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WISCONSIN

Re: In re Advocate Health Care Network, et al., FTC Docket No. 9369

Dear Tom and Sean:

I write on behalf of all Respondents in the above matter to propose terms under which the Respondents would agree to settle the claims in the Complaint and terminate the proceedings now pending before the Commission and in the Northern District of Illinois.

The Complaint in this matter alleges that the proposed merger between Respondents Advocate Health Care Network (“Advocate”) and NorthShore University Health System (“NorthShore”) will reduce competition for certain (i.e., excluding certain tertiary and quaternary services) inpatient general acute care hospital services, and therefore result in higher prices paid by commercial health plans for those services, within a market that contains the four NorthShore hospitals and two Advocate hospitals, specifically Lutheran General Hospital and Condell Medical Center.

As we have explained, Advocate is committed – and the merged organization (ANHP) will be committed – to expanding risk-based payment-for-value arrangements with Chicago-area health plans, and to offering an ANHP-based narrow network insurance product (the “High Performance Network” or “HPN”) in which ANHP will accept capitated rates (equivalent to lower rates than it receives in broader network health plans) in exchange for the increased patient volume created by the narrowness of the network. In turn, the HPN will be sold at lower premiums (as a result of lower provider costs). A merger between Advocate and NorthShore, or more specifically, a transaction that fully aligns Advocate and NorthShore’s finances and policies, including cost reductions and pricing, is necessary for the creation of a commercially successful, two-system narrow network product (the HPN).

The ANHP HPN is a new-to-market, lower priced, high-quality insurance product that will not be sold in the Chicago group insurance market in the absence of this transaction. On a net basis, the downward pricing pressure created by this product – even with

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relatively small enrollment – will more than offset any hypothetical upward pricing pressure resulting from the merger.

Continued delay of the introduction of the HPN into the group insurance market deprives consumers of the benefits of the product itself, the competitive responses of health plans, and the competitive responses of other provider systems and networks. To provide the benefits of the ANHP merger to the Chicago-area market without further delay, the parties propose the following terms of settlement:

1. For a period of seven (7) years, ANHP will limit the annual increase in payment rates for all acute care inpatient services at all current ANHP hospitals in the six-county Chicago metropolitan area under each commercial fee-for-service health plan contract, to the rate of increase in the CPI-U, subject to a floor of 1.0%.
 - a. Accordingly, this agreement would limit rate increases in both a broader product market and a broader geographic market than that alleged by the Commission in its Complaint.
 - b. “Fee-for-service” contracts would exclude contracts under which inpatient hospital services are paid under capitation and those “shared savings” contracts under which ANHP has actual down-side risk.
 - c. The CPI-U has historically lagged the rate of inflation in medical care costs and is expected to do so for the foreseeable future.
2. For each year of the seven-year period ANHP, at its expense, will provide a compliance report prepared by an independent auditor or consultant acceptable to the FTC (and which in any event will not be ANHP’s general auditor).
3. In the event ANHP were determined to have imposed a rate increase on any health plan greater than that allowed under the agreement, ANHP would be required to refund the overage to the affected plan(s) within 90 days.
4. ANHP will commit to make all required publicly-reported and ANHP internal quality/safety data transparent and to produce a “Value Report” for the new organization similar to the annual Advocate Physician Partners value report on an annual basis starting the year after closing.
5. ANHP will consent to private enforcement of the settlement agreement terms by its contracted health plans via binding arbitration with agreed-upon arbitration procedures.

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6. All costs of enforcing the agreement by the FTC and/or private parties would be borne by ANHP.

We make this offer in a good faith effort to resolve the matter, and in the continued belief that the merger's ability to bring the High Performance Network product into the group market at the earliest possible time will stimulate competition and be of immense value to consumers in the greater Chicago marketplace.

We look forward to discussing this proposal with you and appreciate your consideration.

Very truly yours,



Robert W. McCann

cc: David E. Dahlquist, Esq.
J. Robert Robertson, Esq.