

**BEFORE THE DEPARTMENT OF JUSTICE
FOR THE STATE OF MONTANA**

In the Matter of the Certificate
of Public Advantage Issued to
Benefis Healthcare, Great Falls,
Montana.

**PRELIMINARY
FINDINGS CONCERNING
COMPLIANCE WITH TERMS
AND CONDITIONS**

This matter is before the Department on review of the 2002 Annual Progress Report submitted by Benefis Healthcare under Mont. Code Ann. § 50-4-622 and Mont. Admin. R. 23.18.106. The progress report enables 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 the terms and conditions of the Certificate of Public Advantage (COPA), approving the consolidation.

BACKGROUND.¹

The Department of Justice received the hospital's fiscal year 2002 annual report and audited financial report on June 3, 2003. Thereafter, the Department received the reports of the Department of Public Health and Human Services (PHHS) and of the Independent Auditor.

On December 6, 2002, Benefis filed a petition with the Department requesting the following modifications to the COPA:

xclude all investment income from the revenue cap;

1. Complete information regarding the particulars of the July 1996 COPA is available in the COPA itself and in related decisions issued by the Department. Documents are available from the Department on request by interested parties or on the Department of Justice website at <http://www.doj.state.mt.us/safety/greatfallshospitalmerger.asp>.

2. Increase the inflationary factor in the existing revenue cap model by adding an additional one percent each year for the next four years;
3. Modify Sections 5.3, 5.4, and 5.5 of the COPA to allow Benefis to enter exclusive contracts with anesthesiologists²;
4. Modify Section 2.15 of the COPA to require employee and medical staff surveys every three years instead of annually;
5. Eliminate the annual reporting requirements in Sections 1.5-2, 1.5-3, and 1.5-4 of the COPA;
6. Modify the quality reporting indicators in Section 2 of the COPA in collaboration with the Department of Public Health and Human Services and amend Section 2.12 to require annual quality reporting rather than quarterly reporting which is now required; and
7. Modify Section 8.1 to allow equity type partnering on surgical facilities or services.

After receiving public comment and holding a public hearing on the proposed modification, the Department issued its ruling on the modification on April 4, 2003. The Department ruled as follows:

1. The Department granted Benefis' request to remove investment income from the Revenue Cap, retroactively to 2002.

2. Initially, Benefis requested that the COPA be modified to permit exclusive contracts with all hospital-based physicians. By letter dated January 20, 2003, Benefis limited the request to anesthesiologists.

3. This request was withdrawn by letter dated January 20, 2003.

2. The Department granted Benefis a 1% increase for 2002, a 2% increase in 2003, and a 2.5% increase for the years 2004 and 2005 in the inflationary factor used in the revenue cap model.

3. The Department eliminated the COPA restrictions on exclusive contracts with anesthesiologists subject to the restrictions set forth in the decision.⁴

4. The Department modified the frequency of patient and medical staff surveys to require the surveys bi-annually instead of annually.

5. The Department deleted the reporting requirements in Sections 1.5-2, 1.5-3, and 1.5-4 of the COPA.

6. The Department allowed a revision of the quality of care reporting indicators but continued the requirement of quarterly quality of care reporting.

7. The Department, on its own motion, raised the issue of the future of the Regional Community Health Council and invited the community to comment on the future role and function of the Regional Community Health Council until December 31, 2003.

All the documents relating to the petition for modification and the decision may be viewed at <http://www.doj.state.mt.us/safety/greatfallshospital/petitionformodificationofcopa.pdf>.

4. See the 2003 Decision on Petition for Modification of COPA located at <http://www.doj.state.mt.us/safety/greatfallshospitalmerger.asp>.

Having reviewed and carefully considered all information provided to date by the hospital, PHHS, and the Independent Auditor, the Department is prepared to enter preliminary findings regarding the extent of Benefis' compliance with the COPA. However, pursuant to its authority under Mont. Admin. R. 23.18.106(3), the Department will follow its custom of soliciting public comment on Benefis' 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.

The Department adopts the report of the Independent Auditor, Myers and Stauffer LC, and finds that for the period ending December 31, 2002, 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 concludes that Benefis' pricing changes between 2001 and 2002 varied by service area. However, in general, overall prices in fiscal year 2002 increased as compared to fiscal year 2001. Inpatient hospital prices increased by about 10% and outpatient prices increased by 6.4%.

A review of the relative pricing for the period of 1995 to 2002 reveals that the price reductions implemented in 1997 still have a significant impact on overall price differentials between 1995 and 2002. Price changes since 1998 have reflected primarily an upward trend for inpatient services. Inpatient hospital prices have increased by about 16.7% and outpatient prices increased by about 0.8% from 1995 levels.

Adjusted hospital revenues in 2002 were below the COPA's patient revenue cap by approximately \$3.5 million. This is consistent with the amount of relief afforded to Benefis by the retroactive changes to the revenue cap model authorized by the Department in April 2003. Without that relief, Benefis' revenue would have exceeded the revenue cap by approximately \$0.25 million. That amount is within the tolerance thresholds defined by the revenue cap model.

