

4 : CV - 94 - 772

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
 :
 Plaintiff, :
 :
 v. :
 :
 PROVIDENCE HEALTH SYSTEM, INC. :
 AND NORTH CENTRAL PENNSYLVANIA :
 HEALTH SYSTEM, :
 :
 Defendants. :

CIVIL ACTION NO.

FILED
HARRISBURG, PA

MAY 24 1994

LANCE S. WILSON, CLERK
PER AS

COMPLAINT

The Commonwealth of Pennsylvania, by Ernest D. Preate, Jr., Attorney General, brings this action to prevent the formation of the Susquehanna Regional Healthcare Alliance ("Alliance") by Providence Health System, Inc. and North Central Pennsylvania Health System. This Alliance has the substantial likelihood of lessening competition in a line of business (inpatient acute-care hospital services) in an area of commerce (Lycoming County, Pennsylvania) and thus violates section 7 of the Clayton Act, 15 U.S.C. § 18. The Alliance would include the only two hospitals in the City of Williamsport, and three of the four hospitals in Lycoming County.

I. Jurisdiction and Venue

1. This Court has jurisdiction over this action pursuant to 15 U.S.C. § 26, 28 U.S.C. § 1331, and 28 U.S.C. § 1337.

2. Defendants are found and transact business within this district, and the claims in substantial part arise in this district. Venue is proper in the Middle District of Pennsylvania under sections 12 and 16 of the Clayton Act, 15 U.S.C. §§ 22 and 26, and under 28 U.S.C. § 1391(b) and (c).

II. Parties

3. The Commonwealth of Pennsylvania brings this action as parens patriae to protect its general economy and as a direct purchaser of hospital services from defendants through its Medicaid program.

4. "Providence Health System, Inc." ("PHS") is a nonprofit corporation organized under the laws of the Commonwealth of Pennsylvania with its principal place of business at 1100 Grampian Boulevard, Williamsport, Pennsylvania. PHS is the corporate parent of Divine Providence Hospital ("DPH") located at 1100 Grampian Boulevard, Williamsport, Pennsylvania. DPH is the corporate parent of Muncy Valley Hospital ("MVH"), a nonprofit hospital located at 215 East Water Street, Muncy, Pennsylvania.

5. "North Central Pennsylvania Health System" ("NCPHS") is a nonprofit corporation organized under the laws of the Commonwealth of Pennsylvania with its principal place of business at 777 Rural Avenue, Williamsport, Pennsylvania. NCPHS is the

corporate parent of the Williamsport Hospital & Medical Center ("WHMC"), located at 777 Rural Avenue, Williamsport, Pennsylvania. Together with DPH and MVH, WHMC will be under the common management and control of the Alliance.

III. Definitions

6. "Susquehanna Regional Healthcare Alliance" ("Alliance") means the nonprofit corporation created or to be created by PHS and NCPHS that will manage their delivery of health-care services. The Alliance's corporate address will be 1001 Grampian Boulevard, Williamsport, PA.

7. "Health-care Provider" means physicians, hospitals, laboratories and physician networks.

8. "Acute-care Hospital" means a health facility other than a federally-owned facility, having a duly organized governing body with overall administrative and professional responsibility, an organized medical staff that provides 24-hour inpatient care, as well as outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

9. "Inpatient Acute Care" means 24-hour inpatient health care, and related medical or surgical diagnostic and treatment services for physically injured or sick persons with short-term or episodic health problems or infirmities.

10. "Acquire" means to purchase the whole or any part of the assets, stock, equity, capital or other interest of a corporation, or to receive the right or ability to designate directors or trustees or otherwise control the management of a corporation.

11. "HHI" means the Herfindahl-Hirschman Index, a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20 and 20%, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

IV. Trade and Commerce

12. PHS was organized in December 1993 to operate DPH and its related affiliates. Total operating revenues of PHS in 1993 were approximately \$64.4 million. NCPHS is the parent of WHMC. Total patient service revenues of NCPHS in 1993 were \$148.6 million. Each corporation is engaged in interstate commerce, and their activities are in the flow of, and substantially affect, interstate commerce.

13. The provision of inpatient acute care occurs, at least in part, through various channels of interstate communication and transportation.

V. Relevant Product and Geographic Market

14. The relevant product market in which to assess the competitive effect of the Alliance is the market for inpatient acute-care hospital services.

15. The relevant geographic market in which to assess the effect of the Alliance is Lycoming County, Pennsylvania.

VI. Factual Allegations

16. On September 23, 1993, PHS and NCPHS announced that they intended to enter into an agreement whereby they would establish a single nonprofit corporation, the Susquehanna Regional Healthcare Alliance, to provide coordinated hospital and medical services to residents of north central Pennsylvania.

17. PHS and NCPHS will retain their individual assets, and DPH and WHMC will remain individual hospitals operating in a coordinated manner under the Alliance "umbrella." However, through common management, the Alliance will have the responsibility for the majority of the economic decisions affecting the hospitals' activities. Further, the three hospitals under the Alliance's control will compete as one entity.

18. The Alliance will coordinate the delivery of health care services in north central Pennsylvania.

19. Individual consumers generally seek to obtain inpatient acute-care hospital services from hospitals located near their residence or workplace.

20. Likewise, employers and third-party payors generally seek to obtain inpatient acute-care hospital services for their employees and/or subscribers near their employees' and/or subscribers' residence or workplace.

VII. Market Concentration

21. The subsidiary hospitals of defendants PHS and NCPHS are competitors and potential competitors of each other in Lycoming County, Pennsylvania.

22. Significant barriers to entry, specifically the requirement pursuant to Pennsylvania law to obtain a certificate of need before establishing a hospital or other competing health-care service, exist with respect to the provision of inpatient acute-care hospital services in Lycoming County, Pennsylvania.

23. The market for the provision of inpatient acute-care services offered by hospitals in Lycoming County, Pennsylvania is already highly concentrated and will become more so as the result of the proposed Alliance. The Alliance would include the only two hospitals in the City of Williamsport, and three of the four hospitals in Lycoming County. The one remaining independent

hospital, the Jersey Shore Hospital, is a small, financially-troubled hospital located about 10 miles west of Williamsport.

24. Based upon total patient admissions (newborns not included) in 1991, WHMC has a market share of 56.84% in the City of Williamsport and 43.16% in Lycoming County. DPH has a market share of 33.62% in the City of Williamsport and 29.9% in Lycoming County. MVH has a market share of .47% in the City of Williamsport and 9.99% in Lycoming County. Therefore, the three hospitals that would be under the Alliance's control would have a combined market share of 90.93% in the City of Williamsport and 83.05% in Lycoming County. The only other Lycoming County hospital, the Jersey Shore Hospital, has a market share of only .8% in the City of Williamsport and 6.49% in Lycoming County.

25. Currently, the pre- and post-Alliance hospital market shares and HHIs are as follows:

<u>Hospital</u>	<u>Pre-Alliance Market Share</u>	<u>Pre-Alliance HHI</u>	<u>Post-Alliance Market Share</u>	<u>Post-Alliance HHI</u>
WHMC	43.16%	1,862.79	\	
DPH	29.90%	894.01	83.05%	6,897.30
MVH	9.99%	99.80	/	
Jersey Shore	6.49%	42.12	6.49%	42.12
Geisinger	4.42%	19.54	4.42%	19.54
Robert Packer	2.12%	4.49	2.12%	4.49
Lockhaven	.88%	.77	.88%	.77
Evangelical	.66%	.44	.66%	.44
Other	2.37%	5.62	2.37%	5.62
	<u>99.99%</u>	<u>2,929.58</u>	<u>99.99%</u>	<u>6,970.28</u>

Pre-Alliance HHI: 2,929.58

Post-Alliance HHI: 6,970.28

Change in HHI: 4,040.70

26. The proposed Alliance increases concentration significantly in the inpatient acute-care hospital services market in Lycoming County. The pre-Alliance HHI of 2,929.58 already signifies a very concentrated market, and the creation of the Alliance will result in an increase in the HHI of more than 4,000 points to 6,970.28.

27. The Lycoming County market is only peripherally served by several hospitals other than the four located within the County. The closest of these non-Lycoming County hospitals, Lock Haven Hospital in Clinton County, is 26 miles west of the City of Williamsport. These non-Lycoming County hospitals accounted for only 1411 of the 13,226 total patient admissions in Lycoming County in 1991, or 10.67%.

28. The provision of inpatient acute-care hospital services is distinct from the provision of services by other types of health-care facilities such as clinics, ambulatory surgery centers, physicians' offices, nursing homes or rehabilitation or psychiatric hospitals.

29. There are no substitutes for the inpatient acute-care hospital services provided by defendants.

VIII. Violation

30. As a direct result of the Alliance, competition for acute-care inpatient hospital services in Lycoming County will be substantially lessened in the following ways, among others,:

- a. Existing competition and the potential for increased competition between PHS and NCPHS for the provision of inpatient acute-care hospital services in Lycoming County will be permanently eliminated;
- b. Concentration in the relevant product market in Lycoming County will be substantially increased; and
- c. Increased concentration in Lycoming County will enhance the ability of the merged entities to increase prices and decrease quality of service with little fear that such increase in prices and decrease in quality of service will be defeated by fringe competitors.

31. The proposed Alliance violates section 7 of the Clayton Act, 15 U.S.C. § 18.

IX. Injury

32. Unless the violation described above is enjoined, the Commonwealth of Pennsylvania will suffer direct, immediate and irreparable damage to its general economy and as a direct purchaser of inpatient acute-care hospital services. There is no adequate remedy at law.

Relief Requested

WHEREFORE, plaintiff prays:

(a) That defendants, their parents, subsidiaries, affiliates, directors, officers, agents, successors, and assigns, and all other acting on their behalf, be preliminarily and

permanently enjoined from taking any action directly or indirectly in furtherance of the proposed Alliance between PHS and NCPHS.

(b) That the proposed Alliance by PHS of NCPHS be adjudged to be in violation of section 7 of the Clayton Act.

(c) That defendants be ordered to pay all costs and attorneys' fees.

(d) That the court grant such other relief as it deems appropriate.

Dated: May 24, 1994

ERNEST D. PREATE, JR.
Attorney General

By: Carl S. Hisiro
Carl S. Hisiro
Chief Deputy Attorney General
Antitrust Section
Office of Attorney General
14th Fl., Strawberry Square
Harrisburg, PA 17120
(717) 787-4530

Attorneys for the Commonwealth
of Pennsylvania