

## **Findings of the Department of Justice Regarding Compliance of Benefis Healthcare with the Terms and Conditions of the Certificate of Public Advantage for the Years 2003 through 2005**

### **Introduction**

The following letter contains the proposed findings of the Department of Justice in its evaluation of the availability, cost effectiveness, quality and delivery of health care services for the years 2003 to 2005 under the Certificate of Public Advantage issued on July 9, 1996. These findings are based on annual reports submitted by Benefis Healthcare and reviewed by the Department of Justice and its independent consultants. On June 15, 2005, the Chief Financial Officer of Benefis Healthcare indicated on behalf of the facility that he agreed with the department's proposed findings. The department hereby adopts the findings contained in the following letter as its final progress report for 2003-2005.

Mike McGrath  
Attorney General  
August 15, 2007

**STATE OF MONTANA**  
**DEPARTMENT OF JUSTICE**  
**AGENCY LEGAL SERVICES BUREAU**

**Mike McGrath**  
**Attorney General**



**1712 Ninth Avenue**  
**P.O. Box 201440**  
**Helena, MT 59620-1440**

June 13, 2007

Mr. Wayne Dunn  
Chief Financial Officer  
Benefis Healthcare  
1101 Twenty Sixth Street South  
Great Falls, MT 59405

Re: Findings of the Department of Justice Regarding Compliance of Benefis Healthcare with the Terms and Conditions of the Certificate of Public Advantage for the Years 2003 through 2005.

Dear Mr. Dunn:

As you are aware, the Certificate of Public Advantage (COPA) issued in 1996 was terminated retroactively to July 2006 in the 2007 Legislative Session through passage of SB 323. Although annual reporting and evaluation of compliance has been conducted annually by the Department pursuant to Mont. Code Ann. § 50-4-622, findings concerning compliance with terms and conditions have not been formally issued for the timeframe 2003 - July 2006. In this letter the Department is issuing findings concerning compliance for the calendar years 2003-2005. Please provide comments to this draft by June 22, 2007. We are hoping to issue a final report containing findings for the period 2003-2005 by June 30, 2007.

The Department has not received the last report from Benefis Healthcare (Benefis) from January 2006 to July 2006 and therefore is not including in this letter findings concerning this timeframe. We look forward to both Benefis' submission and comments to the findings below and of its annual report from January 2006 to July 2006.

## COMPLIANCE WITH TERMS AND CONDITIONS

### A. Savings and Price Reductions

2003 - The Department adopts the report of the Independent Auditor, Myers and Stauffer LC, and finds that for the period ending December 31, 2003, the hospital has complied with the terms of the cost regulation imposed by the COPA. The Myers and Stauffer report is attached to this document and incorporated by reference.

Among its notable findings, the Myers and Stauffer report states that there was an increase in overall inpatient services prices of 10.5% and outpatient services of 13.3% during 2003 from the previous year. Skilled nursing prices during 2003 were at a level 34.1% higher than the baseline year and inpatient hospital prices were 28.0% higher than the baseline year. Outpatient prices were 14.2% higher than pre-merger price levels. The total Revenue Cap for fiscal year 2003 was approximately \$162.1 million. The Myers and Stauffer report concludes that adjusted hospital revenues in 2003 were below the COPA's patient revenue cap by approximately \$4.2 million. The cumulative total balance for the period 1996 to 2003 indicated revenue below the Revenue Cap of \$8.1 million.

The Myers and Stauffer report also noted that total expenses for 2003 increased by approximately \$0.8 million over 2002 levels. Bad debt expense reported in 2003 was \$8.3 million, an increase of \$1.7 million from the prior year. During 2003, charity care increased from the 2002 level of \$4.32 million to \$4.85 million. Levels of charity care during 2003 were significantly higher than the baseline level of \$1.69 million. There was relatively little change in overall staffing levels during the 2003 fiscal year.

2004 - The Department adopts the report of the Independent Auditor, Myers and Stauffer LC, and finds that for the period ending December 31, 2004, the hospital has complied with the terms of the cost regulation imposed by the COPA. The Myers and Stauffer report is attached to this document and incorporated by reference.

