

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION NO.

94-5653 F

filed
10/20/94
ES

IN THE MATTER OF
BAYCARE HEALTH PARTNERS, INC.

ASSURANCE OF DISCONTINUANCE

The Commonwealth of Massachusetts (the "Commonwealth"), by its Attorney General, has caused an investigation to be made into whether the participation agreements for the formation of Baycare Health Partners, Inc. might violate the Sherman Act, 15 U.S.C. §1 and the Massachusetts Antitrust Act, M.G.L. c. 93, §4.

1. The Baystate Medical Center, Inc. (the "Hospital") is a Massachusetts nonprofit corporation, engaged in the provision of health care services in Springfield, Massachusetts.

2. The Hospital's parent corporation is Baystate Health Systems, Inc. ("Baystate").

3. The Greater Springfield IPA, Inc. (the "IPA") is a Massachusetts for-profit corporation.

4. The formation of Baycare Health Partners, Inc. is being contemplated as a Massachusetts physician hospital organization (the "PHO").

5. The IPA and Baystate would be corporate members (the "Members") of the PHO.

6. The PHO would be organized to arrange for the delivery of health care services through the participation agreement with the IPA physician members (the "IPA Physicians"), with the Hospital, and other health care institutions or providers, to enrollees and their dependents (collectively, "Enrollees") in health maintenance organizations, preferred provider health insurance arrangements, corporate employee benefit plans, union benefit plans, prepaid health plans, and other alternative health care delivery system arrangements ("Health Benefit Plans") and to engage in other activities in connection therewith which are necessary or beneficial in arranging for the delivery of health care services to such Health Benefit Plans.

7. The IPA Participation Agreement contains a Right of First Opportunity wherein the IPA would agree on behalf of itself and IPA Physicians to bring all opportunities for new contracts and contract renewals (including, without limitation, renegotiation of financial arrangements in a contract) with a Health Benefit Plan first to the PHO for its consideration, subject to certain terms and conditions set out in sections 3.1 - 3.5 of the IPA Participation Agreement.

8. Appendix A of the Greater Springfield IPA, Inc. Physician Agreement contains a Right of First Opportunity wherein each participating Physician would agree to bring all opportunities for new contracts and contract renewals (including, without limitation, renegotiation of financial

arrangements in a contract) with a Health Benefit Plan first to the PHO for its consideration, subject to certain terms and conditions set out in sections 3.1 - 3.5 of Appendix A.

9. The Hospital Participation Agreement contains a Right of First Opportunity wherein the Hospital would agree to bring all opportunities for new contracts and contract renewals (including, without limitation, renegotiation of financial arrangements in a contract) with a Health Benefit Plan first to the PHO for its consideration, subject to certain terms and conditions set out in sections 3.1 - 3.3 of the Hospital Participation Agreement.

10. The By-Laws of Baycare Health Partners, Inc. (the "By-Laws") contain a Right of First Opportunity wherein the IPA Member, on behalf of itself and its members who are on the provider panel of the Corporation, and the Hospital on behalf of the Health System Member each would bring all opportunities for new contracts and contract renewals (including, without limitation, renegotiation of financial arrangements in a contract) with Health Benefit Plans first to the Corporation for its consideration subject to certain conditions set out in sections 2.3(a) - 2.3(f) of the By-Laws.

11. This Assurance is intended to resolve antitrust concerns arising from the Attorney General's review of the IPA Participation Agreement, Appendix A to the IPA Participation Agreement, the By-Laws of Baycare Health Partners, Inc. and the Hospital Participation Agreement.

The parties have entered into this Assurance without adjudication of any issue of fact or law herein and without

this Assurance constituting an admission by, any evidence against, or an estoppel against either party with respect to any such issue.

12. Baycare Health Partners, Inc. and the Greater Springfield IPA, Inc. hereby give assurance that sections 3.0, 3.1, 3.2, 3.3, 3.4 and 3.5 pertaining to the Right of First Opportunity in the IPA Participation Agreement will be modified as attached. See Exhibit A.

13. The Greater Springfield IPA, Inc. hereby gives assurance that sections 3.0, 3.1, 3.2, 3.3, 3.4 and 3.5 pertaining to the Right of First Opportunity in Appendix A of the Greater Springfield IPA, Inc. Physician Agreement will be modified as attached. See Exhibit B.

14. Baystate Health Systems, Inc. and the Greater Springfield IPA, Inc. hereby give assurance that sections 2.3, 2.3(a), 2.3(b), 2.3(c), 2.3(d), 2.3(e) and 2.3(f) pertaining to the Right of First Opportunity in the By-Laws of Baycare Health Partners, Inc. will be modified as attached. See Exhibit C.