Combined with prior years, which had a balance of \$0.4 million below the cap, the cumulative deficit balance for the 1996-2002 period stands at \$3.9 million. The hospital is in compliance with the revenue cap conditions imposed by the COPA.

Total expenses for 2002, exclusive of bad debts, increased by approximately 8.9% over 2001 levels. Inflation during that period as measured by the MBI increased 2.9%. There was a marked increase in bad debt expense and professional fees.

B. Quality of Health Care Services.

1. PHHS Monitoring

Pursuant to section 2 of the terms and conditions of the COPA, PHHS has reviewed the monitoring of quality of care at the hospital since the consolidation occurred. For 2002, PHHS again measured six areas for quality indicators, using consistent measurements in an effort to establish facility-specific benchmarks over time. The data gathered through the PHHS monitoring devices show the following:

- a. Maternity services: During the reporting year, Benefis reported below the national benchmark of 2.6 days for discharges of maternity length

of stay. The Department finds that the maternity length of stay at

Benefis of 1.9 days on average is well below the national benchmark.

b. Orthopedic services: Similar to the previous reporting period, the

hospital showed higher than average rates of infection for post-

operative knee and hip patients. No trends have been identified as to

the cause or causes of the infections.

c. Emergency room: Waiting times for emergency room services

increased slightly from the previous period, with an average wait time

to R.N. assessment of 11.3 minutes this period as compared to 9.58

minutes last period. This represents an increase of 1.72 minutes in

waiting time. The average wait time to physician exam was 32.2

minutes which is up from 25.47 minutes last period. In interviews,

facility management attributed increased waiting times to increased

patient volume. Several new programs are under development for the

emergency room. They include a fast-track patient care system

designed to divert less acute injuries and illnesses to mid-level

practitioners. Updated customer service training for staff and increases

in physician and staff coverage hours are planned to begin in July 2004.

A new physician documentation system is scheduled to be implemented

in April 2004. Benefis is planning a new transfer/transport team that

will be implemented in December 2004 to decrease delays in inpatient

admission from the emergency room. Benefis has set a goal of RN waiting times of 8 minutes and physician waiting times of 36 minutes. The Department is concerned that despite the implementation of programs designed to reduce physician workload, increase physician hours, improve hospital bed availability, streamline physician paperwork and enhance overall efficiency, physician waiting times are still expected to increase by an additional 11.8%. The Department has requested additional information from Benefis on this matter.

d. Surgical capacity and utilization: Utilization increased slightly over 2001. Completion and opening of a new surgical service at the East Campus is scheduled for March 2004. Benefis anticipates that this new surgical facility will positively impact East Campus productivity. Further study of this issue will be required to analyze utilization after the new facility opens.

Rehabilitation services: Based on studies of patient improvement levels, PHHS concluded that the hospital's rehabilitation unit is again exceeding the national average for Functional Independence Measurement (FIM). The greater the number, the more improvement a patient achieved. The national average for FIM is 23.6. The regional average is 23.65. Benefis' FIM change is 25.52, exceeding the national and regional average. Length of stay and waiting times are also within acceptable parameters.

- f. Medical/Surgical inpatients: There is no benchmarking available for infection control. The nosocomial infection rates are reported for the East Campus only. There are no acute care services at the West Campus. The nosocomial infection rate is 3.2%, which is up slightly from the previous year's rate of 2.87%.

2. JCAHO Evaluation

The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) re-surveyed Benefis in November of 2002. After correcting several Type deficiencies, Benefis was fully accredited for the three years ending November 9, 2005.

3. Patient Satisfaction Surveys

The hospital continues to conduct patient satisfaction surveys in the areas of outpatient surgery, inpatient hospitalization, emergency room, convenience care, and long term care. The overall average score of 82.6% is a decrease from the score of 83.3% for 2001. A new customer service training program for employees has been instituted to improve patient satisfaction in key service areas.

4. Patient Advocate

In compliance with section 2.17 of the terms and conditions, the hospital's patient advocate continues to receive and review patient inquiries and complaints about quality of care. For the 2002 reporting year, there were 99 complaints handled by the patient advocate.

The patient advocate continues to respond in a timely manner to patient inquiries and to resolve most complaints without additional intervention from either the Regional Community Health Council or PHHS. The system she is using to identify problems, contact

the appropriate Benefis staff, and resolve the complaints to the patient's satisfaction appears to be effective. Patient input is actively solicited and solutions to the identified problems are actively pursued. The number of complaints received is relatively few considering the number of patients that are admitted and discharged.

5. Staffing Ratios

A complete survey of nursing and other service staffing will be performed beginning in late 2003. Complete results will be available in the 2004 annual report.