Some of the notable findings are as follows: There was an increase in overall inpatient services prices of 10.3% and outpatient services of 22.9% during 2004 from the previous year. Skilled nursing prices during 2004 were at a level 38.9% higher than the baseline year and other inpatient hospital prices were at a level 41.6% higher than the baseline year. Outpatient prices were at a level 40.3% higher than the baseline year. The total Revenue Cap for fiscal year 2004 was approximately \$165.7 million. Adjusted hospital revenues in 2004 were over the Patient Revenue Cap by \$3.7 million. The cumulative total balance for the period 1996 to 2004 indicated revenue below the Revenue Cap of \$4.4 million.

The Myers and Stauffer report also noted that total expenses for 2004 increased by approximately \$8.1 million over 2003 levels. Bad debt expense reported in 2004 was \$5.8 million, a decrease of \$2.5 million from the prior year. During fiscal year 2004, charity care increased from the 2003 level of \$4.85 million to \$5.3 million. There was little change in overall staffing levels at Benefis.

2005 - The Department adopts the report of the Independent Auditor, Myers and Stauffer LC, and finds that for the period ending December 31, 2005, the hospital has complied with the terms of the cost regulation imposed by the COPA. The Myers and Stauffer report is attached to this document and is incorporated by reference.

Some of the notable findings are as follows: There was an increase in overall inpatient services prices of 8.9% and outpatient services of 10.4% during 2005 from the previous year. Skilled nursing prices during 2005 were at a level 54.2% higher than the baseline year and other inpatient hospital prices were at a level 54.1% higher than the baseline year. Outpatient prices were at a level 54.9% higher than the baseline year. The total Revenue Cap for fiscal year 2005 was approximately \$178.3 million. Adjusted hospital revenues in 2005 were over the Patient Revenue Cap by \$1.8 million. The cumulative total balance for the period 1996 to 2005 indicated revenue below the Revenue Cap of \$2.6 million.

The Myers and Stauffer report also noted that total expenses for 2005 increased by approximately \$12.2 million over 2004 levels. Bad debt expense reported in 2005 was \$7.3 million, an increase of \$1.5 million from the prior year. During 2005, charity care increased from the 2004 level of \$5.3 million to \$7.0 million. There was relatively little change in overall staffing levels during the 2005 fiscal year.

B. Quality of Health Care Services.

2003 - Pursuant to Section 2 of the terms and conditions of the COPA, for 2003, DPHHS examined the six traditional areas for quality indicators, maternity services, orthopedic services, emergency room waiting times, surgical capacity and utilization of operating rooms, rehabilitation services and medical and surgical inpatient nosocomial infection rates. The Department of Justice and DPHHS (Department of Public Health and Human Services) also instituted a redesigned quality monitoring reporting process. The information of note shows the following: the infection rate control function at Benefis was active and comparatively very successful. Emergency room waiting times increased to 32 minutes to see a physician and 12 minutes to see a nurse. A new customer service training program for employees was instituted to improve patient satisfaction in key areas

of service. Hours of patient care per patient as well as the ratio of registered nurses to licensed professional nurses and other caregivers was examined. Benefis remained accredited under the JCAHO until November 9, 2005.

2004 - The DPHHS applied a new set of indicators that was developed in consultation with Benefis. The indicators were coupled with focused surveys of specific areas of operation that were of concern to DPHHS. In the inpatient satisfaction survey, the scores of the consolidated hospital did not reach the 50th percentile of the comparison group of hospitals. As far as patient satisfaction, overall survey scores declined throughout 2004 in all areas except for the emergency department. Although the number of resolved complaints was 100%, what constituted resolution and why the complaint was deemed resolved was not clear. Patient complaints were not part of Benefis' overall quality assurance program. As far as the survey of medical staff, the 2004 survey results represented a substantial improvement in the opinions of the medical staff. There was an increase of 30% in satisfaction with the quality of care provided by the facility.

During 2004, four focused reviews were initiated in the areas of nursing staffing, ancillary department staffing, case management and emergency room wait times. The process of establishing appropriate staffing levels and the daily staffing management process was usual and customary for hospitals of like size and type. The ancillary department staffing for respiratory care was usual and customary. A review of the case management process was begun in order to examine the cause of patient complaints regarding discharge education. Patient waiting times in the emergency room showed a rising trend over the preceding several years. Actual times to see a physician averaged just over 39 minutes in the second half of 2004. Staffing of registered nurses increased from 6.46 hours per patient day to 6.75 hours per patient day. Monitoring of nosocomial and surgical site infection rates was not considered necessary. Based on its review activities, DPHHS stated that the overall quality of patient care being provided by Benefis was maintained during 2004.

