

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

CLASSIC CARE NETWORK, INC;
NORTH SHORE UNIVERSITY HOSPITAL;
NORTH SHORE UNIVERSITY HOSPITAL
AT GLEN COVE;
BROOKHAVEN MEMORIAL HOSPITAL
MEDICAL CENTER;
CENTRAL SUFFOLK HOSPITAL;
GOOD SAMARITAN HOSPITAL;
HUNTINGTON HOSPITAL;
JOHN T. MATHER MEMORIAL HOSPITAL; and
SOUTH NASSAU COMMUNITIES HOSPITAL;

Defendants.

Civil Action No. 94-5566

Filed:

ENT'D
HAUPPAUGE OFFICE

CLERK
U.S. DISTRICT COURT
EDNY

MAY 1 8 22 PM '95

FILED

Entered: May 1, 1995

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint on December 5, 1994, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of Fact or Law, and upon consent of the parties, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I.

JURISDICTION

This Court has jurisdiction over the subject matter of and the parties to this action. The Complaint states a claim upon which relief may be granted against each defendant under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II.

DEFINITIONS

As used in this Final Judgment:

A. "Agreement" means any contract, combination, conspiracy, concert of action, mutual understanding, formal or informal, express or implied, with any other person;

B. "Fee" means any proposed, suggested, recommended, or actual charge, reimbursement rate, relative value conversion factor, relative value unit, case-based payment rate, price term or condition for any inpatient or outpatient hospital service or any methodology for determining or computing any of the foregoing. The term includes any actual or possible discount off any fee relating to any case-based diagnosis related group or any policy regarding any fee in any agreement between a hospital and a third-party payer, including the use of any most favored nation clause;

C. "Fee schedule" means any list of hospital services showing a fee, range of fees, or methodology for determining or computing fees for such services;

D. "Inpatient hospital services" means hospital services provided to patients who stay overnight at a hospital;

E. "Integrated joint venture" means a joint arrangement to provide hospital services in which hospitals that would otherwise be competitors pool their capital to finance the venture, by themselves or together with others, and share substantial financial risk;

F. "Long Island area" means Queens, Nassau and Suffolk Counties in the State of New York;

G. "Most favored nation clause" means any term or condition in an agreement between a hospital and a third-party payer that provides that the hospital will not charge any other payer a lower fee than that charged to the payer who has entered into the agreement;

H. "Negotiated fee" means any actual or possible discount off any fee in an agreement between a hospital and a third-party payer;

I. "Per Diem" means the reimbursement by any third-party payer of any fee for inpatient hospital services on a daily or overnight basis; and

J. "Third-party payer" means any person or entity that regularly and pursuant to an organized plan or proposal purchases, pays or reimburses for health care services provided to any other person and includes, but is not limited to, health maintenance organizations, preferred provider organizations, health insurance companies, prepaid hospital, medical or other health insurance plans such as Blue Shield or Blue Cross plans, government health benefits programs, self-insured health benefits programs and employers or other entities providing self-insured health benefits programs.

III.

APPLICABILITY

This Final Judgment applies to each defendant and to each of their officers, administrators, agents, servants, representatives, employees, successors, and assigns and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal notice or otherwise.

IV.

PROHIBITED CONDUCT

Unless permitted to engage in activities relating to conduct as set forth in Paragraphs V., VI. and VII. of this Final Judgment:

A. Each defendant is enjoined and restrained from:

1. Directly or indirectly entering into any agreement with any hospital in the Long Island area concerning:

(a) the negotiation, selection, approval, acceptance or refusal of any contract with any third-party payer for the delivery of hospital services,

(b) the terms or amounts of any fee to any third-party payer, or

(c) the utilization of per diem-based fees in any agreement with any third-party payer; and

2. Directly or indirectly communicating any negotiated fee, or any refusal to grant discounts off any fee to any third-party payer to any hospital in the Long Island area.

B. Each defendant hospital is enjoined and restrained from directly or indirectly utilizing the defendant Classic Care or any other agent to set, maintain or determine any fee of any hospital in the Long Island area.

C. Defendant Classic Care is enjoined and restrained from directly or indirectly:

(1) entering into any agreement with any hospital in the Long Island area concerning the terms or amounts of any fee charged to a third-party payer;

(2) entering into any agreement with any hospital in the Long Island area to hold itself out as an exclusive negotiating agent with any third-party payer;

(3) developing, adopting or distributing any fee schedule for use with any third-party payer; and

(4) recommending that any hospital withdraw from or refuse to enter into any agreement with any third-party payer.

D. Each defendant shall terminate any agreement or portion thereof entered into with any other defendant that conditions any actual or possible agreement relating to fees between a hospital and a third-party payer on the formal or informal approval, review or acquiescence of any other defendant.

V.

BONA FIDE JOINT VENTURES

A. Nothing in this Final Judgment shall prohibit a defendant from continuing to be or becoming a member of an integrated joint venture before or after the entry of this Final Judgment so long as the integrated joint venture in no way discourages, impedes or prohibits any participating hospital from negotiating or entering into any agreement independently with any third-party payer. Each individual defendant shall promptly inform plaintiff of the name and address of any integrated joint venture it joins after the entry of this Final Judgment.

