does not negotiate collectively for the providers, disseminate to any provider the agent's or third party's or any other provider's views or intentions as to the proposal, or otherwise serve to facilitate any agreement among providers on prices or other competitive terms and conditions.

The agent or third party, so long as it acts consistently with the foregoing,

(1) Convey to a provider objective information about proposed contract terms, including comparisons with terms offered by other payers;

- (2) solicit clarifications from a payer of proposed contract terms, or engage in discussions with a payer regarding contract terms other than prices and other competitive terms and conditions. except that the agent or third party (a) must tell the payer that the payer may refuse to respond or may terminate discussions at any time and (b) may not communicate to the providers regarding, or comment on, the payer's refusal to offer a clarification or decision not to enter into or to terminate discussions except to providers who requested the clarification;
- (3) convey to a provider any response made by a payer to information conveyed or clarifications sought;

(4) convey to a payer the acceptance or rejection by a provider of any contract offer made by the payer;

(5) at the request of a payer, provide the individual response, information, or views of each provider concerning any contract offer made by such payer; and

(6) charge a reasonable fee to convey contract offers, by applying preexisting objective criteria, not involving prices or other competitive terms and conditions, in a nondiscriminatory manner.

Additionally, the agent or third party must communicate each contract offer made by a payer unless the payer refuses to pay the fee for delivery of that offer; the offer is the payer's first offer and lacks material terms such that it could not be considered a bona fide offer, or the agent or third party applies preexisting objective criteria, not involving prices or other competitive terms and conditions, in a nondiscriminatory manner (for example, refusing to convey offers of payers whose plans do not cover a certain minimum number of people, or offers made after the agent or messenger has conveyed a stated maximum number of offers for a given time period).

(I) Pre-existing practice group means a physician practice group existing as of the date of the filing of the Complaint in this action. All DHS affiliated physicians at the time of the filing of the Complaint in this action constitute a

single pre-existing practice group. DAIPA does not constitute a preexisting physician practice group. A pre-existing practice group may add any physician to the group after the filing of the Complaint, without losing the status of "pre-existing" under this definition for any relevant physician market, so long as each additional physician is not currently offering services in the relevant physician market and would not have entered that market but for the group's efforts to recruit the physician into the market.

(J) Prices or other competitive terms and conditions means all material terms of the contract, including information relating to fees or other aspects of reimbursement, outcomes data, practice parameters, utilization patterns, credentials, and qualifications.

(K) *Provider panel* means those health care providers with whom an organization contracts to provide care to its enrollees

(L) Qualified managed care plan means an organization:

(1) Whose members or owners share substantial financial risk and either directly or through membership or ownership in another organization, comprise, (a) where membership or ownership is non-exclusive, no more than 30% of the physicians in any relevant physician market, except that it may include any single physician or pre-existing practice group, or (b) where membership or ownership is exclusive, no more than 20% of the physicians in any relevant physician market; and

(2) Whose provider panel, does not have more than where non-exclusive 30% or where exclusive 20% of the physicians in any relevant physician market, unless, for those subcontracting physicians whose participation increases the panel beyond the 20% or 30% limitations, the organization bears significant financial risk for payments to and the utilization practices of the subcontracting physicians and does not compensate those subcontracting physicians in a manner that substantially replicates membership or ownership in the organization.

The organization may not facilitate an agreement between any subcontracting physician and any other physician on their charges to payers not contracting with the organization. The organization may at any given item exceed the 20% or 30% limitations as a result of (a) any physician exiting any relevant physician market or (b) the addition of any physician not previously offering services in a relevant physician market who would not have entered that market but for the organization's efforts to recruit the physician into the market;

however, the organization may not exceed the 20% or 30% limitation by any greater degree than is directly caused by such exit or entry.

(M) Relevant physician market means, unless defendants obtain plaintiffs prior written approval of a different definition, each of the following groups of physicians with active staff privileges other than courtesy privileges at

Danbury Hospital:

(1) Physicians who are: (a) Boardcertified only in general internal medicine or family practice; (b) listed only under family practice or internal medicine on the attached medical staff lists of Danbury Hospital; or (c) generally-recognized, and in fact practicing more than a third of the time as a family practitioner or general internist (for purposes of determining the percentage of physicians applicable to a qualified managed care plan, each physician included in a relevant physician market pursuant to this clause (c) of Paragraph (II)(M)(1) of this Final Judgment shall count as only one-third of a physician);

(2) Physicians who are board-certified in, or board-eligible and actually practicing in, obstetrics or gynecology;

(3) Physicians who are board-certified in, or board-eligible and actually practicing in, pediatrics; and

(4) Any other group of physicians who offer services in a relevant product market as defined applying federal antitrust principles.

(N) Subcontracting physician means any physician who provides services to an organization or to persons receiving healthcare services from that physician pursuant to an agreement by that organization to provide such services, but who does not hold, directly or indirectly, any ownership interest in

that organization.

(O) Šubstantial financial risk means financial risk achieved through capitation or the creation of significant financial incentives for the group to achieve specified cost-containment goals, such as withholding from all members or owners of a qualified managed care plan a substantial amount of the compensation due to them, with distribution of that amount to the members or owners only if the costcontainment goals are met.

Applicability

This Final Judgment applies to DHS, DAIPA, and HealthCare Partners, and to all other persons who receive actual notice of this Final Judgment by personal service or otherwise and then act or participate in active concert with any or all of the defendants.