IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA, Plaintiff, vs. HEALTH CHOICE OF NORTHWEST MISSOURI, INC., HEARTLAND HEALTH SYSTEM, INC., AND ST. JOSEPH PHYSICIANS, INC., Defendants.	)	Case No. **{Filed September 13, 1995}**

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h)("APPA"), the United States files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

On September 13, 1995, the United States filed a civil antitrust Complaint alleging that defendant Health Choice of Northwest Missouri, Inc. ("Health Choice"), defendant Heartland Health System, Inc. ("Heartland"), and defendant St. Joseph Physicians, Inc. ("SJPI"), with others not named as defendants, entered into an agreement, the purpose and effect of which was to restrain competition unreasonably by preventing or delaying the development of managed care in Buchanan County, Missouri ("Buchanan County"), in violation of Section 1 of the Sherman

Act, 15 U.S.C. § 1. The Complaint seeks injunctive relief to enjoin continuance or recurrence of the violation.

The United States filed with the Complaint a proposed Final Judgment intended to settle this matter. Entry of the proposed Final Judgment by the Court will terminate this action, except that the Court will retain jurisdiction over the matter for further proceedings that may be required to interpret, enforce, or modify the Judgment, or to punish violations of any of its provisions.

Plaintiff and all defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA"), unless prior to entry plaintiff has withdrawn its consent. The proposed Final Judgment provides that its entry does not constitute any evidence against, or admission by, any party concerning any issue of fact or law.

The present proceeding is designed to ensure full compliance with the public notice and other requirements of the APPA. In the Stipulation to the proposed Final Judgment, defendants have also agreed to be bound by the provisions of the proposed Final Judgment pending its entry by the Court.

II.

PRACTICES GIVING RISE TO THE ALLEGED VIOLATIONS

SJPI is a Missouri for-profit corporation, with its principal place of business in St. Joseph, Missouri ("St. Joseph").[1/] SJPI was incorporated in April 1986 by roughly 85 percent of the approximately 130 physicians practicing or living in Buchanan County. The physicians who own SJPI have never integrated their separate, individual medical practices or shared substantial financial risk for SJPI's failure to achieve predetermined cost containment goals.

SJPI was formed primarily to negotiate collectively about fees and other contract terms with managed care plans seeking to enter Buchanan County. Managed care is a type of health care financing and delivery that seeks to contain costs through using administrative procedures and granting financial incentives to providers and patients. Typically, under such an approach, individual health care providers either are paid one set, predetermined fee for meeting all or nearly all of an enrollee's health care needs, regardless of the frequency or severity of the needed services, or are subject to a substantially discounted fee schedule and rigorous utilization review (i.e., assessment of the necessity and appropriateness of treatment). Beginning almost immediately after its incorporation, SJPI entered into fee

[1] St. Joseph is the county seat of Buchanan County, which has a population of about 72,000 and is located about 55 miles northwest of Kansas City, Missouri.

negotiations collectively on behalf of its physicians with various managed care plans attempting to enter Buchanan County.

Heartland operates the only acute care hospital in the three-county area of Buchanan and Andrew Counties, Missouri, and Doniphan County, Kansas.[2/] On several occasions before January 1990, Heartland supported SJPI's efforts to deal collectively with managed care plans seeking to enter Buchanan County, and, in at least one instance, represented SJPI in such dealings. Between April 1986 and December 1989, no managed care plan was able to obtain a contract with SJPI or with any individual SJPI physician.

In January 1990, SJPI and Heartland formed Health Choice, a for-profit Missouri corporation, to provide managed care services to individuals in Buchanan County. Heartland and SJPI each own 50% of the common stock of Health Choice.

The Health Choice physician provider panel consists of approximately 85% of the physicians working or residing in Buchanan County, including nearly all of the SJPI physicians. Heartland is the primary provider of hospital services for Health Choice.