B. Each defendant may seek plaintiff's approval for any other type of joint venture in the Long Island area in which it seeks to engage. In such event, the defendant shall promptly report the details of the proposed venture, together with the relevant underlying documentation and a statement identifying the proposed implementation date, to plaintiff. Plaintiff may make reasonable requests for additional information relating thereto. The defendant will not consummate the proposed venture for at least 30 days following the submission of any information requested by plaintiff or, if no information is requested, for at least 30 days following its reporting of the proposed venture to plaintiff.

VI.

MERGED ENTITIES

Nothing in this Final Judgment shall apply to agreements between hospitals that are parties to a lawful merger or acquisition with each other or that are subject to common corporate control.

VII.

FIRST AMENDMENT RIGHTS

Nothing in this Final Judgment shall prohibit any defendant acting either alone or with others from exercising rights permitted under the First Amendment of the United States Constitution to petition any federal or state government executive agency concerning legislation, rules or procedures, or to participate in any federal or state administrative judicial proceeding.

VIII.

COMPLIANCE PROGRAM

Each defendant is required to maintain an antitrust compliance program which shall include:

A. Distributing within 60 days from the entry of this Final Judgment, a copy of this Final Judgment and Competitive Impact Statement to all officers, directors, trustees and administrators;

B. Notifying within 60 days from the entry of this Final Judgment, all officers, directors, trustees and administrators that the defendant will not be bound by any agreement that requires the approval of the defendant Classic Care or any other defendant hospital in connection with any actual or possible agreement for the delivery of hospital services, including any agreement relating to fees for hospital services, between the defendant and any third-party payer;

C. Distributing in a timely manner a copy of this Final Judgment and Competitive Impact Statement to any successor corporation or person who succeeds to a position as officer, director, trustee, or administrator;

D. Holding a briefing annually for all operating officers, directors, and administrators on (1) the meaning and requirements of this Final Judgment including the consequences of non-compliance with this Final Judgment; and (2) the application of the federal antitrust laws to the defendant's activities including potential antitrust concerns raised by hospitals (a) engaging in agreements or arrangements with competitors to set or maintain any fee or to limit discounts on any fee, or (b) engaging in agreements with a competitor to refrain from dealing with a third-party payer;

E. Obtaining from each operating officer and administrator an annual written certification that he or she has: (1) read, understands, and agrees to abide by this Final Judgment; (2) has been advised and understands that noncompliance with this Final Judgment may result in his or her conviction for criminal contempt of court and/or fine; and (3) is not aware of any violation of this Final Judgment;

F. maintaining for inspection by plaintiff a record of recipients to whom this Final Judgment and Competitive Impact Statement have been distributed and from whom the certification required by Paragraph VIII. E. has been obtained; and

G. conducting an audit of its activities within 60 days from the entry of this Final Judgment and annually to determine compliance with this Final Judgment.

IX.

CERTIFICATIONS

A. Within 75 days after the entry of this Final Judgment, each defendant shall certify to plaintiff whether it has made the distribution of this Final Judgment in accordance with Paragraph VIII. A. above.

B. For five (5) years after the entry of this Final Judgment, on or before its anniversary date, each defendant shall certify annually to plaintiff whether defendant has complied with the provisions of Paragraph VIII., Sections C., D., E., F., and G.

X.

OTHER RELIEF AS MAY BE REQUIRED

Nothing in this Final Judgment shall bar the United States from seeking, or the Court from imposing, against any defendant or any person any other relief available under any applicable provision of law for violation of this Final Judgment.

XI.

PLAINTIFF'S ACCESS

A. For the sole purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant, be permitted:

(1) access during office hours of such defendant to inspect and copy all records and documents, excluding individual patient records and records directly relating to the performance by that defendant of any medical or quality assurance review program, in the possession or under the control of such defendant, who may have counsel present, and which relate to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview directors, officers, employees or agents of such defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to any defendant, such defendant shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or document obtained by the means provided in Paragraph XI. shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with the Final Judgment or as otherwise required by law.

D. If at the time information or documents are furnished by any defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure and said defendant marks each page of such material, "Subject to Claim of Protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

XII.

JURISDICTION RETAINED

Jurisdiction is retained by this Court to enable any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or implementation of this Final Judgment, for the enforcement or modification of any of its provisions, and for the punishment of any violation hereof.

XIII.

NOTIFICATIONS

Each defendant shall notify plaintiff in writing at least 30 days before any proposed change in its legal structure such as dissolution, reorganization or merger resulting in the acquisition of any hospital or the creation of a successor corporation or association, or any other change which may affect compliance with this Final Judgment.

XIV.

EXPIRATION OF FINAL JUDGMENT

This Final Judgment shall expire five (5) years from the date of entry.


XV.

PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest.

DATED:

May 1, 1995


United States District Judge