Whereas, it is necessary to include within the boundary of the park two parcels of land to provide for management and interpretation consistent with the authorizing legislation,

Therefore, pursuant to Section (5) of Public Law 95–42, notice is given that the boundary of Women's Rights National Historical Park has been revised to include the 0.85 of an acre tracts identified and described as Tracts 101–09 and 101–10 on Land Status Map 101 on Drawing No. 488/80,003, Sheet 2 of 3, dated November 1986, and revised July 1991, prepared by the Land Resources Division, Northeast Field Area, National Park Service.

The map is on file and available for inspection in the office of the National Park Service, Northeast Field Area, Land Resources Division, U. S. Custom House, 200 Chestnut Street, Philadelphia, Pennsylvania 19106.

Warren D. Beach,

Field Director, Northeast Field Area.

[FR Doc. 95–24589 Filed 10–2–95; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–724 (Final)]

Manganese Metal From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: September 26, 1995.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION: On June 13, 1995, the Commission instituted the subject investigation and established a schedule for its conduct (60 F.R. 35223, July 6, 1995). Subsequently, the petitioners requested that the Commission modify its schedule for the investigation because of conflicts with the investigation being conducted by the Department of Commerce. The Commission has determined to revise its scheduled hearing date in the investigation.

The Commission's new schedule for the investigation is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than October 23, 1995; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on October 24, 1995; the deadline for filing prehearing briefs is October 26, 1995; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on November 1, 1995; and the deadline for filing posthearing briefs is November 8, 1995.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: September 26, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–24574 Filed 10–2–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Health Choice of Northwest Missouri, Inc., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and a Competitive Impact Statement have been filed with the United States District Court for the Western District of Missouri in *United States* v. *Health Choice of Northwest Missouri, Inc., et al.*, Civil No. 95–6171–CV–SJ–6 as to Health Choice of Northwest Missouri, Inc., Heartland Health Systems, Inc. and St. Joseph Physicians, Inc.

The Complaint alleges that the defendants entered into an agreement with the purpose and effect of restraining competition unreasonably, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, by preventing managed care plans from developing in Buchanan County, Missouri.

The proposed Final Judgment eliminates the continuance or recurrence of Defendants' agreement to prevent or delay the development of managed care in Buchanan County.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the Federal Register and filed with the Court. Comments should be directed to Gail Kursh, Chief; Professionals and Intellectual Property Section/Health Care Task Force; United States Department of Justice; Antitrust Division; 600 E Street, N.W.; Room 9300; Washington, D.C., 20530 (telephone: 202/307–5799.

Rebecca P. Dick,

Deputy Director of Operations.

United States District Court for the Western District of Missouri

In the matter of: United States or America, Plaintiff, vs. Health Choice of Northwest Missouri, Inc., Heartland Health System, Inc., and St. Joseph Physicians, Inc. Defendants Civil Action No. 95–6171–CV–SJ–6.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Western District of Missouri;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court; and

3. Defendants agree to be bound by the provisions of the proposed Final Judgment pending its approval by the Court. If plaintiff withdraws its consent, or if the proposed Final Judgment is not entered pursuant to the terms of the Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

For Plaintiff, United States of America:

Anne K. Bingaman,

Assistant Attorney General.

Rebecca P. Dick,

Deputy Director, Office of Operations.

Gail Kursh,

Chief, Professions & Intellectual Property Section, Antitrust Division, U.S. Department of Justice.

For Defendant Health Choice of Northwest Missouri, Inc.:

510 Francis Avenue, St. Joseph, MO 64501.

For Defendant Heartland Health System, Inc.

Thomas D. Watkins,

Watkins, Boulware, Lucas Miner, Murphy & Taylor, 3101 Frederick Avenue, St. Joseph, MO 64506.

For Defendant St. Joseph Physicians, Inc.

Richard D. Raskin,

Sidley & Austin, One First National Plaza, Chicago, IL 60603, (312) 853–2170.

Lawrence R. Fullerton,

Chief of Staff.

Edward D. Eliasberg, Jr.,

Dando B. Cellini,

Mark J. Botti,

John B. Arnett, Sr.,

Gregory S. Asciolla,

Attorneys, Antitrust Division, U.S. Dept. of Justice, 600 E Street, NW., Room 9429, BICN Bldg., Washington, DC 20530, (202) 307–0808.

United States District Court for the Western District of Missouri

In the matter of: United States of America, Plaintiff, vs. Health Choice of Northwest Missouri, Inc., Heartland Health System, Inc., and St. Joseph Physicians, Inc., Defendants.

Final Judgment

Plaintiff, the United States of America, having filed its Complaint on September 13, 1995, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of fact or law;

And Whereas defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby ordered, adjudged, and decreed:

I

Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states claims upon which relief may be granted against the defendants under Section 1 of the Sherman Act, 15 U.S.C. 1.

II

Definitions

As used in this Final Judgment:

(A) ''Ancillary services'' means home health care, hospice care, outpatient rehabilitation services, and durable medical equipment.

(B) ''Competing physicians'' means physicians in the same relevant physician market in separate medical practices.

(C) ''General adult primary care'' (''GAPC'') means family practice and general internal medicine, whether or not physicians practicing in these areas are Board certified or Board eligible.

(D) ''Health Choice'' means Health Choice of Northwest Missouri, Inc., each organization controlled by or under common control with it, and its directors, officers, agents, employees, and successors.

(E) ''Heartland'' means Heartland Health System, Inc., each organization controlled by or under common control with it, and its directors, officers, agents, employees, and successors, but does not include Heartland Health Foundation.

(F) ''Messenger model'' means the use of an agent or third party to convey to purchasers any information obtained from individual 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.

(G) ''Non-Heartland physician'' means a physician who is not employed by Heartland and whose practice is not owned by Heartland.

(H) ''Provider panel'' means those health care providers whom an organization authorizes to provide care to its enrollees and whom enrollees are given financial incentives to use.

(I) ''Qualified managed care plan'' means an organization that is owned, in whole or in part, by any or all of the defendants and that offers a provider panel. A qualified managed care plan must satisfy each of the following criteria:

(1) Its owners or not-for-profit members (''members'') who compete either with other owners or members or with providers participating on the organizations' provider panel (a) share substantial financial risk and (b) either directly or through ownership or membership in another organization comprise no more than 30% of the physicians in any relevant physician market, except that it may include Heartland, any single physician, or any single physician practice group for each relevant physician market,

(2) it has a provider panel that includes no more than 30% of the physicians in any relevant physician market, unless, for those subcontracting physicians whose participation increases the panel beyond 30%, (a) there is a sufficient divergence of economic interest between those physicians and the owners or members of the organization so that the owners or members have the incentive to bargain down the fees of the subcontracting physicians, (b) the organization does not directly pass through to the payer substantial liability for making payments to the subcontracting physicians, and (c) the organization does not compensate those subcontracting physicians in a manner that substantially replicates ownership in the organization, and

(3) it does not facilitate agreements between any subcontracting physicians and the owners or members concerning charges to payors not contracting with the organization.

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.

(J) ''Relevant physician market'' means GAPC physicians, pediatricians, obstetricians or gynecologists in Buchanan County, Missouri, unless defendants obtain plaintiff's prior written approval of a different definition for any or all of these markets, or any other relevant market for physician services. This definition is for the sole and limited purposes of this Final Judgment, and shall not constitute an admission or agreement that the

relevant physician market for any other purpose is limited to Buchanan County, Missouri.

(K) ''SJPI'' means St. Joseph Physicians, Inc., each organization controlled by or under common control with it, and its directors, officers, agents, employees, and successors.

(L) ''Subcontracting physician'' means any physician who provides health care services to a qualified managed care plan, but does not hold, directly or indirectly, any ownership interest in that plan.