SJPI and Heartland established, through Health Choice, a utilization review program and a fee schedule for competing physicians in Buchanan County and agreed on several occasions

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[2] Heartland also provides home health care, hospice, rehabilitation, and other "ancillary" health care services in Buchanan County. There was some evidence that Heartland may have used its market power in inpatient hospital services to gain a competitive advantage in various ancillary health care services.

that SJPI physicians and Heartland would deal with managed care plans only through Health Choice. In general, SJPI and Heartland advised managed care plans that they had to use Health Choice's provider panel, fee schedule, and utilization review program. At no time, however, did Heartland, SJPI, or the physicians participating on the Health Choice provider panel share substantial risk in connection with the achievement by Health Choice of predetermined cost containment goals. Since the formation of Health Choice, no managed care plan has been able to enter Buchanan County without contracting with Health Choice, despite the efforts of several plans to do so. Because of the high percentage of local doctors participating in Health Choice, no managed care plan could assemble an adequate panel of providers without including some physicians who participated in Health Choice.[3/] By refusing to deal with managed care plans except through Health Choice, Heartland and SJPI physicians were able to obtain higher compensation and a more favorable hospital utilization review program from managed care plans than they would have been able to obtain independently.

Based on the facts described above, the Complaint alleges that the defendants entered into a contract, combination, or conspiracy to reduce or eliminate the development of managed care in Buchanan County in violation of Section 1 of the Sherman Act,

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[3] Shortly before Health Choice became operational, HealthNet, a competing managed care plan, entered Buchanan County. HealthNet contracted with several self-insured plans in Buchanan County but with no managed care plans.

15 U.S.C. § 1. The Complaint further alleges that this conduct had the effect of (1) unreasonably restraining price and other competition among managed care plans, (2) unreasonably restraining price competition among physicians, and (3) depriving consumers and third-party payors of the benefits of free and open competition in the purchase of health care services in Buchanan County.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment is intended to prevent the continuance or recurrence of defendants' agreement to discourage the development of managed care in Buchanan County. The overarching goal of the proposed Final Judgment is to enjoin defendants from engaging in any activity that unreasonably restrains competition among physicians and among managed care plans in Buchanan County, while still permitting defendants to market a provider-controlled plan.[4/]

[4] This relief comports with the Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust that the U.S. Department of Justice and the Federal Trade Commission issued jointly on September 27, 1994, 4 Trade Reg. Rep. (CCH) ¶ 13,152, at 20,787-98, and in particular with the principles enunciated therein that a provider network (1) should not prevent the formation of rival networks; and (2) may not negotiate on behalf of providers, unless those providers share substantial financial risk or offer a new product to the market place. Statement 8, id. at 20,788-89; Statement 9, id. at 20,793-94, 20,796.

A. Scope of the Proposed Final Judgment

Section III of the proposed Final Judgment provides that the Final Judgment shall apply to defendants and to all other persons (including SJPI stockholders) who receive actual notice of this proposed Final Judgment by personal service or otherwise and then act or participate in concert with any defendant. The proposed Final Judgment applies to SJPI, Health Choice, Heartland, and Heartland's healthcare-related entities. The proposed Final Judgment does not apply to Heartland's entities that do not provide health care services.

B. Prohibitions and Obligations

Sections IV through VIII of the proposed Final Judgment contain the substantive provisions of the consent decree. Section IV applies to SJPI, Section V to Health Choice, and Section VI to Heartland. Section VII contains additional provisions that apply to Health Choice and to Heartland. Section VIII applies only to Heartland.

In Sections IV(A) and V(A), SJPI and Health Choice are enjoined from requiring any physician to provide physician services exclusively through SJPI, Health Choice, or any managed care plan in which SJPI or Health Choice has an ownership interest. SJPI and Health Choice are also barred from precluding any physician from contracting, or urging any physician not to contract, with any purchaser of physician services.

Sections IV(B), V(B), and VI(A) prohibit the sharing of competitively sensitive information. SJPI, Health Choice, and

Heartland are enjoined from disclosing to any physician any financial, price, or similarly competitively sensitive business information about any competing physician or any competitor of defendants. An exception permits any defendant to disclose such information if disclosure is reasonably necessary for the operation of a qualified managed care plan ("QMCP" -- as defined in the proposed Final Judgment and discussed below) in which that defendant has an ownership interest, or if the information is already generally available to the medical community or the public.

Sections IV(C) and V(C) prohibit fee setting and provide that SJPI and Health Choice, respectively, are enjoined from collectively negotiating or setting fees or other terms of reimbursement, or negotiating on behalf of competing physicians, unless the negotiating entity is a QMCP. However, SJPI and Health Choice are permitted to use a messenger model (as defined in the proposed Final Judgment and discussed below).

Sections IV(D), V(D), and VI(B) enjoin SJPI, Health Choice, and Heartland, respectively, from owning an interest in any organization that sets fees or other terms of reimbursement, or negotiates for competing physicians, unless that organization is a QMCP and it complies with Sections IV(A) and (B) (for SJPI) and Sections V(A) and (B) (for Health Choice and Heartland). However, defendants may own an interest in an organization that uses a messenger model, as discussed below.

Section VI(C) enjoins Heartland from agreeing with a competitor to allocate or divide any markets or set the price for any competing service, except as is reasonably necessary for the operation of any QMCP or legitimate joint venture in which Heartland has an ownership interest.[5/]

Section VI(D) enjoins Heartland from acquiring any family or general internal medicine practice without plaintiff's prior approval, or from acquiring any other physician practice located in Buchanan County without 90 days prior notification.

Section VI(E) enjoins Heartland from conditioning the provision of its inpatient hospital services on the purchase or use of Heartland's utilization review program, managed care plan, or ancillary, outpatient, or physician services, unless such services are intrinsically related to the provision of acute inpatient care. (These prohibitions, however, do not apply to any organization or any contract in which Heartland has a substantial financial risk.)

Section VII of the proposed Final Judgment contains additional provisions with respect to Health Choice and Heartland. Section VII(A) requires Health Choice to notify participating physicians annually that they are free to contract separately with any other managed care plan on any terms, and to

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[5] Statements 2 and 3 of the Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust, 4 Trade Reg. Rep. (CCH) ¶ 13,152 at 20,775-81 (1994), discuss how to assess whether collateral agreements are reasonably necessary for the operation of a particular legitimate joint venture.

notify in writing each payor with whom Health Choice has or is negotiating a contract that each of its participating physicians is free to contract separately with such payor on any terms and without consultation with Health Choice.

Under Section VII(B)(1), Heartland is required to observe its formal written policy relating to the provision of ancillary services. This policy was developed by Heartland and is attached to the proposed Final Judgment. Heartland must under Section VII(B)(2) file with plaintiff annually on the anniversary of the filing of the Complaint a written report disclosing the rates, terms, and conditions for inpatient hospital services that Heartland provides to any managed care plan or hospice program, including those affiliated with Heartland.

Heartland is required under Section VII(B)(3) to give plaintiff reasonable access to its credentialing files for the purpose of determining if Heartland misused its credentialing authority, such as by denying hospital privileges to physicians affiliated with managed care plans that compete with Health Choice.

Section VIII permits Heartland to engage in certain activities. Under Section VIII(A), Heartland may own 100% of an organization that includes competing physicians on its provider panel and sets fees or other terms of reimbursement or negotiates for physicians, provided the organization complies with Sections V(A) and (B) and with the subcontracting requirements of a QMCP.

Section VIII(B) permits Heartland to employ or acquire the practice of any physician not located in Buchanan County, who derived less than 20% of his or her practice revenues from patients residing in Buchanan County in the year before employment or acquisition.

Section VIII(C) permits Heartland to employ or acquire the practice of any general practice, family practice, or internal medicine physician, provided Heartland actively recruited the physician to begin offering those services in Buchanan County, gave either substantial financial support or an income guarantee to such physician, and is employing the physician or acquiring the practice within two years of the first offering of those services by that physician in Buchanan County. Heartland must give plaintiff 30 days notice and all information in its possession necessary to determine whether the above criteria have been met.

Under Section VIII(D), Heartland may employ or acquire, with plaintiff's approval, any physician who would cease practicing in Buchanan County but for Heartland's employment or acquisition.

Section IX of the proposed Final Judgment describes the circumstances under which defendants may seek a modification of the proposed Final Judgment. It provides that any defendant may move for a modification of the proposed Final Judgment, and plaintiff will reasonably consider an appropriate modification, in the event that any of the provisions of the proposed Final

Judgment proves impracticable or in the event of a significant change in law or fact.