2005 - Pursuant to Section 2 of the terms and conditions of the COPA, for 2005, DPHHS conducted a review with a new set of indicators developed in consultation with Benefis to allow for benchmarking and comparison with industry-wide results. The new indicators were coupled with focused surveys of specific areas of operation to highlight any ongoing concerns of the Department. In the patient satisfaction area, surveys continued to reflect poor comparative responses from patients and their families to the care and service received at Benefis. There was a trend of increasing quality of care complaints. The scores of Benefis improved slightly over the same quarter in 2004 but have not yet averaged above the 50th percentile of the comparison group since the second

quarter of 2003. No information was received throughout the reporting year regarding any benchmarking activities initiated to determine how the number of complaints received compared with other hospitals of like size and type. The DPHHS suggested that a system wide solution process for patient reported problems should be a higher operational priority. A medical staff survey and an employee satisfaction survey are scheduled for 2006.

As far as focused reviews, the DPHHS was able to perform only three reviews in the areas of case management (with a concern regarding the lack of patient education at discharge, scheduling issues and anesthesia coverage), surgical services and quality assurance. There was an identified need to improve pre-discharge patient education. The results of a look-behind audit were not obtained. Areas for improvement in the surgical services were the scheduling process, block monitoring and policies, coverage planning, and organizational structure, to name a few areas. Regarding quality assurance, the revised Continuous Improvement Plan now includes the patient complaint process as part of the overall QA program. Physician and employee surveys are planned for 2006.

There were no results reported as of the end of 2005 regarding JCAHO accreditation. These are apparently forthcoming in 2006.

As far as nurse staffing ratios, overall, staffing of registered nurses increased from 6.75 hours per patient day to 6.86 hours per patient day. The rates for infection control, for nosocomial infections, 2.3%, and surgical site infections, .37%, are significantly below national benchmarks.

Recommendations made by DPHHS were in the areas of better implementing goals established in the clinical scorecard, the patient complaint process, surgical service scheduling and utilization and improving patient satisfaction.

### C. Access to Health Care Services

2003 - Benefis continued to offer the range of services provided by the two facilities prior to the consolidation. There were no significant changes to the overall services provided by Benefis Hospital. Overall service volume availability had not changed significantly with the consolidation. Since 1999, the facility has experienced a decline in outpatient surgeries.

2004 - The overall availability of inpatient and outpatient services had not significantly changed comparing pre-merger and post-merger services. Patient volumes were approximately the same as in 2003.

2005 - Since the baseline year of 1996, Benefis had made significant changes in the types of services offered at each of the individual hospital campuses. The overall availability of inpatient and outpatient services had not significantly changed with the consolidation.

D. Conclusion

2003 - Benefis complied with the terms and conditions of the COPA in Sections 1 through 4 in the Terms and Conditions section of the COPA and with other sections not specifically mentioned herein. Benefis satisfied the revenue cap requirements for calendar year 2003.

2004 - Benefis complied with the terms and conditions of the COPA in Sections 1 through 4 in the Terms and Conditions sections of the COPA and with other sections not specifically mentioned herein. Benefis satisfied the revenue cap requirements for calendar year 2004.

2005 - Benefis substantially complied with the terms and conditions of the COPA in Sections 1 through 4 in the Terms and Conditions sections of the COPA and with other sections not specifically mentioned herein. Benefis satisfied the revenue cap requirements for calendar year 2005.

Myers and Stauffer found that in order to comply with the revenue cap requirements of the COPA, Benefis implemented a package of strategic pricing reductions in 1997 that continued to have a significant impact on the prices charged by Benefis in later years. Data confirms that for the nine year period following implementation of the COPA in 1997, Benefis' net prices have been consistently lower than the prices charged by the three other large Montana hospitals.

Mr. Wayne Dunn  
August 20, 2007  
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As stated above, the Department is hopeful that it can issue findings on compliance with the COPA by June 30, 2007. We look forward to your comments on these draft findings and to receipt of your annual report from January 2006 to July 2006.

Sincerely,

AGENCY LEGAL SERVICES BUREAU

KATHERINE J. ORR  
Assistant Attorney General

kjo/clr

c: Mr. Mike McGrath  
Mr. Mark Callister  
Mr. Allan Hansen