(M) ''Substantial financial risk'' means 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 specified 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

Applicability

This Final Judgment applies to Health Choice, Heartland, and SJPI, and to all other persons who receive actual notice of this Final Judgment by personal service or otherwise and then act or participate in concert with any or all of the defendants.

IV

SJPI Injunctive Relief

SJPI is enjoined from:

(A) Requiring any physician to provide physician services exclusively through SJPI, Health Choice, or any managed care plan in which SJPI has an ownership interest, precluding any physician from contracting with any payor or urging any physician not to contract with another payor; provided that, nothing in this Final Judgment shall prohibit SJPI from paying dividends to its owners;

(B) Disclosing to any physician any financial or price or similar competitively sensitive business information about any competing physician, except as is reasonably necessary for the operation of any qualified managed care plan in which SJPI has an ownership interest, or requiring any physician to disclose to SJPI any financial, price or similar competitively sensitive business information about any competitor of SJPI or managed care plan in which SJPI has an ownership interest; provided that, nothing in this Final Judgment shall prohibit the disclosure of information already generally available to the medical community or the public;

(C) Setting the fees or other terms of reimbursement or negotiating for competing physicians unless SJPI is a qualified managed care plan; provided that, nothing in this Final Judgment shall prohibit SJPI from using a messenger model, even if SJPI is not a qualified managed care plan; and

(D) Owning an interest in any organization that sets fees or other terms of reimbursement for, or negotiates for, competing physicians, unless that organization is a qualified managed care plan and complies with Paragraphs (A) and (B) of this Section IV of the Final Judgment as if those Paragraphs applied to that organization; provided that, nothing in this Final Judgment shall prohibit SJPI from owning an interest in an organization that uses a messenger model, even if the organization is not a qualified managed care plan.

Health Choice Injunctive Relief

Except as permitted in Section VIII, Health Choice is enjoined from:

(A) Requiring any physician to provide physician services exclusively through SJPI, Health Choice, or any managed care plan in which Health Choice has an ownership interest, precluding any physician from contracting with any payor, or urging any physician not to contract with another payor;

(B) Disclosing to any physician any financial, price or similar competitively sensitive business information about any competing physician, except as is reasonably necessary for the operation of Health Choice or any managed care plan in which Health Choice has an ownership interest, or requiring any physician to disclose to Health Choice any financial, price or similar competitively sensitive business information about any competitor of Health Choice or any managed care plan in which Health Choice has an ownership interest; provided that, nothing in this Final Judgment shall probibit the disclosure of information already generally available to the medical community or the public;

(C) Setting the fees or other terms of reimbursement or negotiating for competing physicians unless Health Choice is a qualified managed care plan; provided that, nothing in this Final Judgment shall prohibit Health Choice from using a messenger model, even if Health Choice is not a qualified managed care plan; and

(D) Owning an interest in any organization that sets fees or other terms of reimbursement for, or negotiates for, competing physicians, unless that organization is a qualified managed care plan and complies with Paragraphs (A) and (B) of this Section V of the Final Judgment as if those Paragraphs applied to that organization; provided that, nothing in this Final Judgment shall prohibit Health Choice from owning an interest in an organization that uses a messenger model, even if the organization is not a qualified managed care plan.

VI

Heartland Injunctive Relief

Except as permitted in Section VIII, Heartland is enjoined from:

(A) (1) Disclosing to any person directly responsible for pricing physician or ancillary services of Heartland any price or, without appropriate consent, other proprietary business information about any other physician or ancillary services provider, except as is reasonably necessary for the operation of any qualified managed care plan in which Heartland has an ownership interest, and

(2) Disclosing to any competing physician or ancillary services provider any price or, without appropriate consent, other proprietary business information about any other physician or ancillary services provider; provided that, nothing in this Final Judgment shall prohibit the disclosure of information already generally available to the medical community or the public;

(B) Owning an interest in any organization that sets fees or other terms of reimbursement for, or negotiates for, competing physicians, unless that organization is a qualified managed care plan and complies with Paragraphs (A) and (B) of Section V of the Final Judgment as if those Paragraphs applied to that organizaton; provided that, nothing in this Final Judgment shall prohibit Heartland from owning an interest in an organization that uses a messenger model, even if the organization is not a qualified managed care plan;