Section X of the proposed Final Judgment requires the defendants to implement a judgment compliance program. Section X(A) requires that within 60 days of entry of the Final Judgment, defendants must provide a copy of the proposed Final Judgment and the Competitive Impact Statement to certain officers and all directors. Sections X(B) and (C) require defendants to provide a copy of the proposed Final Judgment and Competitive Impact Statement to persons who assume those positions in the future and to brief such persons annually on the meaning and requirements of the proposed Final Judgment and the antitrust laws, including penalties for violating them. Section X(D) requires defendants to maintain records of such persons' written certifications indicating that they (1) have read, understand, and agree to abide by the terms of the proposed Final Judgment, (2) understand that their noncompliance with the proposed Final Judgment may result in conviction for criminal contempt of court, and imprisonment, and/or fine, and (3) have reported any violation of the proposed Final Judgment of which they are aware to counsel for defendants. Section X(E) requires defendants to maintain for inspection by plaintiff a record of recipients to whom the proposed Final Judgment and Competitive Impact Statement have been distributed and from whom annual written certifications regarding the proposed Final Judgment have been received.

The proposed Final Judgment also contains provisions in Section XI requiring defendants to certify their compliance with specified obligations of Section IV through X of the proposed Final Judgment. Section XII of the proposed Final Judgment sets forth a series of measures by which the plaintiff may have access to information needed to determine or secure defendants' compliance with the proposed Final Judgment. Section XIII provides that each defendant must notify plaintiff of any proposed change in corporate structure at least 30 days before that change to the extent the change may affect compliance obligations arising out of the proposed Final Judgment.

Finally, Section XV states that the decree expires five years from the date of entry, except that plaintiff during that five year period may, in its sole discretion, after consultation with defendants, extend for an additional five years all provisions of the decree except the provisions of Section VI(D), that portion of the Final Judgment dealing with Heartland's acquisition of physician practices.

C. Effect of the Proposed Final Judgment on Competition

1. The Prohibitions on Setting and Negotiating Fees and Other Contract Terms

The prohibitions on setting and negotiating fees and other contract terms set forth in Sections IV(C) and (D), V(C) and (D), and VI(B) provide defendants with essentially two options for complying with the proposed Final Judgment.[6/] First, Health

[6] For convenience, this Statement discusses Health Choice's options. However, the same options are available to

Choice may change its manner of operation and no longer set or negotiate fees on behalf of competing physicians, for example by using a "messenger model," a term defined in the proposed Final Judgment. Second, Health Choice may restructure its ownership and provider panels to become a QMCP.[7/]

Currently, SJPI owns 50% of Health Choice and includes among its shareholders competing physicians who do not share substantial financial risk. In addition, Heartland, which owns the other 50% of Health Choice, employs physicians who compete with the SJPI physicians and other physicians on the Health Choice provider panel. The SJPI and Heartland physicians on the provider panel also do not share financial risk. The proposed Final Judgment prevents Health Choice, under its present structure, from continuing to set or negotiate fees or other terms of reimbursement collectively on behalf of these competing physicians. (Section V(C).)[8/] Such conduct would constitute naked price fixing. Arizona v. Maricopa County Medical Soc'y, 457 U.S. 332, 356-57 (1982).

SJPI and Heartland, should they choose to utilize them.

[7] Of course, Health Choice could simply cease operations and dissolve. Defendants have indicated, however, that they will not pursue that approach. In any event, the Judgment's prohibitions on setting and negotiating fees and other contract terms (as well as a number of other prohibitions) apply to any organization in which the defendants own an interest, not just to Health Choice.

[8] Similarly, Section IV(C) prevents SJPI from setting or negotiating fees and other contract terms for just SJPI physicians, and Sections IV(D) and VI(B) prevent SJPI and Heartland from engaging in such conduct through their ownership of Health Choice.

The proposed Final Judgment does not, however, prohibit Health Choice as presently structured from engaging in activities that are not anticompetitive.[9/] In particular, while the proposed Judgment enjoins Health Choice from engaging in price fixing or similar anticompetitive conduct, it permits Health Choice to use an agent or third party to facilitate the transfer of information between individual physicians and purchasers of physician services. Appropriately designed and administered, such messenger models rarely present substantial competitive concerns and indeed have the potential to reduce the transaction costs of negotiations between health plans and numerous physicians.

