

Superior Court of Maine, Kennebec County.

STATE of Maine

v.

CENTRAL AND WESTERN MAINE REGIONAL PHO, INC., Integrated Healthcare Corp.,
Central Maine Medical Center, Stephens Memorial Physician Hospital Organization, Inc.,
Stephens Memorial Hospital, Inc., Rumford Community Hospital Organization, Inc., Rumford
Community Hospital, Inc., Northern Cumberland Memorial Hospital PHO, Inc., and Northern
Cumberland Hospital, Inc.

Civil No. CV-96-16.

Jan. 18, 1996.

CONSENT ORDER

ALEXANDER, Judge.

WHEREAS, Plaintiff, State of Maine, having filed its Complaint herein on January 18, 1996, and Plaintiff and Defendants, by their respective attorneys, having consented to the entry of this Consent Order without trial or adjudication of any issue of fact or law herein and without this Consent Order constituting any evidence against or admission by any party with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and on consent of the parties hereto, it is hereby ordered, adjudged and decreed as follows:

I. JURISDICTION

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against Defendants under 22 M.R.S.A. § 1885.

II. DEFINITIONS

In this Consent Order, the following definitions shall apply:

- A. "Department" shall mean the Department of the Attorney General for the State of Maine.
- B. "Member" shall mean each hospital and physician which has an ownership, interest or shares substantial financial risk in a PHO, the Network, or a qualified managed care plan.
- C. "Messenger model" means the use of an agent or third party to convey to purchasers any information obtained from individual providers (including both members and other hospital and physician providers) about the fees which each provider is willing to accept from such purchasers,

and to convey to providers any contract offer made by a purchaser, where (1) each provider makes a separate, independent, and unilateral decision to accept or reject a purchaser's offer, (2) the fee information conveyed to purchasers is obtained separately from each individual provider, and (3) the agent or third party (a) does not negotiate collectively for the providers, (b) does not disseminate to any provider the agent's or third party's or any other provider's views or intentions as to the proposal and (c) does not otherwise serve to facilitate any agreement among providers on price or other significant terms of competition.

D. "Network" shall mean the Central and Western Maine Regional PHO, Inc., each organization controlled by or under common control with it, and its directors, officers, agents, employees, members, and successors.

E. "PHOs" shall mean Integrated Healthcare Corporation, Rumford Community Hospital Organization, Inc., Stephens Memorial Physician Hospital Organization, Inc., and Northern Cumberland Memorial Hospital PHO, Inc., each organization controlled by or under common control with them, and their directors, officers, agents, employees, members and successors.

F. "Provider panel" shall mean those health care providers whom an organization authorizes to provide care to its enrollees and whom enrollees are given financial incentives to use.

G. "Qualified managed care plan" shall mean an organization that is owned, in whole or in part, by any of the Defendants or members and that offers a provider panel. The owners and members of a qualified managed care plan must share substantial financial risk on all contracts for provision of health care services. Nothing herein shall be deemed to limit the ability of a qualified managed care plan to create financial incentives for improved performance goals for a provider or the organization or to shift risk to a provider, consistent with this paragraph.

H. "Substantial financial risk" shall mean financial risk such as that achieved when an organization receives revenue through capitation or payment of insurance premiums, or when the organization creates significant financial incentives for providers to achieve specific cost containment goals, such as withholding a substantial amount of their compensation, with distribution of that amount made only if the cost-containment goals are met.

III. NON-EXCLUSIVITY

The Network and PHOs are enjoined from:

A. Requiring any member to provide physician or hospital services exclusively through the Network or PHOs or through any other payor or managed care plan.

B. Including in any by laws, participation agreements or any other document or agreements binding members, any provisions directly or indirectly requiring or urging members to:

(i) Provide the Network, PHOs or any payor or managed care plan with a right of first refusal applicable to any proposed contract for physician or hospital services;

(ii) Terminate, fail to renew, fail to negotiate or let expire existing contracts for physician or hospital

services, negotiated other than through the Network or PHOs.

C. Conditioning the provision of hospital or physician services, other than through the Network or PHOs, to patients of any managed care plan by making that service available only if the managed care plan:

- (a) Purchases or uses the Network's or PHO's utilization review program; and
- (b) Contracts or deals with the Network or the PHOs.

IV. NOTICES

The Network and PHOs are ordered to notify each physician and hospital member in writing within 30 days of this Consent Decree or within 10 days of becoming a member that the member is free to contract separately with any other managed care plan on any terms.

V. PRICING

The Network and PHOs are enjoined from

A. Setting the fees or other terms of reimbursement or negotiating on behalf of competing physicians or hospitals unless the Network or PHOs are a qualified managed care plan; and

B. Owning an interest in any organization that sets fees or other terms of reimbursement for, or negotiates for, competing physicians or hospitals, unless that organization is a qualified managed care plan and complies with paragraphs III A, B & C of the Consent Order as if those paragraphs apply to that organization; and

C. Paragraphs A and B above shall not prohibit Defendants from using a messenger model or owning an interest in an organization that uses a messenger model notwithstanding that neither Defendants nor such organization are a qualified managed care plan.

VI. CONTRACT TERMS

The Network and PHOs are enjoined from entering into any contract with any managed care plan or payor for a term longer than two years unless the payor requests a longer term.

VII. MONITORING AND CONDITIONS

A. The Department shall monitor the activities of the Network and the PHOs and compare the Network's and the PHOs' activities to the activities of physician and hospital providers in other comparable areas of the State with respect to the following factors:

- (i) The level of utilization of health care services; and
- (ii) The level of premiums paid or to be paid under contracts between providers and managed care

plans.

B. If the Department determines, at any time, in its sole discretion, that the Network's or PHOs' level of performance with respect to the factors set forth above are significantly less than the level of performance achieved by providers in other areas of the State of Maine, the Department may send the Network or PHOs a written notice stating its conclusions with respect to the performance by the Network or PHOs. The Network or PHOs shall have 60 days from the date the notice is sent to meet with the Department and present any information relating to its performance, including any plans for improving the Network's or PHO's performance with respect to the factors set forth in paragraph A.

C. If the Department concludes, in its sole discretion, after receiving information from the Network, that, with respect to the factors set forth in paragraph A, the Network's or PHO's operation has had or is likely to continue to have significant anticompetitive effects that outweigh any significant procompetitive effects, the Department may file a Notice of Determination with the Court.

1. Upon the Department's filing of the Notice of Determination the Network and PHOs shall be prohibited from negotiating or entering into any new contracts for the delivery of physician or hospital services with any payor or managed care plan.

2. Upon the filing of the notice the Network and PHOs shall be permitted to

(a) Fulfill its obligations under any existing contracts for the provision of medical or hospital services until the next anniversary date of any such contract, at which time Defendants shall be prohibited from further performance under any such contract; and

(b) Perform utilization review, medical management or messenger model functions.

D. Within 60 days after the filing of the Notice of Determination, the Network and PHOs may apply to this Court for an order terminating the Notice of Determination and permitting the Network and PHOs to negotiate and enter contracts for the provision of hospital and medical services. The Court shall schedule a hearing, after providing a reasonable time for discovery, at which hearing the Network or PHOs shall have the burden of establishing by clear and convincing evidence that, with reference to the factors set forth in paragraph A above and the benefits and disadvantages set forth in [22 M.R.S.A. § 1883\(4\) \(Supp.1995\)](#), the likely benefits resulting from the negotiating activities of the Network or PHOs outweigh any disadvantages attributable to a reduction in competition that may result from those activities. Prior to the Court's decision on the Network's or PHOs' request, the Network and PHOs shall be subject to the provisions of paragraph C above.

VIII. FEES

If a hearing is held pursuant to paragraph VII D and if the Department prevails, the Network and PHOs shall reimburse the Department for the reasonable costs of attorneys and experts and consultants; court costs; and reasonable cost of deposition transcripts.

IX. MODIFICATION

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Order to apply to this Court at any time for such further directions as may be necessary or appropriate for the construction or carrying out of this Consent Order, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

It is hereby ORDERED and DECREED.