



# Department of Justice

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The Department of Justice announced today that it has filed an antitrust suit to block consummation of the planned acquisition of the capital stock of Southern Medical Services, Inc. (SMS) of Birmingham, Alabama, by Beverly Enterprises (Beverly) of Pasadena, California.

In addition to Beverly and SMS, the complaint named as defendants:

Beverly Enterprises-Alabama, Inc. of Pasadena, California, a wholly-owned subsidiary of Beverly;

American Trust of Hawaii, Inc., as Trustee under the SMS Profit Sharing Plan, owner of 340 shares of voting and 273,280 shares of non-voting SMS stock;

George H. Smith of Birmingham, Alabama, President of SMS and owner of 330 shares of voting and 80,000 shares of non-voting SMS stock; and

Jack B. Bruce of Birmingham, Alabama, Corporate Secretary of SMS and owner of 330 shares of voting and 80,000 shares of non-voting SMS stock.

All of the defendants are parties to the acquisition agreement.

Attorney General William French Smith said that the suit was filed in U.S. District Court in Macon, Georgia.

The complaint alleges that the acquisition would violate Section 7 of the Clayton Act because it may substantially lessen competition among nursing homes in and around the cities of Macon, Georgia; Augusta, Georgia; Montgomery, Alabama; and Mobile, Alabama.

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Beverly is the largest provider of nursing home care in the United States. It operates over 800 nursing homes in 42 states and the District of Columbia, including one nursing home in Macon, two in Augusta, one in Montgomery, and two in Mobile. Beverly had revenues of about \$816 million in 1982.

SMS is the seventeenth largest provider of nursing home care in the United States. It operates 49 nursing homes in seven states, including two nursing homes in Macon, one in Augusta, two in Montgomery, and two in Mobile. SMS had revenues exceeding \$30 million in 1982.

The complaint alleges that, if Beverly acquires SMS, Beverly will control 29 percent of the licensed nursing bed capacity in the Macon area, 35 percent in the Augusta area, 48 percent in the Montgomery area, and 36 percent in the Mobile area. As measured by the Herfindahl-Hirschman Index, the planned acquisition would increase concentration in terms of licensed nursing bed capacity from 1145 to 1432 in Macon, 1688 to 2307 in Augusta, 2213 to 3382 in Montgomery, and 1181 to 1828 in Mobile.

J. Paul McGrath, Assistant Attorney General in charge of the Antitrust Division, pointed out that the anticompetitive potential of the planned acquisition is increased by the legal requirement that a new firm desiring to enter the nursing home business in the four areas covered by the complaint must

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obtain a certificate of need from the appropriate state regulatory body.

The complaint alleges that the planned acquisition would eliminate competition between Beverly and SMS and increase concentration in the provision of nursing home care in Macon, Augusta, Montgomery, and Mobile. It asks that the defendants be enjoined from consummating the acquisition.

McGrath said that the Department is continuing its investigation to determine if the proposed acquisition would violate Section 7 of the Clayton Act in geographic areas additional to those cited in the complaint.

The planned acquisition is the third transaction since April, 1982, in which the Department has identified competitive problems created by Beverly's proposed stock acquisitions of other nursing home operators. Beverly restructured the two earlier transactions to avoid suit.

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