

UNITED STATES DISTRICT COURT

DISTRICT OF MONTANA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 80-92-H
	)	(D. Montana, Helena Division)
	)	
MONTANA NURSING HOME	)	
ASSOCIATION, INC.	)	Filed: April 13, 1982
	)	
Defendant.	)	
	)	

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. §§ 16(b)-(h)), the United States of America submits this Competitive Impact Statement relating to the proposed final judgment submitted for entry in this civil antitrust proceeding.

I

NATURE AND PURPOSE OF THE PROCEEDING

On June 13, 1980, the Department of Justice filed a civil antitrust Complaint under Section 4 of the Sherman Act (15 U.S.C. § 4), alleging that the defendant violated Section 1 of the Sherman Act (15 U.S.C. § 1). The Complaint alleges that the defendant and various co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in nursing home services, the substantial term of which was to raise the price of nursing home services paid under the Medicaid program in the State of Montana.

Entry of the proposed final judgment will terminate the action, except that the Court will retain jurisdiction over the matter for further proceedings which may be required to interpret, modify or enforce the judgment, or to punish violations of any of its provisions.

## II

### DESCRIPTION OF THE PRACTICES INVOLVED IN THE ALLEGED VIOLATION

The defendant is a trade association for the nursing home industry in the State of Montana. Approximately 70 nursing homes throughout the State, representing over 66 percent of all nursing home beds in the State of Montana, are members of the defendant.

Approximately 65 percent of all occupied nursing home beds in Montana are paid for with funds provided by the Medicaid program, which is a cooperative federal/state venture, jointly financed by federal and state funds. The Montana State Department of Social and Rehabilitation Services ["SRS"] certifies nursing homes to participate in the program and, subject to certain federal guidelines, determines rates of reimbursement to be paid for Medicaid patients.

The Complaint alleges that the defendant and co-conspirators engaged in a conspiracy, beginning sometime in 1978, to raise the price of nursing home services paid under the Medicaid program in the State of Montana. The Complaint alleges that the defendant acted as the bargaining agent for its member nursing homes to negotiate the terms and conditions on which nursing homes would contract with SRS to care for Medicaid patients and that the defendant and co-conspirators jointly refused to enter into contracts with SRS except upon terms and conditions agreed upon by the defendant and its co-conspirators.

The Complaint alleges that the conspiracy has had the following effects, among others: (a) competition among nursing homes with respect to the terms and conditions on which they will contract to care for Medicaid patients has been eliminated, and (b) prices charged by nursing homes for the care of Medicaid patients have been increased.

Had this case gone to trial, the United States would have adduced evidence to show that, since 1978, the defendant has acted on behalf of its members in accepting or rejecting all or part of various Medicaid provider contracts, and used the joint bargaining strength of its member nursing homes together with concerted withdrawals and threats of withdrawal from the Medicaid program to obtain more favorable contract terms and conditions than otherwise would have been possible; the conspiracy was effectuated in numerous meetings of the defendant's membership, meetings of various committees formed by the defendant for the purpose of negotiating Medicaid contracts with SRS, and in meetings between representatives of the defendant and representatives of SRS.

### III

#### EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the defendant have stipulated that the Court may enter the proposed final judgment after compliance with the Antitrust Procedures and Penalties Act. The proposed final judgment provides that its entry does not constitute any evidence against or admission by either party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, the proposed final judgment may not be entered until the Court determines that entry is in the public interest.

#### A. Prohibited Conduct

The proposed final judgment prohibits the defendant from participating in any concerted refusal by nursing homes to enter into Medicaid standard provider contracts or to participate in the Medicaid program. The defendant is also prohibited from participating in any agreement, understanding, plan or course of conduct with the purpose or foreseeable effect that nursing homes (1) jointly accept or reject all or

any terms of Medicaid standard provider contracts; (2) jointly reject or discharge Medicaid patients; or (3) jointly threaten not to participate in the Medicaid program. The defendant is further prohibited from allowing at its meetings any course of conduct, or discussion of any plan, having the purpose or foreseeable effect that nursing homes engage in any of the activities described in 1-3 immediately above. The defendant is also prohibited from advocating or recommending that nursing homes accept or reject all or any terms of Medicaid standard provider contracts, or reject or discharge Medicaid patients, or threaten not to participate in the Medicaid program. The provisions described above would, for example, enjoin the defendant from acting as a bargaining agent in order to secure more favorable terms or higher compensation for nursing homes participating in the Medicaid program.

The proposed final judgment provides that nothing in the final judgment shall prohibit defendant from discussing or distributing factual information concerning the Medicaid program or proposed changes therein or from giving fair and reasonable constructions of the terms of existing or proposed Medicaid standard provider contracts, governmental regulations, or policies and procedures relating thereto. In addition, defendant is permitted to advocate proposed changes in the Medicaid program to, or discuss the Medicaid program with, any governmental body or member or employee thereof. Defendant is also allowed to seek through any bona fide judicial or administrative law proceeding a determination of the rights or responsibilities of its members under the Medicaid program. The final judgment provides, however, that the permissible conduct described above must not be part of an agreement, plan or conspiracy to engage in conduct prohibited elsewhere by the final judgment.

B. Affirmative Obligations

The proposed final judgment requires the defendant to furnish a copy of the judgment to each of its members, as well as to new members as they join, together with a letter explaining the terms of the judgment. Also, the defendant is required to furnish to the Court and the plaintiff an affidavit as to the fact and manner of its notification of its members and future members.

The proposed final judgment requires that 13 months after entry of the judgment and every two years thereafter, the defendant audit its operations to determine compliance with the judgment and with the antitrust laws. Its findings must be filed with the Court and the plaintiff.

The proposed final judgment requires the defendant to adopt a written statement setting forth its policy regarding compliance with the antitrust laws and the judgment. The written compliance policy must be published in defendant's newsletter at least once a year for three consecutive years.

C. Scope of the Proposed Judgment

The proposed final judgment will remain in effect for a period of 10 years from entry. It applies to the defendant and to each of its officers, directors, committees, 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 the judgment by personal service or otherwise

D. Effect of the Proposed Judgment on Competition

The relief in the proposed final judgment is designed to prevent any recurrence of the activities alleged in the Complaint. The prohibitive language of the judgment is designed to insure that each nursing home's decision whether to provide services under the Medicaid program will be made independently,

(15 U.S.C. § 16(b)) were considered in formulating the proposed final judgment. Consequently, none have been filed with the Court.

Respectfully submitted,

/s/ Charles R. Schwidde

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CHARLES R. SCHWIDDE

/s/ Elizabeth M. O'Neill

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ELIZABETH M. O'NEILL

Attorneys, United States Department of Justice  
10th & Constitution Avenue, N. W.  
Washington, D. C. 20530  
Telephone: (202) 633-4479

Dated: