

BEFORE THE DEPARTMENT OF JUSTICE
FOR THE STATE OF MONTANA

In the Matter of the Certificate) PRELIMINARY
of Public Advantage Issued to) FINDINGS CONCERNING
Benefis Healthcare, Great Falls,) COMPLIANCE WITH TERMS
Montana.) AND CONDITIONS

This matter is before the Department on review of the first comprehensive progress report submitted by Benefis Healthcare under Mont. Code Ann. § 50-4-622 and Mont. Admin. R. 23.18.106. The purpose of the progress report is to enable the Department to evaluate the impact of the hospital consolidation on the availability, cost effectiveness, quality, and delivery of health care services and to determine whether the hospital has complied with its terms and with the order of the Department approving the consolidation.

I. BACKGROUND

The Department of Justice issued a final Certificate of Public Advantage (COPA) to Benefis Healthcare's predecessors, Montana Deaconess Medical Center and Columbus Hospital, on July 9, 1996, pursuant to the authority of Mont. Code Ann. title 50, chapter 4, part 6, granting antitrust immunity to the consolidation of the two facilities under certain terms and conditions. Central to the Department's decision were the following findings:

1. That the consolidation is likely to result in lower health care costs than would occur in the absence of a consolidation.
2. That the quality of health care services will likely be maintained after the consolidation.
3. That the consolidation is likely to result in improved access to health care.

To guard against the potential for abuse of monopoly power and to make sure the objectives of the COPA were achieved, the Department imposed extensive terms and conditions on the consolidation, including:

cost regulation to ensure that cost savings resulting from the consolidation are passed on to health care consumers and third-party payers;

access regulation to ensure that medical services available in Great Falls before the merger are not denied as a result of it; and

quality regulation, including submission of certain internal quality reporting measures including patient outcomes, satisfaction surveys, and other quality indicators to ensure that quality of care is not diminished as a result of the consolidation.

Following issuance of the COPA, the Department entered into an agreement with the Montana Department of Public Health and Human Services (PHHS) under which PHHS assumed responsibility for conducting quality review of the consolidated hospital in accordance with the terms of the COPA. The Department thereafter contracted with the Topeka, Kansas, firm of Myers and Stauffer LC to conduct a review of the audited financial statements and related data of the hospital, as well as its annual report, and make necessary calculations to enable the Department to determine whether the hospital is in compliance with the cost regulation imposed by the COPA.

In March 1998, the Department received the hospital's progress report for 1997, and on May 1, 1998, received the hospital's 1997 annual audit report and additional documents related to its 1997 employee satisfaction survey. The Department subsequently received a report from PHHS documenting its findings regarding quality of care. Finally, on October 16, 1998, the Department received Myers and Stauffer's Independent Accountant's Report on Applying Agreed-Upon Procedures Related to Benefis Healthcare's COPA, 6/1/1996 to 12/31/1997.

The Department also has received letters from residents of the Great Falls service area during the two years since issuance of the COPA regarding its effectiveness and concerns that have arisen about the hospital's performance.

Having reviewed and carefully considered all information provided to date by the hospital, PHHS, the independent accountant, and the public, the Department is prepared to enter preliminary findings regarding the state of Benefis's compliance with the COPA. However, pursuant to its authority under Mont. Admin. R. 23.18.106(3), the Department also finds it appropriate to solicit and consider public comment on Benefis's compliance

with the COPA, and will accept written comment for a period of 30 days following the issuance of these preliminary findings.

II. COMPLIANCE WITH TERMS AND CONDITIONS

A. Savings and Price Reductions

According to the findings of Myers and Stauffer, the hospital did not eliminate any services during 1997, although a number of services were consolidated. The hospital has taken aggressive steps to consolidate functions and eliminate redundant services and support functions. The overall operating expenses for the hospital declined by approximately \$4.3 million from 1996 levels, and total expenses were decreased by \$5.4 million over 1996 levels. Savings are expected to increase as additional costs associated with construction and other consolidation activities are eliminated. The total FTE count dropped from 1,891.3 in June 1996 to 1,687.4 for 1997, the majority of which occurred through attrition.

