

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT

95-0331 E

IN THE MATTER OF	)
HARVARD COMMUNITY HEALTH PLAN, INC.	)
and	)
PILGRIM HEALTH CARE, INC.	)

ASSURANCE OF DISCONTINUANCE

The Commonwealth of Massachusetts (the "Commonwealth"), by its Attorney General, has caused an investigation to be made into whether the proposed affiliation between Harvard Community Health Plan, Inc. and Pilgrim Health Care, Inc. ("HCHP/Pilgrim") may violate the Sherman Act, 15 U.S.C. §1, and the Massachusetts Antitrust Act, M.G.L. c. 93, §4.

This agreement resolves the concerns of the Commonwealth.

1. Harvard Community Health Plan, Inc. ("HCHP") is a Massachusetts non-profit corporation, engaged in the provision of health care services.
2. Pilgrim Health Care, Inc. ("Pilgrim") is a Massachusetts non-profit corporation, engaged in the provision of health care services.

I. GENERAL PROVISIONS

A. HCHP/Pilgrim admits no liability under or violation of the antitrust or any other state or federal laws.

B. All provisions of the agreement are to be restricted to conduct occurring within the Commonwealth of Massachusetts, unless otherwise restricted specifically to a more narrow geographic area.

C. The requirements of the agreement will expire 3 years after the date executed, unless otherwise specifically provided.

D. All information provided to the Attorney General in conjunction with review of the affiliation transaction, for the purposes of any reporting pursuant to the agreement, or for obtaining any approval required under the agreement shall be kept confidential under the Massachusetts Public Records laws or otherwise to the extent permitted by law. If at any time any person seeks access by subpoena, requests pursuant to any law, or otherwise to the notification, information, or documentary materials provided to the Attorney General, the Attorney General shall, to the extent permitted by law, (i) immediately notify HCHP/Pilgrim, (ii) not release the information sought for at least 10 days after providing HCHP/Pilgrim with notification, and (iii) in response to such subpoena or request assert, if appropriate, that the information constitutes trade secrets or confidential information or financial information that is not subject to disclosure.

E. For purposes of this agreement, "Eastern Massachusetts" means Barnstable, Bristol, Essex, Middlesex, Norfolk, Plymouth, Suffolk and Worcester counties.

F. HCHP/Pilgrim may request modifications to this agreement for such reasons as changes in the factual circumstances of

HCHP/Pilgrim or of the health care financing marketplace in the Commonwealth or changes in the legal standards governing issues addressed in this agreement and the Attorney General shall consider such requests in good faith. Violation of this Assurance will not constitute contempt of court.

## II. LIMITATIONS ON CONTRACTING ARRANGEMENTS AND ACQUISITIONS

A. HMO Acquisitions. During the first two years of the term of this Agreement, HCHP/Pilgrim agrees that it will provide prior notice to and receive approval from the Attorney General before acquiring, directly or indirectly, the voting securities or assets of any health maintenance organization (hereafter "HMO"), as defined under Massachusetts General Laws, Chapter 176G §1, provided that such notice and approval shall not be required for an HMO with no members residing in Eastern Massachusetts and fewer than 20,000 members residing in the remaining counties of Massachusetts. Such notice and approval shall be pursuant to the procedures and subject to the standards set out in paragraph III below.

B. Exclusive Contracts with Hospitals. HCHP/Pilgrim agrees that it will provide prior notice to and receive approval from the Attorney General before entering into any contract with a hospital where such contract prohibits that hospital from entering into any contract or affiliation with all other hospital service corporations, medical service corporations, insurance organizations or HMOs. Such notice and approval shall be pursuant to the procedures and subject to the standards set out in paragraph III below. This provision does not apply to contracts or other

arrangements with any hospital in which HCHP/Pilgrim has the right to elect over 50% of the board of directors or other governing body. Nothing in this provision limits HCHP/Pilgrim's right to determine not to enter into a contract with any hospital.

