

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,

v.

SOUTH CAROLINA HEALTH CARE  
ASSOCIATION, INC.,  
Defendant.

Civil Action No. 79-1742-9

Filed: February 7, 1980

Entered: 4/22/80

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on August 27, 1979, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein 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 herein and upon consent of the parties hereto, it is hereby,  
ORDERED, ADJUDGED, AND DECREED as follows:

I

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

II

As used in this Final Judgment:

(A) "Defendant" means the South Carolina Health Care Association, Inc.;

(B) "Medicaid" means the system of health care for indigents created by Title XIX of the Social Security Act, entitled "Grants to States for Medical Assistance Programs," and includes regulations promulgated thereunder by the United States Department of Health, Education, and Welfare (HEW), and regulations, policies and procedures of South Carolina to implement the program;

(C) "Standard provider contracts" means contracts between the State of South Carolina and nursing homes by which nursing homes agree to provide care for Medicaid beneficiaries;

(D) "Nursing home" means a provider of skilled nursing and/or intermediate care services in the State of South Carolina.

III

This Final Judgment applies to the defendant and to its officers, directors, members, agents, employees, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment.

IV

The defendant is enjoined from:

(A) Acting as an agent for nursing homes in connection with any decision to accept or reject all or any terms of Medicaid standard provider contracts;

(B) Participating in or furthering any agreement, understanding, plan or course of conduct having the purpose or foreseeable effect that nursing homes jointly determine to (1) accept

or reject all or any terms of Medicaid standard provider contracts; (2) reject or discharge Medicaid patients; or (3) threaten not to participate in the Medicaid program;

(C) Advocating or recommending that nursing home(s)

(1) accept or reject all or any terms of Medicaid standard provider contracts; (2) reject or discharge Medicaid patients; or (3) threaten not to participate in the Medicaid program; and

(D) Causing or permitting at any formal or informal meeting of defendant or its committees any course of conduct, or discussion of any plan, having the purpose or foreseeable effect that nursing home(s) (1) accept or reject all or any terms of Medicaid standard provider contracts; (2) reject or discharge Medicaid patients; or (3) threaten not to participate in the Medicaid program.

#### V

Except as prohibited in Section IV, nothing herein shall prohibit defendant from:

(A) Representing nursing home(s) in any bona fide judicial or administrative law proceeding; or

(B) Advocating or discussing, on behalf of nursing home(s), proposed changes in the Medicaid program with any federal or state legislative body or executive agency, or any committee or member thereof; or

(C) Disseminating factual information about the Medicaid program to nursing homes.

#### VI

The defendant is ordered and directed:

(A) Within sixty (60) days from the entry of this Final Judgment,

(1) To send to each of its members

- (a) a copy of this Final Judgment; and
- (b) a letter identical in text to that attached to this Final Judgment as Appendix A;
- (2) To cause the publication of this Final Judgment in the defendant's newsletter; and
- (3) To file with this Court and to serve upon the plaintiff an affidavit stating the fact and manner of compliance with subsection (A) of this Section VI;

(B) To serve a copy of this Final Judgment, together with a letter identical in text to that attached to this Final Judgment as Appendix A, upon all of its future members at such time as they become members;

(C) To conduct an audit of its activities, during the thirteenth month following entry of this Final Judgment, and once during every twenty-four month period thereafter while this Final Judgment remains in effect, to determine compliance with this Final Judgment and with the antitrust laws. The audit shall be conducted or supervised by an attorney and shall include a review of defendant's files and those of its directors maintained in connection with their responsibilities as such, and interviews of defendant's officers, directors, and employees as deemed necessary by the attorney. A written report of each audit shall be promptly prepared, furnished to plaintiff and filed with the court; and

(D) To establish and adopt a written statement setting forth defendant's policy regarding compliance with the antitrust laws and this Final Judgment. The written compliance policy shall be published in defendant's newsletter at least once a year for three consecutive years.

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VII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) 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 the defendant made to its principal office, be permitted:

(1) Access during office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant which may have counsel present, relating 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 officers, employees and agents of the defendant who may have counsel present, regarding any such matters;

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested;

(C) No information or documents obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a

duly authorized representative of the Executive Branch 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 this Final Judgment or as otherwise required by law; and

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

#### IX

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

#### X

This Final Judgment will expire ten years after date of entry.

XI

Entry of this Final Judgment is in the public interest.

Dated:

Robert F. Chapman  
UNITED STATES DISTRICT COURT

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APPENDIX A

RE: United States v. South Carolina Health Care Association, Inc., Civil No. 79-1742-9

Dear SCHCA Member:

Enclosed is a copy of the Final Judgment, filed \_\_\_\_\_ 1979, in United States v. South Carolina Health Care Association, Inc., Civil No. 79-1742-9. The terms of the Final Judgment require that a copy of it as well as this letter be sent to you. You should read the terms of the decree carefully and note that you, under certain circumstances, are bound by the provisions. The purpose of this letter is to help you understand those provisions.

Under the decree the Association is barred from participating in any plan or agreement which would result in nursing homes jointly threatening not to participate in the Medicaid program, as well as jointly determining to accept or reject all or part of the standard provider contracts, or to discharge Medicaid patients. The Final Judgment also prohibits the Association from causing or allowing nursing home representatives to discuss any of the above-mentioned actions at any formal or informal Association meetings, including committee meetings.

Finally, the Final Judgment prohibits the Association from acting as an agent on behalf of its members in connection with any decision to accept or reject Medicaid standard provider contracts.