violation of antitrust laws may collect fees and costs is a mixed question of law and fact that would be addressed by the judiciary.

Section 381.04065, Florida Statutes, sets forth the Legislature's intent to replace competitive market forces with state regulation in order to foster the development of rural health networks. The section provides:

"It is also the intent of the Legislature that consolidation of network hospital services or technologies undertaken pursuant to this section, and cooperative agreements between members of rural health networks, shall not violate the state's antitrust laws when such arrangements improve the quality of health care, moderate cost increases, and are made between members of rural health networks as defined in s. 381.0406. It is also the intent of the Legislature that such arrangements be protected from federal antitrust laws, subject to the approval and supervision of the Agency for Health Care Administration. Such intent is within the public policy of the state to facilitate the provision of quality, cost-efficient medical care to rural patients." [1]

Thus, there is a legislative finding that the cooperative alliance of members of a rural health care network does not violate the state's antitrust laws when such an arrangement improves the quality of health care with only moderate increases in cost. Moreover, the statute requires approval and supervision of such cooperative agreements by the Agency for Health Care Administration (AHCA) as a precursor to affording protection from federal antitrust laws. [2] I am enclosing a copy of an article appearing in The Cornell Law Review that is relevant to the issues

you have raised.

You may wish to contact Mr. Jerome Hoffman, General Counsel for AHCA, to further discuss potential antitrust implications of entering into a cooperative agreement that would be reviewed and approved by that agency. He may be reached at the following: Agency for Health Care Administration, Building 3, Room 3431, 2727 Mahan Drive, Tallahassee, Florida 32308, Telephone (904), 922-5873 FAX (904) 413-0313.

I trust Mr. Hoffman will be able to assist you and that the article will provide you with useful information.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/t

Enclosure

[1] Section 381.04065(1), Fla. Stat. (1995).

[2] Section 381.04065(2), Fla. Stat. (1995).