



September 15, 2014

Attn: Antitrust Division
Office of the Attorney General
One Ashburton Place
Boston, Massachusetts 02108

Re: Comments on the Proposed Final Judgment by Consent in Commonwealth of Massachusetts v. Partners Healthcare System, Inc., South Shore Health and Educational Corp., and Hallmark Health Corp., Superior Court Civil Action No. 14-2033 (BLS)

Dear Attorney General Coakley,

MASSPIRG is pleased to submit comments to the Office of the Attorney General concerning the acquisitions by Partners Healthcare System, Inc. ("Partners") of South Shore Health and Educational Corp. ("South Shore Health") and Hallmark Health Corporation ("Hallmark"), explaining that the proposed settlement fails to adequately protect consumers from anticompetitive harm.

MASSPIRG, is a non-profit, non-partisan public interest organization with a long history of protecting consumers winning concrete results for our health, safety and financial security. Since 1972, we've been a voice for consumers, countering the influence of big banks, insurers, chemical manufacturers and other powerful special interests. Our team of researchers uncovers the facts; our staff bring our findings to the public, through the media as well as one-on-one interactions; and our advocates bring the voice of the public to the halls of power on behalf of consumers.

The proposed settlement does not adequately protect the public from the resulting anticompetitive harm. From the consumer perspective, the most important aspect of a settlement in such a prolific merger matter is ensuring that the consent is the public interest and that it restores competition lost by the merger. Here the proposed settlement, of which the remedies suggested are untested, fails to accomplish its intended goal of providing a remedy that will cure the anticompetitive effects on the market, including increased prices, decreased competition for provider services, and decreased access for low-income patients, and as a result is not in the public interest.

MASSPIRG appreciates the position of the Attorney General's office – that there are challenges and risks to any litigation. And while MASSPIRG appreciates that the settlement was crafted as a best attempted to address the competitive concerns at issue without going to litigation, the proposed settlement does not prevent the largest hospital system in the region from substantially increasing its foothold, which at the end of the day is harmful to consumers.

The Massachusetts healthcare market can little afford further consolidation.¹ Generally, in consolidated markets, the lack of competition between health systems leads to higher prices and lower quality. This is precisely the case in Massachusetts. Health system consolidation has led to Massachusetts consumers paying the highest per capita price for health care in the United States, an average of \$9,278.² The Massachusetts Health Policy Commission (“HPC”) found that the Partners/South Shore merger will raise the total medical spending for the three major commercial payors by \$23 to \$26 million per year.³ Much like the South Shore acquisition, HPC found the Hallmark merger will increase spending for the three major commercial payors by \$15.5 to \$23 million per year.⁴ As is noted by the Congressional Budget Office, “reducing competition may decrease the incentive to improve quality to attract patients. [And] the disruption caused by unifying two independent facilities may negatively affect quality, particularly in the immediate aftermath of the merger.”⁵ Combining Partners with South Shore and Hallmark will not improve the status quo, but rather harm consumers as Partners will be able to further wield its dominance in the market to the disadvantage of consumers.

Substantially documented by the Attorney General’s office and other Massachusetts regulators is that Partners is already the dominant healthcare system in Massachusetts. As a result, Partners has used its position to harm the healthcare market, including exacting the highest rate of commercial payments in the state, and substantially increasing hospital prices to the point that Partners has the highest hospital prices in Massachusetts.⁶

To redress the loss of competition from the mergers, the proposed settlement contains untested conduct remedies, which are insufficient to protect consumers from the resulting anticompetitive harms. For example, allowing component contracting as a means to essentially stop Partners from tying the use of one facility to another, is insufficient for coordinated patient care. Component contacting may force patients to use facilities at which their preferred physician does not have privileges. This harms patient choice and access.

Additionally, the proposed settlement seeks to set price caps which may be set above a competitive level. A price cap will not protect consumers from non-price harms, such as reduction in quality or staffing. Non-price effects can be equally as harmful as price increases to consumers. Moreover, the price cap does not cover certain business lines for vulnerable consumers, such as

¹ HEALTH POL’Y COMM’N, COST TRENDS REPORT 2013, JULY 2014 SUPPLEMENT at 27 (2014), *available at* <http://www.mass.gov/anf/docs/hpc/07012014-cost-trends-report.pdf> (while Partners is the dominant provider, five hospital systems control 50% of all inpatient care in the state).