C. Exclusive Contracts with Physicians. HCHP/Pilgrim agrees that it will provide prior notice to and receive approval from the Attorney General before entering into any contract with a physician that precludes that physician from entering into any contract or affiliation with all other hospital service corporations, medical service corporations, insurance organizations or HMO's (hereafter "exclusivity contract"), where the contract will result in HCHP/Pilgrim's having exclusivity contracts with over 25% of the physicians in the same specialty located in the county in which such group is located. The notice and approval required by this provision shall be pursuant to the procedures and subject to the standards set out in paragraph III below. Nothing in this provision limits HCHP/Pilgrim's right to determine not to enter into a contract with any physician group.

D. Most Favored Nation Contract. HCHP/Pilgrim agrees that it will not enter into any contract with a provider of health care services that contractually requires that provider to charge HCHP/Pilgrim the lowest fee charged or offered by that provider to any person or other plan. Nothing in this provision limits the ability of HCHP/Pilgrim to negotiate with a provider based upon a fee or fee schedule of any person or other plan or government program.

E. Acquisition of Physician Groups. During the first two years of the term of this Agreement, HCHP/Pilgrim agrees that it will provide ten days prior notice to the Attorney General before acquiring more than a 50% interest in any physician group in a county if, as a result of such acquisition, the number of physicians in any specialty in that county which it employed or who were employed by groups in which HCHP/Pilgrim owned more than a 50% interest would exceed 25% of the physicians in the same specialty practicing in that county.

F. Pricing Assurances

1. HCHP/Pilgrim agrees that during calendar year 1995 (i) it will not increase the premium rates filed with the Massachusetts Division of Insurance (hereafter "filed rates") for its non-group and small group traditional HMO products in any quarter over the filed rates for such products for the same quarter of 1994, and (ii) will not increase its filed rates for all other traditional HMO products in any calendar quarter by more than 2% over the filed rates for such products for the same quarter of 1994.

2. HCHP/Pilgrim agrees that any increases in its filed rates for any of its products for any quarter of calendar year 1996 as compared with the same quarter of 1995 will not exceed the higher of (i) the average of the increase in filed rates for substantially similar products of all other HMO's competing with HCHP/Pilgrim in Eastern Massachusetts in the immediately preceding quarter of 1996 or (ii) 4.5%.

3. The following shall apply to the provisions of paragraphs

II. F. 1 and 2:

Filed rates shall be adjusted for changes resulting from taxes or similar governmental levies or changes in benefits before the above calculations are made.

4. a. The provisions of paragraphs II. F. 1 and 2 shall not apply to POS or PPO products.
- b. The provisions of paragraphs II. F. 1 and 2 shall apply only to the extent that their application would not cause HCHP/Pilgrim to be in violation of any loan or bond financial covenants or any legal or regulatory requirements.

III. NOTIFICATION AND APPROVAL PROCEDURES

A. Where notice to and approval by the Attorney General is required under this agreement, the provisions of this section shall apply.

B. HCHP/Pilgrim shall give any notice required by this agreement at least 30 days before taking any action covered by the approval requirement. Within 30 days of notification by HCHP/Pilgrim under this agreement, the Attorney General may request additional information or documentary material relevant to the proposed action. If the Attorney General makes such a request, the time within which he may review the proposed action will be extended by an additional twenty days beyond the initial 30-day period. If the Attorney General objects to such proposed action, he shall state such objection in writing and provide the reasons therefor within the 30-day period, or within any extension thereof

provided for herein or otherwise agreed to by the parties. In deciding whether to object to the proposed action, the Attorney General shall determine whether the proposed action would violate the Massachusetts Antitrust Act, Massachusetts General Laws, Chapter 93, §§1-14A, as those provisions may be from time to time amended; the Massachusetts Consumer Protection Act, Massachusetts General Laws, Chapter 93A, as those provisions may be from time to time amended; or the federal antitrust laws. In the event that the Attorney General objects to a proposed action requiring his approval under this agreement, the Attorney General shall inform HCHP/Pilgrim of his intention to so object and shall provide HCHP/Pilgrim with a written statement of the competitive reasons that form the bases of his intention. The bases set out in this written statement shall not be arbitrary and capricious.