The following services and functions were consolidated through the end of 1997: Accounting, Administration, Bronchoscopy Lab/Pulmonary Function Testing, Community Relations, Continuing Care Services, Continuous Improvement Services, Education Services, Flight Program, Human Resources/Personnel, Lab (partial), Laundry Services, Library, Patient Business Services, Pediatrics, Purchasing, Rehabilitation, and Utilization Review/Managed Care. Virtually all clinical services were expected to be consolidated by the end of 1998.

The hospital made significant price reductions, with a particular emphasis on discounting prices for selected outpatient diagnostic and surgical services. Aggregate inpatient prices were found to have decreased by 12.6% and outpatient prices by 17.4%. Like other facilities nationwide, the hospital has experienced a decrease in inpatient days.

Based on a thorough analysis conducted pursuant to the economic model established by the Department under the terms of the COPA, Myers and Stauffer's review determined the total revenue cap to be \$131.65 million, and adjusted hospital revenue subject to the cap to be \$135.09 million. The final report concludes that the hospital generated patient-based revenues exceeding the revenue cap by approximately \$3.4 million. Under section 1.j(1) of the terms and conditions of the COPA, excess revenues above the

patient revenue cap that are under \$3.5 million are to be retained by the hospital and returned to consumers through lower prices during the following year. With inflationary adjustments, the hospital remains below the maximum surplus threshold by approximately \$200,000.

The Department adopts the report of the independent accountant and finds that for the period ending December 31, 1997, the hospital has complied with the terms of the cost regulation imposed by the COPA.

B. Quality of Health Care Services

1. PHHS Monitoring

In July 1996 the Department entered into a Memorandum of Agreement with PHHS under which PHHS assumed oversight of section 2 of the terms and conditions of the COPA. The Agreement set forth the specific duties of PHHS, including monitoring the hospital's accreditation by the Joint Commission on the Accreditation of Hospital Organizations; monitoring the number of operating rooms and reporting any substantial deviation from industry standards; developing quality indicators for the reporting and comparison of data; developing surveys for patients, medical, nursing and hospital staff, as well as forms for collection and submission of data concerning staffing ratios; and reviewing complaints from consumers referred by the Department or by the Community Health Council.

Representatives of PHHS met immediately with staff of the Deaconess and Columbus hospitals to begin preparation for the quality monitoring devices. PHHS conducted a public forum on October 29, 1996, for the purpose of reviewing its responsibilities with the community and receiving feedback on quality concerns regarding the hospital. Approximately 30 to 35 people attended the public forum.

Since completing development of the survey and reporting instruments, PHHS has also established a reporting process for review of patient complaints reported to the hospital's patient advocate, and has met at least quarterly with the patient advocate to review complaints. The PHHS staff assigned to monitor Benefis's compliance with the COPA have conducted numerous on-site visits to the hospital and have met with hospital staff to discuss concerns. PHHS has followed up on all complaints received by staff

or patients and has made specific recommendations to the hospital. The hospital has been responsive in addressing those recommendations.

In compliance with section 2 of the terms and conditions, PHHS has developed reporting devices to monitor quality of care, and has reported to the Department on a quarterly basis the results of its surveys. The areas in which PHHS conducted monitoring—which are consistent with reports required by the Joint Commission on the Accreditation of Hospital Organizations (JCAHO)—are:

Maternity Services

Orthopedic Services

Emergency Room waiting times

Surgical Capacity and Utilization of Operating Rooms

Rehabilitation Services

Medical/Surgical Inpatients; Nosocomial Infections

Based on the data gathered through these monitoring devices, it appears that the hospital remains within expectations for a facility of its size and no significant problems were detected. However, concerns were raised regarding (1) infection control and (2) a lack of coordination between physicians and hospital staff in the scheduling of operating rooms.