² MASS. ATT’Y GEN. MARTHA COAKLEY, EXAMINATION OF HEALTH CARE COST TRENDS AND COST DRIVERS at 43 (2010), *available at* <http://www.mass.gov/ago/docs/healthcare/2010-hcctd.pdf>.

³ MASS. HEALTH POL’Y COMM’N, REVIEW OF PARTNERS HEALTHCARE SYSTEM’S PROPOSED ACQUISITION OF SOUTH SHORE HOSPITAL (HPC-CMIR-2013-1) AND HARBOR MEDICAL ASSOCIATES (HPC-CMIR-2013-2), FINAL REPORT at 17 (2014).

⁴ MASS. HEALTH POL’Y COMM’N, REVIEW OF PARTNER’S HEALTH CORPORATION PURSUANT TO M.G.L. C. 6D, § 13: FINAL REPORT at 2, 22 (Sept. 3, 2014).

⁵ Tamara Hayford, Health and Human Services Resources Division, Congressional Budget Office, The Impact of Hospital Mergers on Treatment Intensity and Health Outcomes, Working Paper 2011-5 (October 2011).

⁶ CTR. FOR HEALTH INFOR. AND ANALYSIS, ANNUAL REPORT ON THE MASSACHUSETTS HEALTH CARE MARKET at 32, 34 (2013), *available at* <http://www.mass.gov/chia/docs/tr/pubs/13/ar-ma-health-care-market-2013.pdf>.

Medicaid Managed Care (of which over half of state Medicaid participants are enrolled in a MassHealth managed care organization)⁷ or Medicare Advantage (which cover over one million citizens).

The ability of Partners to decrease access to vulnerable patients is quite alarming. The proposed remedy does nothing to address this problem, and there have been no post-merger commitments by Partners to increase the volume of vulnerable patients. Partners' hospitals on average have the lowest Medicaid service levels of hospitals in their primary service areas. This is true for South Shore as well.⁸ The combination of low Medicaid mix hospitals increases the burden on competing hospitals with higher mixes of low-margin patients, and increases the combined hospitals' strength to decrease access to the low-margin patients. As reported by the Health Policy Commission

[c]ontrasting trends in payer mix and service mix across different providers can contribute to, or exacerbate, financial distress at providers that care for the highest mix of government payer patients, or provide the greatest proportions of low-margin services – with potential long-term consequences for access for such patients and to such services. Combining providers with similar profiles of high commercial payer mix may reinforce the resulting system's financial strength vis-à-vis area competitors.⁹

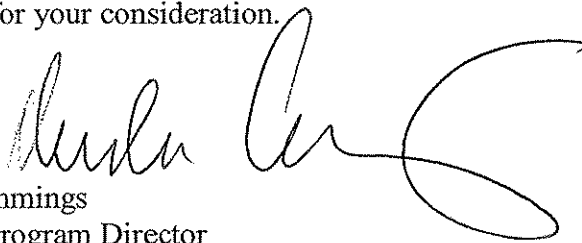
The ability to decrease access to services for the most vulnerable patients will only increase with the mergers.

As currently structured, given Partners' high costs and low Medicaid mix, coupled with the analyses of the Health Policy Commission estimating significant cost increases, the allegations in the Attorney General's complaint of the anticompetitive effects of the mergers, and the inadequacies of the proposed settlement to remedy the anticompetitive effects, it seem quite evident the mergers, which will result in increased costs to consumers and less access to healthcare for vulnerable populations, is not in the public interest.

We urge you to reconsider the proposed settlement and to move to block the mergers.

Thank you for your consideration.

Sincerely,



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⁷ MASS. HEALTH POL'Y COMM'N, REVIEW OF PARTNERS HEALTHCARE SYSTEM'S PROPOSED ACQUISITION OF SOUTH SHORE HOSPITAL (HPC-CMIR-2013-1) AND HARBOR MEDICAL ASSOCIATES (HPC-CMIR-2013-2), FINAL REPORT at fn 15 (2014).

⁸Id.

⁹ Id. at 57.