15. Baycare Health Partners, Inc. and the Baystate Medical Center, Inc. hereby give assurance that sections 3.0, 3.1, 3.2 and 3.3 pertaining to the Right of First Opportunity in the Hospital Participation Agreement will be modified as attached. See Exhibit D.

16. Baystate Medical Center, Inc., Baycare Health Partners, Inc. and the Greater Springfield IPA, Inc. agree that they shall not modify the terms describing the Right of First Opportunity in Exhibits A through D nor shall they require any Right of First Opportunity in any subsequent agreement between

them that is inconsistent with the language in Exhibits A through D.

17. Baycare Health Partners, Inc. hereby agrees to inform the Commonwealth, through its Attorney General, of any intention to change its governance structure by giving physicians greater than 50% control of its board. Notice of such change shall be given in writing, sixty days prior to the proposed modification, in order to allow the Attorney General to perform an antitrust review of the modification. Baycare shall not implement such change in its governance board prior to the Attorney General's review or the expiration of the sixty day period or eighty day period as provided below.

18. The Attorney General may request information or documentary material relevant to the proposed modification. If the Attorney General makes such a request, the time within which he may review the modification will be extended by an additional twenty days.

19. The Greater Springfield IPA, Inc., Baystate Health Systems, Inc. and Baystate Medical Center shall reimburse the Office of the Attorney General an amount of \$2,500 for its costs and expenses.

20. Nothing in this Assurance shall be interpreted as abrogating any statutory or other authority that the Attorney General possesses.

21. Throughout the terms of this Assurance, the PHO, the IPA, and the Hospital shall respond promptly to any reasonable requests for information or documents made by the Attorney General to ensure compliance with this Assurance.

22. This Assurance will bind each of the undersigned as well as their respective parents, affiliates, successors and assigns.

GREATER SPRINGFIELD IPA, INC.

By: John Cooke, MD

Dated: 10/4/94

BAYSTATE HEALTH SYSTEMS, INC.

By: Michael J. Daly
President - 9/29/94

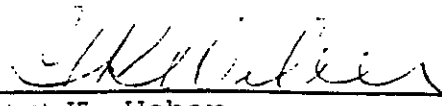
BAYSTATE MEDICAL CENTER

By: Mark R. Tolosky
Mark R. Tolosky
Chief Executive Officer

Dated: 9/29/94

COMMONWEALTH OF MASSACHUSETTS
SCOTT HARSHBARGER
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~~September~~ ^{October} 19, 1994

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BAYCARE HEALTH PARTNERS, INC.

IPA PARTICIPATION AGREEMENT

3. Right of First Opportunity. The IPA agrees on behalf of itself and IPA Physicians to bring all opportunities for new contracts and contract renewals (including, without limitation, renegotiation of financial arrangements in a contract) with a Health Benefit Plan first to the PHO for its consideration, subject to the following terms and conditions:

3.1 This obligation shall not apply with respect to any Health Benefit Plan which indicates to an individual IPA Physician that the Health Benefit Plan prefers to conduct negotiations with the individual IPA Physician without the prior knowledge of the PHO.

3.2 This obligation shall not apply with respect to any Health Benefit Plan which indicates to the IPA that it will not negotiate with the PHO.

3.3 This obligation shall not preclude individual IPA Physicians from simultaneously bringing a Health Benefit Plan contract opportunity to another physician-hospital organization in which they participate directly or indirectly.

3.4 The PHO shall have sixty (60) days to negotiate an agreement with the Health Benefit Plan on behalf of its Members and the IPA Physicians which sixty (60) day period may be extended by mutual agreement of the PHO and the Health Benefit Plan (the "PHO Negotiation Period").

3.5 If (a) the PHO declines to pursue an agreement with the Health Benefit Plan, (b) the Health Benefit Plan declines to negotiate with the PHO pursuant to Section 3.2, (c) the PHO Board of Directors fails to vote on the agreement with the Health Benefit Plan within the PHO Negotiation Period, or (d) the PHO Board of Directors votes on the agreement with the Health Benefit Plan and the IPA Directors approve the agreement, but the Health System Directors do not, then the IPA shall have a period of time as determined by the IPA in its IPA Physician Agreement to negotiate an agreement with the Health Benefit Plan on behalf of the IPA Physicians which period may be extended by mutual agreement of the IPA and the Health Benefit Plan (the "IPA Negotiation Period"). For the purposes of the IPA Negotiation Period, the IPA shall only have the authority to bind IPA Physicians to agreements or programs with Health Benefit Plans that Meet the contracting parameters adopted by the PHO Board of Directors pursuant to the process described in Section 4 of Appendix A to this Agreement.