(C) Agreeing with a competitor to allocate or divide the market for, or set the price for, any competing service, except as is reasonably necessary for the operation of any qualified managed care plan or legitimate joint venture in which Heartland has an ownership interest;

(D) Acquiring during the next five years:

(1) The practice of any non-Heartland physician who at the filing of this Final Judgment has active staff privileges in family practice or general internal medicine (diagnosticians excluding subspecialties of internal medicine) or the practice of any physician who after

the filing of this Final Judgment establishes a practice and provides services as a GAPC physician in Buchanan County, Missouri, without the prior written approval of the plaintiff; and

(2) Any physician practice located in Buchanan County, Missouri that has provided services in Buchanan County, Missouri within five years prior to the date of the proposed acquisition, unless Heartland provides plaintiff with 90 days' prior written notice of the proposed acquisition; and

(E) Conditioning the provision of any inpatient hospital service to patients of any competing managed care plan by making that service available only if the competing managed care plan;

(1) Purchases or utilizes (a) Heartland's utilization review program, (b) any Heartland managed care plan, or (c) Heartland's ancillary or outpatient services or any physician's services, unless such services are intrinsically related to the provision of acute inpatient care, such as but not limited to where Heartland's provision of inpatient care inherently gives rise to Heartland bearing professional responsibility for such services, so long as Heartland otherwise makes its inpatient services available to competing managed care plans as set forth in this Paragraph; or

(2) Contracts with or deals with Health Choice, Community Health Plan, or any other Heartland managed care plan.

This Paragraph (E) shall not apply to any contract with an organization in which Heartland has a substantial financial risk.

This Paragraph (E) shall not limit Heartland's ability to condition the provision of any inpatient hospital service on the purchase or utilization of ancillary or outpatient services or physician's services selected by Heartland, pursuant to any contract in which Heartland bears financial risk, so long as Heartland otherwise makes its inpatient services available to competing managed care plans as set forth in this Paragraph.

VII

Additional Provisions

(A) Health Choice shall:

(1) Inform each physician on its provider panel annually in writing that the physician is free to contract separately with any other managed care plan on any terms; and

(2) Notify in writing each payor with which Health Choice has or is negotiating a contract that each provider on Health Choice's provider panel is free to contract separately with such payor on any terms, without consultation with Health Choice; and

(B) Heartland shall:

(1) Observe the attached and incorporated Heartland Referral Policy relating to the provision of ancillary services;

(2) File with plaintiff each year on the anniversary of the filing of the Complaint in this action a written report disclosing the rates, terms, and conditions for inpatient hospital services Heartland provides to any managed care plan or hospice program, including those affiliated with Heartland. Plaintiff agrees not to disclose this information unless in connection with a proceeding to enforce this Final Judgment or pursuant to court or Congressional order; and

(3) Give plaintiff reasonable access to its credentialing files for the purpose of determining if Heartland used its credentialing authority to deny hospital privileges to physicians employed by or otherwise affiliated with a competing managed care plan, provided Heartland is given all necessary authorizations for the release of such records.

VIII

Heartland Permitted Activities

Notwithstanding any of the prohibitions or requirements of Sections IV through VII of this Final Judgment, Heartland may:

(A) Own 100% of an organization that includes competing physicians on its provider panel and either uses a messenger model or sets fees or other terms of reimbursement or negotiates for physicians so long as the organization complies with Paragraphs (A) and (B) of Section V of the Final Judgment as if those Paragraphs applied to that organization, and with the subcontracting requirements of a qualified managed care plan;

(B) Employ or acquire the practice of any physician not located in Buchanan County, Missouri, who derived less than 20% of his or her practice revenues from patients residing within Buchanan County, Missouri, in the year before the employment or acquisition;