The proposed Final Judgment makes clear that the critical feature of a properly devised and operated messenger model is that individual providers make their own separate decisions about whether to accept or reject a purchaser's proposal, independent of other physicians' decisions and without any influence by the messenger. (Section II(F).) The messenger may not, under the proposed Judgment, coordinate individual providers' responses to a particular proposal, disseminate to physicians the messenger's or other physicians' views or intentions concerning the proposal, act as an agent for collective negotiation and agreement, or

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[9] For example, nothing in the proposed Final Judgment prevents Health Choice from continuing to offer billing, utilization management, and third party administrator services, provided it does not violate the Judgment's prohibitions, in Sections V(A) and (B), on exclusivity and the collection and dissemination of competitively sensitive information.

otherwise serve to facilitate collusive behavior.[10/] The proper role of the messenger is simply to facilitate the transfer of information between purchasers of physician services and individual physicians or physician group practices and not to coordinate or otherwise influence the physicians decision-making process.[11/]

If, on the other hand, Health Choice wants to negotiate on behalf of competing physicians, it must restructure itself to meet the requirements of a QMCP as set forth in the proposed Final Judgment. To comply, (1) the owners or members of Health Choice (to the extent they compete with other owners or members or compete with physicians on Health Choice's provider panels) must share substantial financial risk, and comprise no more than 30% of the physicians in any relevant market; and (2) to the extent Health Choice has a provider panel that exceeds 30% of the

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[10] For example, it would be a violation of the proposed Final Judgment if the messenger selected a fee for a particular procedure from a range of fees previously authorized by the individual physician, or if the messenger were to convey collective price offers from physicians to purchasers or negotiate collective agreements with purchasers on behalf of physicians. This would be so even if individual physicians were given the opportunity to "opt out" of any agreement. In each instance, it would really be the messenger, not the individual physician, who would be making the critical decision, and the purchaser would be faced with the prospect of a collective response.

[11] For example, the messenger may convey to a physician objective or empirical information about proposed contract terms, convey to a purchaser any individual physician's acceptance or rejection of a contract offer, canvass member physicians for the rates at which each would be willing to contract even before a purchaser's offer is made, and charge a reasonable, non-discriminatory fee for messenger services, provided the messenger otherwise acts consistently with the proposed Final Judgment.

physicians in any relevant market, there must be a divergence of economic interest between the Health Choice owners and the subcontracting physicians, such that the owners have the incentive to bargain down the fees of the subcontracting physicians. (Section II (I)(2).) As explained below, the requirements of a QMCP are necessary to avoid the creation of a physician cartel while at the same time allowing payors access to such panels.

The financial risk-sharing requirement of a QMCP ensures that the physician owners in the venture share a clear economic incentive to achieve substantial cost savings and provide better services at lower prices to consumers. This requirement is applicable to all provider-controlled organizations since without this requirement a network of competing providers would have both the incentive and the ability to increase prices for health care services.

The requirement that a QMCP not include more than 30% of the local physicians in certain instances is designed to ensure that there are available sufficient remaining physicians in the market with the incentive to contract with competing managed care plans or to form their own plans. This limitation is particularly critical in this case in view of the defendants' prior conduct in forming negotiating groups with up to 85% of the local physicians.

Many employers and payors in the St. Joseph area indicated that they may want managed care products with all or many of the

physicians in St. Joseph on the provider panel. The QMCP's subcontracting requirements are designed to let Health Choice (or any other QMCP) offer a large physician panel, but with restrictions to avoid the risk of competitive harm. To offer panels above 30%, Health Choice must operate with the same incentives as a nonprovider-controlled plan. Specifically, the owners of Health Choice must bear significant financial risk for the payments to, and utilization practices of, the panel physicians. These requirements prevent Health Choice from using the subcontracts as a mechanism for increasing fees for physician services.

Consequently, the proposed Final Judgment permits a QMCP to subcontract with any number of physicians in a market provided three important safeguards are met. Under Section II(I)(2) of the proposed Final Judgment, the subcontracting physician panel may exceed the 30% limitation only if (1) there is a sufficient divergence of economic interest between those subcontracting physicians and the owners such that the owners have the incentive to bargain down the fees of the subcontracting physicians, (2) the organization does not directly pass through to the payor substantial liability for making payments to the subcontracting physicians, and (3) the organization does not compensate those subcontracting physicians in a manner that substantially replicates ownership.

Health Choice would meet the subcontracting requirements if, for example, Health Choice were compensated on a capitated, per

diem, or diagnostic related group basis and, in turn, reimbursed subcontracting physicians pursuant to a fee schedule. In such a situation, an increase in the fee schedule to subcontracting physicians during the term of the Health Choice contract with the particular payor would not be directly passed through to the payor and, instead, would be borne by Health Choice itself. This would provide a substantial incentive for Health Choice to bargain down its fees to the subcontracting physicians.

On the other hand, the subcontracting requirements would not be met if a Health Choice contract with a payor were structured so that significant changes in the payments by Health Choice to its physicians directly affected payments from the payor to Health Choice, or if the payor directly bears the risk for paying the panel physicians or pays the panel physicians pursuant to a fee-for-service schedule. The requirements would also not be satisfied if contracts between Health Choice and the subcontracting physicians provided that payments to the physicians depended on, or varied in response to, the terms and conditions of Health Choice's contracts with payors.[12/] Any of these scenarios would permit Health Choice to pass through to payors, rather than bear, the risk that its provider panel will

[12] Nothing in the proposed Final Judgment prohibits Health Choice or any other QMCP from entering into arrangements that shift risk to providers so long as those provisions are consistent with the criteria for a QMCP set forth in Section II(I) of the Judgment.

charge fees that are too high or deliver services inefficiently.[13/]

2. Prohibition on Exclusivity

Sections IV(A), V(A), and VI(B) of the proposed Final Judgment enjoin defendants from requiring physicians to deal exclusively with their managed care plans or urging physicians not to contract with other payors. Health Choice is also required to inform both its providers and payors with which it has or is negotiating contracts, that each provider is free to contract separately with any managed care plan on any terms. (Section VII(A)(1) and (2).) These provisions will encourage the development of competing managed care plans in the St. Joseph area by ensuring that physicians remain free to decide individually whether, and on what terms, to participate in any managed care plan.

3. Physician Acquisitions

Section VI(D) of the proposed Final Judgment enjoins Heartland from acquiring additional family practice and general internal medicine physician practices in Buchanan County without plaintiff's prior written approval, and from acquiring any other active physician practice in Buchanan County without 90 days'

[13] Similarly, Health Choice would fail the ownership replication restriction of Section II(I) of the proposed Final Judgment if, for example, the owners paid themselves a dividend and then, through declaration of a bonus, paid the same or similar amount to the subcontracting physicians. The same would be true if the owners otherwise structured dividends, bonuses, and incentive payments in such a way that ensures that subcontracting and owning physicians receive equal overall compensation.

prior notification.[14/] These provisions will prevent Heartland from obtaining such physician concentration that would permit it to raise prices for physician services above competitive levels or otherwise thwart the ability of competing managed care plans to enter and compete effectively in St. Joseph.[15/]

4. Other Substantive Provisions

Sections IV(B), V(B), and VI(A) of the proposed Final Judgment enjoin the disclosure to any physician of any financial or competitively sensitive business information about any competing physician or competitor of defendants. These provisions will ensure that defendants do not exchange information that could lead to price fixing or other anticompetitive harm.

Section VII(B)(3) provides plaintiff access to Heartland's credentialing files to ensure that Heartland does not abuse its credentialing authority by denying privileges to or otherwise disciplining physicians who participate in a competing managed

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[14] By letter dated June 8, 1995, from Chief of Staff, Antitrust Division, Lawrence R. Fullerton, to counsel for Heartland, Thomas P. Watkins, Esq., plaintiff has indicated to Heartland that it does not intend to challenge the acquisition of Internal Medicine Associates of St. Joseph, a three-physician practice group providing general internal medicine services in St. Joseph. (See Attachment.)

[15] The proposed Final Judgment permits Heartland to employ or acquire other physician practices where the employment or acquisition would not result in a substantial lessening of competition in the St. Joseph area either because (1) the physician derived only limited revenues from patients in Buchanan County, (2) Heartland actively recruited the physician to the St. Joseph area, or (3) the physician would exit the market but for Heartland's employment or acquisition. (Section VIII (B),(C) and (D).)

care plan. Similarly, Section VII(B)(1) requires Heartland to abide by its formal written referral policy regarding ancillary services to ensure that Heartland will not abuse its control over inpatient hospital services to reduce or eliminate competition among providers of ancillary services in St. Joseph.