C. Should the Attorney General communicate his objection to any such proposed action, or refuse to modify this agreement upon request of HCHP/Pilgrim, HCHP/Pilgrim may obtain judicial review in the Superior Court for Suffolk County. If the court determines that the bases set out in the objection of the Attorney General or his refusal to modify the agreement are arbitrary and capricious, the court shall enter an order declaring such bases or refusal to have been arbitrary and capricious and requiring the Commonwealth to withdraw its objections.

#### IV. COMMUNITY BENEFIT COMMITMENTS

A. HCHP Foundation Programs. HCHP/Pilgrim will increase the funding of community-benefit activities and programs through

increasing contributions to the HCHP Foundation over the three-year period following the closing. Such increased contributions shall exceed the budgeted level of contributions by the aggregate sum of \$3.25 million over that period. The CEO of HCHP/Pilgrim will certify in writing to the Attorney General that the \$3.25 million contribution is in addition to the amount of any contribution previously planned. Such \$3.25 million shall be distributed pursuant to a community benefit process reviewed and approved by the Chief of the Consumer Protection and Antitrust Division of the Attorney General's Office (hereafter "Antitrust Division"). HCHP/Pilgrim may review with the Antitrust Division the process used to secure community input on existing programs in violence prevention, health care for the homeless and AIDS education (hereafter "the existing programs"). Except to the extent that the Antitrust Division reasonably concludes that such process for existing programs was materially inadequate, the \$3.25 million may be allocated to expand such existing programs.

B. Medicare Program.

1. HCHP/Pilgrim will continue selling its recently-introduced Medicare risk products. HCHP/Pilgrim will target enrollment of a total of 40,000 new members by December 31, 1998 in its Medicare programs. Should the enrollment level of 40,000 new members by December 31, 1998 not be achieved, or should less than 30,000 of HCHP/Pilgrim's total Medicare members not have purchased coverage for prescription drugs (hereafter "Rx members") or should the number of Rx members who are over 75 years of age be



less than 80% of the percent of persons over 75 years of age in the general population in all the counties in which HCHP/Pilgrim is marketing its Medicare products, then HCHP/Pilgrim will make an additional contribution during 1998 of \$500,000 to the HCHP Foundation to be used specifically for health programs benefiting elderly residents of the Commonwealth. HCHP/Pilgrim agrees that it will market its Medicare products in a non-age discriminatory manner, so as to provide to all age segments of the Medicare population, to the extent reasonably practicable, an opportunity to enroll.

2. HCHP/Pilgrim will enroll a minimum number of new Rx members over 73 years of age as follows:

By December 31, 1996	3,000
By March 31, 1998	6,000

If for reasons beyond the reasonable control of HCHP/Pilgrim the foregoing minimum numbers are not achieved, HCHP/Pilgrim and the Attorney General will discuss measures to achieve such goals or alternative benefit programs for the elderly.

3. Should prudent business judgment require the discontinuance of the Medicare risk product, HCHP/Pilgrim will promptly notify the Attorney General with a report explaining the reasons therefor.

C. Non-Group Program. HCHP/Pilgrim will make a non-group program substantially the same as HCHP's existing non-group program available to HCHP/Pilgrim prospective members who desire to use the existing Pilgrim delivery network.

D. Cobra Program.

Within six months of the date of this Agreement and for three years thereafter, HCHP will establish, and fund at the rate of \$250,000 per annum, a program which will provide to certain members of HCHP/Pilgrim premium subsidies. Such subsidies (i) will be provided to group members who become eligible for COBRA coverage with the group through which they were members and whose annual household income is less than 250% of the federal poverty level and who are not eligible for Medicare or Medicaid, and (ii) will be 33 1/3% of the premium such member would otherwise be required to pay to maintain coverage under his or her group's HCHP/Pilgrim HMO coverage during the COBRA eligibility period, and will be paid for

the duration of the member's COBRA eligibility period so long as such member otherwise qualifies for a subsidy.

HARVARD COMMUNITY HEALTH PLAN, INC.

By: Manuel M. Torres

Dated: 1/18/95

PILGRIM HEALTH CARE, INC.

By: Alla Gueby

Dated: 1/18/95

COMMONWEALTH OF MASSACHUSETTS

SCOTT HARSHBARGER  
ATTORNEY GENERAL

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Dated: 1/18/95