The hospital continued throughout 1997 to allow operating schedules to be established through anesthesiologists, instead of having that function centralized at the hospital. As a result, there has been less efficient coordination between physicians and the hospital and times when hospital staff was not prepared for surgeries. At PHHS's recommendation, the hospital is putting plans into place to conduct operating room scheduling itself.

With respect to infection controls, PHHS has conducted on-site visits to follow up on infection control concerns and Benefis has implemented the

recommendations of PHHS. Infection rates are a key component of quality monitoring, as they reflect the quality of patient care being delivered by direct care staff. It is important that the hospital pay close attention to the recommendations of its own infection control staff; PHHS will continue to closely monitor this area.

2. JCAHO Evaluation

The hospital was evaluated by the JCAHO in November 1996 and at that time received a score of 86%. Required corrections were made within six months following the survey and Benefis was issued accreditation status for a term of three years.

3. Patient Satisfaction Surveys

Patient satisfaction surveys have been developed and are being used in the areas of outpatient surgery, inpatient hospitalization, outpatient therapies, emergency room, home care, psychiatry, convenience care, and substance abuse. Benefis also surveyed residents of its Skilled Nursing Facility and patients in its Transitional Care Unit twice during the year. The return rate for the surveys remained considerably lower than the national average throughout 1997. Benefis has taken appropriate measures to increase the rate of return, including the installation of "comment boxes" within the hospital for patients to provide immediate feedback. Throughout 1997, in part due to the low response rate, no significant trends in quality of care could be identified from the patient satisfaction surveys. The surveys showed that the Emergency Department achieved the highest satisfaction scores of all hospital services, with an average satisfaction score more than one standard deviation above the norm mean. The lowest satisfaction score went to Benefis Convenience Care, with an average score more than one standard deviation below the norm mean. A principal item of concern from the surveys and patient complaints was staff and physician attitude or demeanor—lack of courtesy, rudeness and low staff morale. With assistance from PHHS, Benefis is taking measures to address the problems associated with dissatisfied staff, discussed later in this report. Further, although the COPA does not govern physicians, the hospital has implemented a process to review and address complaints regarding physicians. Finally, Benefis has established an organization improvement goal in all surveyed areas for 1998.

4. Patient Advocate

Benefis has, in compliance with section 2.17 of the terms and conditions, also established a patient advocate position within the hospital to review patient complaints about quality of care. The patient advocate program, in the Department's view, has proven to be one of the most successful steps the hospital has taken since consolidation. A detailed complaint procedure was developed by the hospital, requiring quick response from hospital staff and an objective review by the patient advocate, as well as referral to the Community Health Council if the patient is not satisfied. The patient advocate, Debby DeMott, investigated an estimated 120 to 200 complaints during 1997 and established a case review process involving patients and staff. She has promptly responded to complaints and has worked with hospital improvement committees to implement recommendations. Ms. DeMott resolved patient complaints in an average of 11.7 days. PHHS recommended that the hospital include the Patient Advocate as a member of its quality assurance committee. Benefis has successfully adopted this recommendation. The Patient Advocate's report is shared quarterly with the Board of Directors' Continuous Improvement Committee and used to help identify areas of concern. Nearly all of the patients with whom Ms. DeMott has worked have been satisfied with the ultimate outcome of the complaint resolution process.

The PHHS Department received eight patient complaints between July 1996 and December 1997 that were either referred by the Department of Justice or brought directly to PHHS. All complaints were thoroughly investigated and resolved in a timely manner.

5. Staffing Ratios

Section 2.14 of the COPA requires the hospital to collect and provide data in its annual report concerning staffing ratios (including but not limited to the average number of hours of patient care delivered per patient and the ratio of Registered Nurses to Licensed Professional Nurses and other care givers such as nurses' aides). The COPA also requires a comparison of this data to other health care facilities of similar size throughout the country.