Section VI(E) enjoins Heartland from requiring managed care plans to use other Heartland services such as its utilization review program or managed care plan in order to obtain inpatient hospital services. This Section will permit managed care plans to use their own physician panels, utilization review, and fee schedule, thereby fostering the development of truly competitive health care delivery systems in St. Joseph.

Section VII(B)(2) requires Heartland to file annually with plaintiff a report of the rates, terms, and conditions for inpatient hospital services that Heartland provides any managed care plan or hospice program. This will assist plaintiff in assessing whether Heartland has abused its power in the inpatient hospital market.

Finally, Section XI(C) requires any defendant owning an interest in a QMCP that includes any single physician practice group comprising more than 30% of the physicians in any relevant market to notify plaintiff if the practice group acquires additional physicians. This will ensure that the United States knows of any such acquisition and can evaluate its potential anticompetitive effects.

5. Conclusion

The Department of Justice believes that the proposed Final Judgment contains adequate provisions to prevent further violations of they type upon which the Complaint is based and to remedy the effects of the alleged conspiracy. The proposed Final Judgment's injunctions will restore the benefits of free and open competition in St. Joseph and will provide consumers with a broader selection of competitive health care plans.

IV.

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Final Judgment would be a full trial on the merits of the case. In the view of the Department of Justice, such a trial would involve substantial costs to both the United States and defendants and is not warranted because the proposed Final Judgment provides all of the relief necessary to remedy the violations of the Sherman Act alleged in the Complaint.

V.

REMEDIES AVAILABLE TO PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and a reasonable attorney's fee. Entry of the proposed Final Judgment will neither impair nor assist in the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act,

15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent lawsuits that may be brought against one or more defendants in this matter.

VI.

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

As provided by Sections 2(b) and (d) of the APPA, 15 U.S.C. § 16(b) and (d), any person believing that the proposed Final Judgment should be modified may submit written comments to Gail Kursh, Chief; Professions & Intellectual Property Section/Health Care Task Force; Department of Justice; Antitrust Division; 600 E Street, N.W.; Room 9300; Washington, D.C. 20530, within the 60-day period provided by the Act. Comments received, and the Government's responses to them, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free, pursuant to Paragraph 2 of the Stipulation, to withdraw its consent to the proposed Final Judgment at any time before its entry, if the Department should determine that some modification of the Final Judgment is necessary for the public interest. Moreover, the proposed Final Judgment provides in Section XIV that the Court will retain jurisdiction over this action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the proposed Final Judgment.

VII.

DETERMINATIVE DOCUMENTS

No materials and documents of the type described in Section 2(b) of the APPA, 15 U.S.C. § 16(b), were considered in formulating the proposed Final Judgment. Consequently, none are filed herewith.

Dated: September 13, 1995

Respectfully submitted,

/s/_____
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June 8, 1995

Thomas D. Watkins, Esq.
Watkins, Boulware, Lucas, Miner,
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3101 Frederick Avenue
St. Joseph, MO 64506-0207

Re: United States v. Health Choice, et al.

Dear Mr. Watkins:

We understand that Heartland Health System, Inc. ("Heartland") is considering the June 8, 1995 draft of the proposed Final Judgment in this matter. In that regard, you have asked what would be our position, assuming Heartland's agreement to the draft, with respect to granting our approval under Section VI(D)(1) of the Judgment to the acquisition by Heartland of Internal Medicine Associates Of St. Joseph ("Spurgat Group") if Heartland presently were to give us the required written notice.

We have investigated the facts surrounding this proposed acquisition, including speaking at length to Dr. Spurgat, other St. Joseph physicians, various payers, and other individuals familiar with both the St. Joseph physician market and physician markets in general. After consideration of the facts regarding this matter, we will approve, absent a material change in circumstances relating to the physicians employed by Heartland, the proposed acquisition under Section VI(D)(1) of the Final Judgment.

Sincerely,

Lawrence W. Fullerton
Chief of Staff

CERTIFICATE OF SERVICE

I, Edward D. Eliasberg Jr., hereby certify that a copy of the Competitive Impact Statement in United States v. Health Choice of Northwest Missouri, Inc., et al. was served on the 13th day of September 1995 by first class mail to defendants as follows:

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