(C) If Plaintiff does not disapprove under the procedures set out in this Paragraph (C), employ or acquire the practice of any GAPC physician so long as Heartland incurs substantial costs recruiting such physician for the purpose of beginning the offering of GAPC services in Buchanan County, Missouri, or gives either substantial financial support or an income guarantee to such physician to induce that physician to begin offering GAPC services in Buchanan County, Missouri, and employs the physician or acquires the practice within two years of the physician first offering GAPC services in Buchanan County, Missouri. Heartland must give the plaintiff an opportunity to disapprove, by giving plaintiff 30 days prior written notice and such information in Heartland's possession as is necessary to determine whether the above criteria have been met. Plaintiff shall not disapprove if these criteria are met. If plaintiff disapproves, plaintiff will set forth the reasons for disapproval. If plaintiff fails to disapprove within 30 days of receipt of the requisite information, the criteria shall be deemed to have been met, and Heartland may employ or acquire the practice of the GAPC physician; and

(D) With plaintiff's prior written approval, employ or acquire the practice of any physician who will cease to be a GAPC physician in Buchanan County, Missouri, unless Heartland acquires the practice or employs the physician.

IX

Judgment Modification

In the event that any of the provisions of this Final Judgment proves impracticable as to any defendant or in the event of a significant change in fact or law, that defendant may move for, and plaintiff will reasonably consider, an appropriate modification of this Final Judgment. Nothing in this Section limits the right of any defendant to seek any modification of this Final Judgment it deems appropriate.

X

Compliance Program

Each defendant shall maintain a judgment compliance program, which shall include:

(A) Distributing within 60 days from the entry of this Final Judgment, a copy of the Final Judgment and Competitive Impact Statement to all senior administrative officers and directors;

(B) Distributing in a timely manner a copy of the Final Judgment and Competitive Impact Statement to any person who succeeds to a position described in Paragraph (A) of this Section X;

(C) Briefing annually those persons designated in Paragraphs (A) and (B) of this Section X on the meaning and requirements of this Final Judgment and the antitrust laws, including penalties for violation thereof;

(D) Obtaining from those persons designated in Paragraphs (A) and (B) of this Section X annual written certifications that they (1) have read, understand, and agree to abide by this

Final Judgment, (2) understand that their noncompliance with this Final Judgment may result in conviction for criminal contempt of court and imprisonment and/or fine, and (3) have reported any violation of this Final Judgment of which they are aware to counsel for the respective defendant; and

(E) Maintaining for inspection by plaintiff a record of recipients to whom this Final Judgment and Competitive Impact Statement have been distributed and from whom annual written certifications regarding this Final Judgment have been received.

XI

Certifications

(A) Within 75 days after entry of this Final Judgment, each defendant shall certify to plaintiff that it has made the distribution of the Final Judgment and Competitive Impact Statement as required by Paragraph (A) of Section X above;

(B) For five years after the entry of this Final Judgment, on or before its anniversary date, each defendant shall certify annually to plaintiff whether it has complied with the provisions of Section X above applicable to it; and

(C) Each defendant shall provide written notice to plaintiff if at any time during the period that this Final Judgment is in effect (1) that defendant owns an interest in a qualified managed care plan, (2) that qualified managed care plan includes among its owners or members any single physician practice group which comprises more than 30% of the physicians in any relevant physician market, and (3) that single physician practice group adds additional physicians.

XII

Plaintiff's Access

For the sole purpose of determining or securing compliance with this Final Judgment, and subject to any recognized privilege, authorized representatives of the United States Department of Justice, upon written request of the Assistant Attorney General in charge of the Antitrust Division, shall on reasonable notice be permitted during the term of this Final Judgment:

(A) Access during regular business hours of any defendant to inspect and copy all records and documents in the possession or under the control of that defendant relating to any matters contained in this Final Judgment;

(B) To interview officers, directors, employees, and agents of any defendant, who may have counsel present, concerning such matters; and

(C) To obtain written reports from any defendant, under oath if requested, relating to any matters contained in this Final Judgment.

