IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Case No. 1:94CV02693 TPJ
	)	
vs.	)	
	)	Filed: November 2, 1995
VISION SERVICE PLAN,	)	
	)	
Defendant.	)	
	)	

REVISED COMPETITIVE IMPACT STATEMENT

I.

BACKGROUND

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), the United States submits this Revised Competitive Impact Statement relating to the proposed Revised Final Judgment submitted for entry in this civil antitrust proceeding. These documents are styled as "Revised" because they reflect changes made to a few of the provisions of the proposed Final Judgment, filed on December 15, 1994, as the basis for settling this antitrust lawsuit, and in related portions of the Competitive Impact Statement, filed on January 13, 1995, and published at 60 Fed. Reg. 5210-17 (1995).

This civil antitrust action commenced on December 15, 1994, when the United States filed a Complaint alleging that Vision Service Plan (VSP), in all or parts of the 46 states and the District of Columbia in which VSP operates vision care plans,

entered into agreements with its panel doctors that unreasonably restrain competition by restraining discounting of fees for vision care services in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Complaint seeks injunctive relief to enjoin continuance of the violation.

The previously filed Competitive Impact Statement is incorporated by reference herein, except as modified by this Revised Competitive Impact Statement. The Government has agreed to the revisions of the proposed Final Judgment that are contained in the proposed Revised Final Judgment and outlined below to remedy certain problems VSP has experienced while operating under the terms of the proposed Final Judgment since it was filed, pursuant to a Stipulation with the Government, pending the Court's approval of the Final Judgment.

II.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

A. Definitions

A definition of "VSP panel doctor" has been added as Section II(G) of the proposed Revised Final Judgment to clarify that to the extent provisions of the Final Judgment prohibit VSP from taking, or permit VSP to take, specified actions regarding the doctors on its panel, those provisions apply in the same manner also to doctors who have applied for panel membership. In addition, the

definitions of "modal fee" and "median fee," which had been Sections II(F) and (G) of the original proposed Final Judgment, have been deleted because, as explained below, VSP will no longer collect or use information concerning the modal or median fees of its panel doctors in calculating payments to be made to them. A definition of "usual and customary fees" has been added as a new Section II(F) because, as explained below, VSP will be permitted to collect and use information concerning the usual and customary fees that its panel doctors charge in calculating VSP's payments to them.

B. Permitted Activities and Obligations

The proposed Revised Final Judgment modifies Section V of the original proposed Final Judgment. Generally, Section V permits VSP to undertake prescribed activities in determining payments to its panel doctors that could otherwise violate applicable injunctive provisions of Section IV. The proposed Revised Final Judgment adds a new Section V(G) and revises Sections V(A),(B),(C), and (F).

The addition of Section V(G) is the primary basis for submitting the Revised Final Judgment. Section V(G) permits VSP to implement the reimbursement methodologies of any Medicare program or any state Medicaid program that it may administer. VSP acts as the agent for those programs in several states, but, in negotiating the proposed Final Judgment, VSP simply overlooked the Final Judgment's possible restriction upon its ability to carry out its

obligations to those governmental programs. Section V(G) of the proposed Revised Final Judgment, therefore, makes clear that nothing in the Judgment should be construed to prevent VSP from gathering fee information required by Medicare or Medicaid, while precluding VSP from using that fee information in setting the fees that VSP pays its panel doctors for providing services to VSP patients not covered by Medicare or Medicaid programs.

Sections V(A), (B), (C), and (F) of the proposed Revised Final Judgment have been changed to reflect that VSP will no longer maintain the option, contained in the original proposed Final Judgment, to calculate the payments made to its panel doctors based on a doctor's modal or median fee and to collect and, if warranted, verify the accuracy of, the fee data from its panel doctors needed to make such calculations. Pursuant to revised Sections V(A), (B), (C) and (F), VSP will now merely retain the option of calculating the fees that it pays panel doctors based on their usual and customary fees, and it will no longer be permitted to request panel doctors annually to report "sufficient information" or, if warranted, verify the accuracy of the reported information, to enable VSP "to calculate" a doctor's modal or median fee. Rather, VSP will simply be permitted to ask each panel doctor to report annually only the doctor's usual and customary fees before any discounts are applied, and it will be allowed, if warranted, to verify only that fee information. These changes will substantially

reduce both the level of detail of fee information that VSP will be permitted to obtain routinely from its panel doctors and the resultant reporting requirements it may impose on VSP panel doctors.

VSP requested these changes because of difficulties encountered during the past several months in trying to calculate the modal and median fees of its panel doctors pursuant to the terms of the original proposed Final Judgment. Based on that experience, VSP has concluded that it does not routinely need to obtain more detailed fee information from its panel doctors than an annual report of each doctor's usual and customary fees, as now provided by Sections V(A) and (B) of the proposed Revised Final Judgment. The Government is amenable to making these requested changes because they narrow the scope of activities permitted by VSP under the Final Judgment and raise no competitive concerns.

III.

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED REVISED FINAL JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Revised Final Judgment should be modified may submit written comments to Gail Kursh, Chief; Professions & Intellectual Property Section/Health Care Task Force; Department of Justice; Antitrust Division; 600 E Street, N.W.; Room 9300; Washington, D.C. 20530, within the 60-day period provided by the Act. Comments received, along with comments already received on the previously published Competitive Impact

Statement, and the Government's responses to them, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free, pursuant to Paragraph 2 of the Stipulation, to withdraw its consent to the proposed Revised Final Judgment at any time before its entry if the Department should determine that some modification of the Judgment is necessary to the public interest. The proposed Revised Final Judgment itself provides that the Court will retain jurisdiction over this action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the Judgment.

IV.

DETERMINATIVE DOCUMENTS

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), were considered in formulating the proposed Revised Final

Judgment. Consequently, none are filed herewith.

Dated:

Respectfully submitted,

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