3.6 If (a) the PHO Board of Directors votes on the agreement with the Health Benefit Plan and the IPA Directors do not approve the Agreement, or (b) in the case of Section 3.5, (i) the IPA declines to pursue an agreement with the Health Benefit Plan, (ii) the Health Benefit Plan declines to negotiate with the IPA, (iii) the IPA Board of Directors fails to vote on the agreement with the Health Benefit Plan within the IPA Negotiation Period; or (iv) the IPA Board of Directors votes not to approve the agreement with the Health Benefit Plan, then the IPA Physicians shall be free to pursue agreements with the Health Benefit Plan independently.

IPA PARTICIPATION AGREEMENT

APPENDIX A

3. Right of First Opportunity. The Physician agrees to bring all opportunities for new contracts and contract renewals (including, without limitation, renegotiation of financial arrangements in a contract) with a Health Benefit Plan first to the PHO for its consideration, subject to the following terms and conditions:

3.1 This obligation shall not apply with respect to any Health Benefit Plan which indicates to the Physician that the Health Benefit Plan prefers to conduct negotiations with the Physician without the prior knowledge of the PHO.

3.2 This obligation shall not apply with respect to any Health Benefit Plan which indicates to the IPA or to the Physician that it will not negotiate with the PHO.

3.3 This obligation shall not preclude the Physician from simultaneously bringing a Health Benefit Plan contract opportunity to another physician-hospital organization in which he participates directly or indirectly.

3.4 The PHO shall have sixty (60) days to negotiate an agreement with the Health Benefit Plan on behalf of its Members and the IPA Physicians which sixty (60) day period may be extended by mutual agreement of the PHO and the Health Benefit Plan (the "PHO Negotiation Period").

3.5 If (a) the PHO declines to pursue an agreement with the Health Benefit Plan, (b) the Health Benefit Plan declines to negotiate with the PHO pursuant to Section 3.2, (c) the PHO Board of Directors fails to vote on the agreement with the Health Benefit Plan within the PHO Negotiation Period, or (d) the PHO Board of Directors votes on the agreement with the Health Benefit Plan and the IPA Directors approve the agreement, but the Health System Directors of the PHO do not, then the IPA shall have a period of time as determined by the IPA in its IPA Physician Agreement to negotiate an agreement with the Health Benefit Plan on behalf of the IPA Physicians which period may be extended by mutual agreement of the IPA and the Health Benefit Plan (the "IPA Negotiation Period"). For the purposes of the IPA Negotiation Period, the IPA shall only have the authority to bind IPA Physicians to agreements or programs with Health Benefit Plans that meet the contracting parameters adopted by the PHO Board of Directors pursuant to the process described in Section 4 of this Appendix A; and

3.6 If (a) the PHO Board of Directors votes on the agreement with the Health Benefit Plan and the IPA Directors of the PHO do not approve the Agreement, or (b) in the case of Section 3.5, (i) the IPA declines to pursue an agreement with the Health Benefit Plan, (ii) the Health Benefit Plan declines to negotiate with the IPA, (iii) the IPA Board of Directors fails to vote on the agreement with the Health Benefit Plan within the IPA Negotiation Period; or (iv) the IPA Board of Directors votes not to approve the agreement with the Health Benefit Plan, then the Physician shall be free to pursue agreements with the Health Benefit Plan independently.

BY-LAWS

OF

BAYCARE HEALTH PARTNERS, INC.

2.3 To be qualified for membership in the Corporation, the IPA Member, on behalf of itself and its members who are on the provider panel of the Corporation, and the Hospital on behalf of the Health System Member each shall bring all opportunities for new contracts and contract renewals (including, without limitation, renegotiation of financial arrangements in a contract) with Health Benefit Plans first to the Corporation for its consideration subject to the following conditions:

