



December 11, 2014

Hon. Janet L. Sanders
Superior Court Justice
Suffolk Superior Court, Room 1017
Commonwealth of Massachusetts
Three Pemberton Square
Boston, MA 02110

Re: Proposed Final Judgment in Massachusetts v. Partners HealthCare System, Inc. et al., Civ. No. 14-2033 (BLS)

Dear Judge Sanders,

The Massachusetts Public Interest Research Group (“MASSPIRG”) submits this letter to address an issue that arose in the November 10, 2014 hearing about the exclusion of Medicare Advantage (“MA”) and Medicaid managed care (“MMC”) from the price cap provision of the proposed Partners Final Judgment. At the recent hearing, a representative from the Massachusetts Attorney General’s office stated that the price cap need not include MA or MMC plans, because “the government sets the amount of money that they give to the health insurance companies...that limits what the health insurers can then turn around and pay to providers like Partners.”¹ MASSPIRG offers this letter to the Court demonstrating why that analysis is incorrect.

MASSPIRG submits this letter to emphasize the important role of MA and MMC programs, and the need to include these lines of business under the price cap. The federal government and Massachusetts believe that utilizing managed care for Medicare and Medicaid beneficiaries can be more efficient and lower costs within the programs.² In particular, the plans play a vital role in providing services to some of the most costly patient populations: seniors, the disabled, children, and the economically disadvantaged. Controlling costs within these patient populations is paramount to lowering the state’s total medical expenditures. If those costs are not controlled, the costs to taxpayers increase and/or the level of services diminish. Due to their success, MA and MMC plans have seen significant growth. According to the Massachusetts

¹ Transcript of November 10, 2014 Hearing at 111.

² See MASSHEALTH, MASSHEALTH MANAGED CARE QUALITY STRATEGY at 5 (Dec 2013), available at <http://www.mass.gov/eohhs/docs/masshealth/research/qualitystrategy-05.pdf> (A MassHealth Strategic Goals for managed care “lower costs”).

Association of Health Plans, over one million people in Massachusetts currently utilize a MA or MMC plan.³

Both MA and MMC are quasi-private plans instituted by third party payers. MA plans are regulated and funded strictly by the federal government whereas MMC plans are regulated and funded by both the state and federal government. In MA and MMC, third party plans contract with the federal government or state to offer services to Medicare and Medicaid beneficiaries.⁴ In order to form an appropriate network for these beneficiaries, MA and MMC plans contract with area providers to offer health care services to these beneficiaries. Plans, and not the government, bear the additional costs of any changes in the market, including increased costs from providers.

In merging with South Shore and Hallmark, Partners may utilize its leverage as a “must have” provider to increase costs to MA and MMC plans. In the short term, MA and MMC plans will absorb higher prices decreasing their profitability. In the long term, due to higher costs, MA and MMC plans will likely raise their prices, thus increasing costs to consumers, the state, and federal government. Ultimately, taxpayers will bear the burden of the reduction in competition. Furthermore, to decrease costs, MA and MMC may reduce additional offered services to the most vulnerable and important patient populations. Lastly, facing increased costs, MA and MMC plans may withdraw from the market, eliminating vital competition among plans.⁵

The fact that the government may control the amount of reimbursement does not diminish competitive concerns. This is demonstrated in recent enforcement actions by the Department of Justice to protect competition in both MA and MMC markets. In UnitedHealth Group’s acquisition of Sierra Health Services, the Department of Justice required United to divest its MA business in Las Vegas.⁶ The merger would have resulted in a single firm with 94 percent of the MA market. Likewise, in WellPoint’s acquisition of Amerigroup, the Department of Justice required a divestiture of Medicaid managed care assets in Northern Virginia. According to the Department of Justice, the Amerigroup acquisition would have substantially lessen competition within MMC markets leading to a lower quality of care.⁷ The same analysis is true for providers engaging and contracting with MA and MMC plans. Provider concentration can raise costs and lower quality of services for MA and MMC beneficiaries.

³ Comment of Massachusetts Association of Health Plans on the Proposed Final Judgment in *Massachusetts v. Partners Healthcare System, Inc.* Civ. No. 14-2033 (BLS) at 8 (Sept. 15, 2014), available at <http://www.mass.gov/ago/docs/partners/mahp.pdf>.

⁴ See *Medicare Advantage Fact Sheet*, KAISER FAMILY FOUNDATION (May 1, 2014), <http://kff.org/medicare/fact-sheet/medicare-advantage-fact-sheet/>.

⁵ There are currently only five Medicaid managed care plans within Massachusetts, one of which, Neighborhood Health Plan, is owned by Partners. *MassHealth MCO Managed Care Health Plans*, MASSRESOURCES.ORG, <http://www.massresources.org/masshealth-managed-care.html> (last visited Nov. 17, 2014).

⁶ Press Release, Dep’t of Justice, Justice Department Requires Divestiture in UnitedHealth Group’s Acquisition of Sierra Health Services (Feb. 25, 2008), available at http://www.justice.gov/atr/public/press_releases/2008/230445.htm.

⁷ Press Release, Dep’t of Justice, Amerigroup Corp.’s Divestiture of its Virginia Operations Addresses Department of Justice’s Concerns with WellPoint Inc.’s Proposed Acquisition of Amerigroup (Nov. 28, 2012), available at <http://www.justice.gov/opa/pr/2012/November/12-at-1416.html>.

In order to protect the Massachusetts taxpayers and the elderly and needy patients, MASSPIRG requests the Court consider including both the MA and MMC programs within the price cap remedy.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Deirdre Cummings". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Deirdre Cummings
Legislative Director
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