Benefis's report states that although employee staffing ratios are calculated for each nursing unit on a quarterly basis, it is difficult to obtain comparable statistics from other health care facilities of similar size. On a hospital-wide basis, Benefis's staffing ratios are significantly higher than comparable

hospitals nationwide. Benefis has provided little analysis concerning the average number of hours of patient care delivered per patient or the ratio of Registered Nurses to Licensed Professional Nurses and other care givers such as nurses' aides.

PHHS reports that staffing levels have not changed significantly due to layoffs or reduction in force. Voluntary terminations by staff have had some impact, particularly in providing adequate coverage for all departments. Both in comments from the public and in reviews conducted by PHHS, concerns have been raised regarding the adequacy of recruitment and training of new nursing staff, traveling nurses and float staff. Mergers often result in higher staff turnover during the transition period, and some temporary disruption is to be expected. However, as discussed further below, the Department remains concerned that Benefis must continue to improve its relationship with employees and ensure that patient care is not compromised.

6. Physician Surveys

Pursuant to section 2.15 of the COPA, survey instruments for both employees and physicians were developed and approved by PHHS. The physician survey was distributed in November 1997 to 210 physicians. Thirty-five percent (35%) were returned. Due to the relatively low rate of return and as a result of feedback from several physicians, the hospital has agreed to modify the physician survey to more accurately reflect the medical environment and issues at Benefis Healthcare. A medical staff committee is being developed to address this and other issues. The results of the physician survey indicate a need for the hospital to work more closely with its medical staff to improve communication and the overall relationship between physicians and the hospital. The top five priorities for improvement identified from the physician survey are:

Availability of supplies and equipment

Overall quality of care delivered

Administrative support in Cardiology

Medical leadership in medicine

Speed of medicine delivery

Benefis plans to develop individual task forces to address each of the top 20 priorities, including the five listed above. Each task force would be composed of an administrative team leader, four or five physicians, and a member of the hospital's management staff. Coordination of the committees would be the responsibility of the Continuous Improvement Committee of the Board of Directors.

7. Employee Surveys

Employee surveys also showed significant room for improvement. The employee satisfaction survey was conducted in November 1997 and distributed to 940 employees. The hospital's composite score was 53.8, compared to a national norm of 61.2 for organizations of similar size, not all of which were hospitals. The top five survey categories identified as needing improvement were: Other Employee Attitudes; Acknowledgment of a Job Well Done; Manager Response Style to Problems; Level of Pride Felt; and Adequacy of Supervisor Support. Benefis has developed a plan to address each of these areas and recognizes the seriousness of having low employee satisfaction. Many of the problems appear to be the result of the stress and confusion associated with the transition from two hospitals to a single institution. Although departmental functions were consolidated, many managers were still traveling frequently between the East and West campuses and had little time to address problems of the employees. With attrition, several mid-level managers were promoted from employee ranks; they were trying to assume new responsibilities while having to help their work units keep up with regular duties until staffing levels stabilized.

In addition to the surveys, several complaints were made by employees directly to the Department of Justice or to PHHS. A majority of the complaints concerned issues over which the Department has no direct authority, including the hospital's employee benefit package and disparity in salaries between employees of different campuses. However, the Department has made Benefis aware of these concerns and the hospital indicates that establishment of a single set of wage scales and employee benefits is nearing completion. PHHS staff investigated one complaint involving staff shortages in the critical care and intensive care areas; it found

that although there were shortages in those areas, the hospital was replacing those staff positions and using qualified traveling nurses to fill the vacancies.

The Department is hopeful that, with Benefis's recent efforts, employee morale is improving. To its credit, Benefis accomplished the transition without significant layoffs. In fact, its employee turnover rate for 1997 was only 2% above the national average for hospitals. The Department has no authority to intervene in the hospital's labor relations issues but, to the extent such matters affect quality of care, the Department and PHHS will continue to closely monitor the hospital's efforts in implementing corrective action plans to ensure that staff morale and communication improve. Additionally, PHHS will monitor the hospital's efforts to recruit, retain and train core staff, particularly in the critical care areas.

C. Charitable Contributions

Section 3.1 of the COPA requires Benefis to continue at least the same level of charitable services that Columbus and MDMC previously provided, including annual adjustments for inflation, funding for charitable programs, and the provision of medical services for low-income persons. Benefis has met and exceeded this requirement of the COPA, providing in 1997 \$1.9 million of charity care—the equivalent of 1.3% of its gross revenues for the year—an increase of approximately \$200,000 over the 1996 level. Benefis also provided significant amounts of non-billed and subsidized services, including educational programs, counseling, and health screening. Benefis's charitable services are exemplary, and have even been expanded in 1998. The Department cautions, however, that additional amounts spent on charity care cannot be a substitute for lower prices to all health care consumers in order to meet the revenue cap requirements.

D. Community Health

Benefis also established and funded, as required by section 3.3 of the COPA, a community health council, now known as the Regional Community Health Council, which held its first meeting in October 1996 and met regularly during 1997. The health council has 12 members representing a variety of interests and organizations in the service area and receives limited staff support from Benefis. The council publishes notice of each of its meetings and has established a web page and a toll-free phone number. The council established bylaws for its operating procedure and conducted some

community outreach activities, consisting primarily of providing talks to local organizations and publishing an update in the bimonthly Great Falls Today magazine. In 1997, the council received fewer than five consumer complaints from hospital patients and took appropriate investigative action in each case. The council also reviewed and participated in the Certificate of Need process involving proposed new ambulatory surgery centers.

Council members, who volunteer their time, have worked diligently to establish the council as a useful and productive community partner in identifying and planning community health needs and facilitating the delivery of health care services. However, the independent auditor's report concludes that the council has not made a significant impact on establishing health goals and strategies for the region or on developing greater levels of cooperation. The auditor notes that this may be attributable in part to the lack of permanent staffing available to the council.

The council plans to concentrate its efforts toward building healthier communities within the 15-county service area, beginning with Cascade County. It will also play a significant part in determining the appropriate disposition of any surplus revenue generated by Benefis in excess of the revenue cap, should that be necessary.

The Department is confident that the health council can play a valuable role in linking Benefis to the community and in fostering better communication and identification of health needs and opportunities. The council should establish a 12-month work plan each year and determine whether it has a need for permanent staff or whether any other changes should be made in its composition or method of operation.

Additionally, the hospital should consider whether there are opportunities to make better use of the council in its community outreach efforts. In a 1997 survey conducted by the American Hospital Association, entitled 1997 AHA Annual Survey, Healthcare InfoSource, Inc., and reported to the Department of Public Health and Human Services, Benefis answered "no" to the following questions regarding "community orientation":

Does your hospital have a long-term plan for improving the health of the community?

Does your hospital work with other providers, public agencies, or community representatives to conduct a health status assessment of the community?

Does your hospital use health status indicators (such as rates of health problems or surveys of self-reported health) for defined populations to design new services or modify existing services?

Does your hospital work with other local providers, public agencies, or community representatives to develop a written assessment of the appropriate capacity for health services in the community?

Although hospital management later indicated its responses were not entirely accurate, the survey is signed by Benefis's CEO and at a minimum shows that upper management employees who assisted in its completion have the impression that these things are not being done. The Regional Community Health Council could serve a valuable function in establishing a long-term plan for improving community health, in conducting a community health status assessment, and in developing an assessment of the appropriate capacity for health services in the community. In short, the hospital should incorporate the council into its health strategy planning and community health efforts and take advantage of the resources available through the council's membership.

E. Access to Health Care Services

The Department finds that Benefis is in compliance with section 4 of the terms and conditions pertaining to the provision of services. With the exception of hospital-based abortion services, the hospital continues to provide all services previously provided at MDMC or Columbus. With respect to abortion services, MDMC complied with section 4.6 of the COPA by providing a cash gift to Intermountain Planned Parenthood in the amount of \$250,000, interest from which is to be used to cover expenses identified in section 4.6. The Department recently approved the release of approximately

one-half the principal amount to Intermountain Planned Parenthood, based upon a finding that the entire amount was not necessary to maintain a stable source of funding for the travel costs associated with out-of-town, hospital-based abortion services.

F. Referral Practices

Referral practices have generated several complaints during the first 18 months of the consolidated operations. In compliance with section 6.5, the hospital submitted and the Department approved policies used to inform unassigned patients of the availability of follow-up care after receiving emergency room services. The Department received complaints from other health care providers in the area of home health referrals and referrals to cardiologists. As a result of those complaints, the Department conducted several interviews and reviewed the requirements of the referral policies with Benefis management staff. Some changes were made in the policies to clarify terms such as "unassigned," and the Department has emphasized to the hospital the importance of making sure hospital staff comply with these policies. At this time, it does not appear that Benefis is violating any terms of the COPA concerning referral policies, but this is an area that the Department will continue to monitor. Benefis should continue to work with its staff to make sure the non-discriminatory referral policies are followed and that no particular physicians' group or ancillary service provider is given preferential treatment, whether or not affiliated with the hospital.

G. Competition

One of the Department's primary concerns in granting the COPA was to ensure that the increase in economic power resulting from the consolidation did not adversely impact competition among health care providers. On two separate occasions during this reporting period Benefis has used its resources to challenge Certificate of Need applications by competing health care providers. For example, shortly after the consolidation was approved, the hospital challenged a CON application filed by a home health agency that would have competed with the hospital's own home health services. As mentioned above, complaints also were raised with the hospital's referral practices to home health care providers. More recently, the hospital again became involved with a CON proceeding regarding a competing outpatient surgical center. Although each of these matters has been resolved, the Department believes that these challenges adversely and unnecessarily

affected the hospital's relationships with physicians, other health care providers, and the community by creating the impression that Benefis is more concerned about preventing competition than about dedicating its resources to the exclusive purpose of providing quality service to health care consumers. While the Department cannot prevent Benefis from invoking the provisions of the Montana Certificate of Need laws, the Department will continue to closely monitor Benefis's conduct in relation to competing health care providers to ensure that competition is not harmed.

H. Other Conditions

The Department finds that Benefis is complying with other terms and conditions of the COPA not specifically discussed previously in these findings.

III. CONCLUSION

The Department concludes that Benefis is working toward the objectives of the COPA and has made considerable progress. The hospital achieved significant price reductions in 1997 and has satisfied the revenue cap requirements for the first full period of analysis (July 1996 through December 1997).

Objective data shows that quality of care has not deteriorated since the consolidation, but the hospital needs to continue action to ensure that quality is maintained and improved. Some negative perceptions about the consolidation persist--on the part of the public, the medical community, and the hospital's own employees. The Department encourages Benefis to continue its efforts in community outreach and internal communication, training, and other human resource improvements to eliminate these perceptions.

Charity care meets and even exceeds the requirements of the COPA, but more effort could be made to incorporate the health council into the hospital's community outreach and health planning efforts.

Comments on these preliminary findings will be accepted until February 1, 1999. Comments should address the extent to which the consolidation has affected hospital-based health care costs, quality of health care services

provided by the hospital, and accessibility of health care services. Comments may be sent to the Department at the following address:

Montana Department of Justice
Legal Services Division
P.O. Box 201401
Helena, MT 59620-1401

In addition, pursuant to the authority granted by section 14.3 of the COPA's terms and conditions, the Department will call a special meeting of the Benefis board of directors for the purpose of discussing the hospital's progress toward meeting the COPA's objectives. The meeting will be arranged at a time convenient to the board and will be open to the public.

DATED this 31st day of December, 1998.

JOSEPH P. MAZUREK
Attorney General