XIII

Notifications

To the extent that it may affect compliance obligations arising out of this Final Judgment, each defendant shall notify the plaintiff at least 30 days prior to any proposed (1) dissolution, (2) sale or assignment of claims or assets of that defendant resulting in the emergence of a successor corporation, or (3) change in corporate structure of that defendant.

XIV

Jurisdiction Retained

This Court retains jurisdiction to enable any of the parties to this Final Judgment, but no other person, to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

XV

Expiration of Final Judgment

This Final Judgment shall expire five (5) years from the date of entry; provided that, before the expiration of this Final Judgment, plaintiff, after consultation with defendants and in plaintiff's sole discretion, may extend the judgment, except for Section VI(D), for an additional five years.

XVI

Public Interest Determination

Entry of this Final Judgment is in the public interest.

Dated:. _____

_____

United States District Judge.

Referral Policy

I. General Statement

After a patient or the patient's family or other appropriate person (collectively ''patient'') has been identified (via screening, assessment, discharge planning, staff, family, physician, or other means) as being in need of appropriate home health care, hospice, DME, or outpatient rehabilitation services (referred to collectively as ''Ancillary Service''), and, if necessary, a physician's order has been obtained, the following procedures will be used by a referring person when connecting patients to the appropriate Ancillary Service. Our focus is on patient choice.

II. Ancillary Service Referrals

A. If a physician orders an Ancillary Service and specifies the provider to be used (whether specifically written in the chart or other written notification), then a referring person shall contact the patient indicating that the physician has ordered an Ancillary Service and has ordered that a particular provider be used. The patient should be asked whether this is acceptable, and if so, referred to that provider. (If the patient does not wish that provider, see subsection B below.)

B. If a physician orders an Ancillary Service, but does not specify the provider to use, then the patient shall contacted and informed that his physician has ordered an Ancillary Service, and shall be asked if he has a preference as to which provider to use:

1. If the patient has a preference, that preference shall honored.

2. If the patient has no preference, a referring person shall indicate that Heartland has an excellent, fully accredited Ancillary Service that is available to the patient, and the appropriate Heartland brochure may be given. If the patient accepts, then the referral shall be made to Heartland's Ancillary Service.

3. If the patient has not accepted Heartland's Ancillary Service (see subsection B(2) above), or asks what other providers are available, a referring person shall state that there are other providers in the community that offer the Ancillary Service; however, the referring person cannot make a recommendation as to these other providers, but there is a listing of them in the telephone book. [PATIENT SHALL BE GIVEN A REASONABLE AMOUNT OF TIME TO INVESTIGATE OTHER OPTIONS] If the patient at this point chooses a provider, that choice is to be honored. However, if the patient again requests that a referring person provide them with the names of other providers, the social worker should indicate that Heartland has done no independent review or evaluation of these providers and cannot speak to the quality of care they provide, and then verbally name these providers. The patient's choice shall be honored.

In the United States District Court for the Western District of Missouri

In the matter of: United States of America, Plaintiff, vs. Health Choice of Northwest Missouri, Inc., Heartland Health System, Inc., and St. Joseph Physicians, Inc., Defendants. [Case No. 95–6171–CV–SJ–6.]

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 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 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, 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 restraints competition among physicians and among managed care plans in Buchanan County, while

[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.

[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.

[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.

still permitting defendants to market a provider-controlled plan.[4]

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 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

[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.

[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.

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 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. *Arizone* v. *Maricopa County Medical Soc'y,* 457 U.S. 332, 356–57 (1982).

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 transition 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 otherwise serve to facilitate collusive behavior.[10] The

[6] For convenience, this Statement discusses Health Choice's options. However, the same options are available to 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 (V(D) and VI(B) prevent physicians and Heartland from engaging in such conduct through their ownership of Health Choice.

[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.

[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.

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 of 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 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 panel.

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 a 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 charge fees that are too high or deliver services ineffectively.[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' prior notification.[14]

[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.

[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.

[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.

[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

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 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 the 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 border 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,

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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).)

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Census of Fatal Occupational Injuries

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an