- a. This obligation shall not apply with respect to any Health Benefit Plan which indicates to an individual IPA Physician that the Health Benefit Plan prefers to conduct negotiations with the individual IPA Physician without the prior knowledge of the Corporation.
- b. This obligation shall not apply with respect to any Health Benefit Plan which indicates to the IPA, to the Hospital or to the IPA Physician that it will not negotiate with the Corporation.
- c. This obligation shall not preclude individual IPA Physicians from simultaneously bringing a Health Benefit Plan contract opportunity to another physician-hospital organization in which they participate directly or indirectly.
- d. The PHO shall have sixty (60) days to negotiate an agreement with the Health Benefit Plan on behalf of its Members and the IPA Physicians which sixty (60) day period may be extended by mutual agreement of the PHO and the Health Benefit Plan (the "PHO Negotiation Period").
- e. If (1) the PHO declines to pursue an agreement with the Health Benefit Plan, (2) the Health Benefit Plan declines to negotiate with the Corporation pursuant to Section 2.3.b, (3) the Corporation's Board of Directors fails to vote on the agreement with the Health Benefit Plan within the PHO Negotiation Period, or (4) the Corporation's Board of Directors votes on the agreement with the Health Benefit Plan and the IPA Directors approve the agreement, but the Health System Directors do not, then the IPA shall have a period of time as determined by the IPA in its IPA Physician Agreement to negotiate an agreement with the Health Benefit Plan on behalf of the IPA Physicians which period may be extended by mutual agreement of the IPA and the Health Benefit Plan (the "IPA Negotiation Period").

For the purposes of the IPA Negotiation Period, the IPA shall only have the authority to bind IPA Physicians to agreements or programs with Health Benefit Plans that meet the contracting parameters adopted by the PHO Board of Directors pursuant to the process described in the IPA's agreements with IPA Physicians.

f. If (1) the Corporation's Board of Directors votes on the agreement with the Health Benefit Plan and the IPA Directors do not approve the Agreement, or (2) in the case of Section 2.3.e, (i) the IPA declines to pursue an agreement with the Health Benefit Plan, (ii) the Health Benefit Plan declines to negotiate with the IPA, (iii) the IPA Board of Directors fails to vote on the agreement with the Health Benefit Plan within the IPA Negotiation Period; or (iv) the IPA Board of Directors votes not to approve the agreement with the Health Benefit Plan, then the IPA Physicians shall be free to pursue agreements with the Health Benefit Plan independently.

g. If (1) the Corporation declines to pursue an agreement with the Health Benefit Plan, (2) the Health Benefit Plan declines to negotiate with the Corporation pursuant to Section 2.3.b, (3) the Corporation's Board of Directors fails to vote on the agreement with the Health Benefit Plan within the PHO Negotiation Period, or (4) the Corporation's Board of Directors votes on the agreement with the Health Benefit Plan and does not approve the agreement, then the Hospital shall be free to negotiate an agreement with the Health Benefit Plan.

BAYCARE HEALTH PARTNERS, INC.

HOSPITAL PARTICIPATION AGREEMENT

3. Right of First Opportunity. The Hospital agrees to bring all opportunities for new contracts and contract renewals (including, without limitation, renegotiation of financial arrangements in a contract) with a Health Benefit Plan first to the PHO for its consideration subject to the following terms and conditions:

3.1 This obligation shall not apply with respect to any Health Benefit Plan which indicates to the Hospital that the Health Benefit Plan prefers to conduct negotiations with the Hospital without the prior knowledge of the PHO.

3.2 This obligation shall not apply with respect to any Health Benefit Plan which indicates to the Hospital that the Health Benefit Plan will not negotiate with the PHO.

3.3 The PHO shall have sixty (60) days to negotiate an agreement with the Health Benefit Plan on behalf of its Members, the Hospital and the IPA Physicians which sixty (60) day period may be extended by mutual agreement of the PHO and the Health Benefit Plan (the "PHO Negotiation Period"); and

3.4 If (a) the PHO declines to pursue an agreement with the Health Benefit Plan, (b) the Health Benefit Plan declines to negotiate with the PHO pursuant to Section 3.2, (c) the PHO Board of Directors fails to vote on the agreement with the Health Benefit Plan within the PHO Negotiation Period, or (d) the PHO Board of Directors votes on the agreement with the Health Benefit Plan and the IPA Directors approve the agreement, but the Health System Directors do not, then the Hospital shall be free to negotiate an agreement with the Health Benefit Plan.

Appendix A

This Appendix A shall apply only with respect to physicians participating in contracts entered into by the IPA with Baycare Health Partners, Inc. and, unless modified by this Appendix A, the Agreement shall remain in full force and effect.

1. Agent of IPA Physician. Nothing herein shall preclude Physician from designating his or her practice manager as agent for purposes of engaging in business discussions under this Agreement, provided, however, that such status shall confer no proxy or voting rights on said individual except in accordance with the Bylaws of IPA.