6. Physician Surveys

A professional staff survey was administered in 2002. Over 211 Physician surveys were sent, with 91 returns, reflecting a 43% participation rate. Responses revealed that physicians are less satisfied with the quality of care provided at Benefis than national norms and less satisfied overall. Primary areas of dissatisfaction include the adequacy of the number of nursing staff, technology/equipment available for inpatient and outpatient surgery, the quality of care provided by facility staff, overall administrative leadership, quality of discharge planning services, surgery scheduling, anesthesiology services, and opportunities for input/involvement in decisions regarding strategic planning. Benefis has implemented a physician satisfaction action plan for the year 2003 to address the areas identified by the 2002 physician survey.

7. Employee Surveys

An employee satisfaction survey was completed in 2002. The mean score for all questions on a scale of 1 to 6 (1 being the highest) was 2.79. This score is better than the 2001 score of 2.98. Benefis scored higher than the national norm in the areas of salary and

working conditions but slightly lower in the areas of administration, personnel policies, benefits, job security, and job mobility. Benefis has instituted action plans to address these areas of concern.

C. Charitable Contributions.

The hospital provided \$4.32 million in charity care in 2002, which was an increase from the \$3.72 million dollars of charity care in 2001. Charity care levels are significantly higher than the baseline level of \$1.69 million in 1995.

D. Community Health.

The Regional Community Health Council continued its efforts to meet the goals set forth by the COPA. It continued to review Benefis' quarterly patient satisfaction surveys, and Benefis' strategic plan, and to address a small volume of consumer complaints. The volume of patient complaints that was initially anticipated has not materialized and the Council has struggled to define a role for itself in the regulation process. On April 4, 2003, the Department of Justice solicited public comment as to the future role and function of the Council. No public comment has been received on this matter.

The Council does review the patient satisfaction surveys and Benefis' strategic plan, however, those functions are also carried out by PHHS. As a practical matter, the Council's role of defining community health goals and strategies and coordinating services of various health care providers are carried out by other groups such as the Foundation Advisory Board and the Northcentral Montana Healthcare Alliance. The function of reviewing consumer complaints as required by COPA § 2.16 is currently carried out by the Consumer Ombudsman, and if the Ombudsman is unable to resolve the complaint, the complaint is

referred to the Council. However, the vast majority of complaints have been resolved effectively by the Consumer Ombudsman.

Accordingly, the Department finds that the Regional Community Health Council has served the purpose for which it was created and should now be dissolved. Section 3.3 of the COPA is hereby deleted. Section 2.16 of the COPA is modified to read:

2.16 The Consumer Ombudsman provided for in paragraph 2.17 shall be responsible for receiving consumer complaints and working with hospital management to resolve those complaints. If the Consumer Ombudsman finds cause to believe that the conduct complained of constitutes a violation of Mont. Code Ann. title 50, chapter 5, part 1 or 2, or Mont. Admin. R. title 16, chapter 32, subchapter 3, or a term or condition of the COPA, and the complaint is not resolved after consultation with hospital management, the Consumer Ombudsman shall promptly report the alleged violation to PHHS. In its discretion, the Department may forward to the Ombudsman any complaints received under Mont. Admin. R. 23.18.106(4) and the Ombudsman shall report back to the Department the results of her investigation of the complaint.

The Attorney General wishes to extend his sincerest thanks to the past and current members of the Council for their service to the state of Montana. The Council served a valuable purpose in the days and months following the merger. It acted as a voice of various Benefis constituents both locally and around the region. To a large extent the dissipation of the sentiment that surrounded the merger has led to better relations between Benefis and the community. At the recent request for modification, Benefis enjoyed strong community backing for its requests. The Council has done its job well and its members deserve the highest commendation.

E. Access to Health Care Services.

The Department finds that Benefis continues to offer the range of services provided by the two facilities prior to the consolidation. Since 1999 the facility has experienced a decline

in outpatient surgeries. This is associated with the post-consolidation entry of two outpatient surgery centers, resulting in an increase in competition for outpatient surgery services in Great Falls. The hospital is a minority partner in one surgery center operated by the Great Falls Clinic. The Department finds that Benefis is in compliance with section 4 of the terms and conditions pertaining to the provision of services.

F. 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.

Benefis has satisfied the revenue cap requirements for calendar year 2002. The Department commends Benefis for honoring its commitment to pass merger-related savings on to Montana consumers through lower prices and increased charity care.

The Department urges Benefis to continue its efforts toward better relations with its workforce and patients. Hospital management continues to work hard to identify issues of concern and areas for improvement, and has shown a high level of commitment to continuous improvement in patient care and employee satisfaction.

Comments on these preliminary findings will be accepted until February 17, 2004.

Comments should address the extent to which the consolidation has affected hospital-based


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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:

Agency Legal Services Division
Montana Department of Justice
1712 Ninth Avenue
P.O. Box 201440
Helena, MT 59620-1440

DATED this 1/14/07 day of January, 2004.



MIKE McGRATH
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