2. Participation Criteria. The Physician represents and warrants that he or she does and shall during the term of this Agreement:
 - 2.1 Maintain in full force and effect a license to practice medicine or osteopathy in Massachusetts;

 - 2.2 Maintain malpractice insurance in an amount not less than \$1,000,000 individual and \$3,000,000 aggregate. If the Physician has a claims-made policy, he or she shall purchase "tail coverage" upon retirement or leaving Massachusetts;

 - 2.3 Maintain insurance in an amount not less than \$200,000 per occurrence and \$600,000 aggregate, for personal injury on or about the premises of the Physician's facility;

 - 2.4 Maintain employer's liability and workers' compensation insurance to the extent required by law;

 - 2.5 Maintain staff privileges at Baystate Medical Center or such other hospitals approved by the PHO from time to time;

 - 2.6 Meet the credentialing criteria and recredentialing requirements of the PHO and such other criteria for being on the PHO's provider panel as the PHO's Board of Directors may from time to time impose.

Should Physician fail to meet any of the above criteria during the term of this Agreement, he or she will immediately so notify the IPA, which will in turn notify the PHO.

3. Right of First Opportunity. The Physician agrees to bring all opportunities for new contracts and contract renewals (including, without limitation, renegotiation of financial arrangements in a contract) with a Health Benefit Plan first to the PHO for its consideration, subject to the following terms and conditions:
 - 3.1 This obligation shall not apply with respect to any Health Benefit Plan which indicates in writing to the IPA or to the Physician that it will not, under any reasonable circumstances, negotiate with the PHO, provided, however, that the IPA or the Physician provides the PHO with evidence of this in writing;

- 3.2 This obligation shall not preclude individual IPA Physicians from simultaneously bringing a Health Benefit Plan contract opportunity to another physician-hospital organization in which they participate directly or indirectly;
- 3.3 The PHO shall have sixty (60) days to negotiate an agreement with the Health Benefit Plan on behalf of its Members and the IPA Physicians, which sixty (60) day period may be extended by mutual agreement of the PHO and the Health Benefit Plan (the "PHO Negotiation Period");
- 3.4 If (a) the PHO declines to pursue an agreement with the Health Benefit Plan, (b) the Health Benefit Plan declines to negotiate with the PHO pursuant to Section 3.1, (c) the PHO Board of Directors fails to vote on the agreement with the Health Benefit Plan within the PHO Negotiation Period, or (d) the PHO Board of Directors votes on the agreement with the Health Benefit Plan and the IPA Directors approve the agreement, but the Hospital Directors do not, then the IPA shall have a period of time as determined by the IPA in its IPA Physician Agreement to negotiate an agreement with the Health Benefit Plan on behalf of the IPA Physicians, which period may be extended by mutual agreement of the IPA and the Health Benefit Plan (the "IPA Negotiation Period"). For the purposes of the IPA Negotiation Period, the IPA shall only have the authority to bind IPA Physicians to agreements or programs with Health Benefit Plans that meet the contracting parameters adopted by the PHO Board of Directors pursuant to the process described in Section 4 of this Appendix A; and
- 3.5 If (a) the PHO Board of Directors votes on the agreement with the Health Benefit Plan and the IPA Directors do not approve the Agreement, or (b) in the case of Section 3.4, (i) the IPA declines to pursue an agreement with the Health Benefit Plan, (ii) the Health Benefit Plan declines to negotiate with the IPA, (iii) the IPA Board of Directors fails to vote on the agreement with the Health Benefit Plan within the IPA Negotiation Period; or (iv) the IPA Board of Directors votes not to approve the agreement with the Health Benefit Plan, then the IPA Physicians shall be free to pursue agreements with the Health Benefit Plan independently.
4. Participation in Health Benefit Plan Agreements. The Physician agrees to participate in and accept the terms of all Health Benefit Plan contracts entered into or sponsored by the PHO. The Physician shall participate in agreements and programs entered into or sponsored by the PHO which meet the contracting parameters adopted by the PHO Board of Directors from time to time. Prior to the PHO Board's adopting contracting parameters for any particular type of contract [e.g., fee for service contracts, global pricing contracts and capitation contracts (a "Category of Contracts")], the Physician shall have the opportunity to provide information to the PHO Board regarding parameters acceptable to that Physician. Such information shall be kept confidential by the PHO Board and shall not be shared with any other physician that competes with the Physician. After the PHO Board develops and disseminates contracting parameters for any Category of Contracts, the Physician shall have the opportunity to decline to participate in contracts for that Category of Contracts entered into or sponsored by the PHO. The PHO Board reserves the right to offer all physicians who had not declined the contracting parameters adopted by the PHO Board of Directors for the applicable category of contracts the opportunity to accept or decline an individual