

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. 91-104

STATE OF MAINE,)
)
Plaintiff,)
)
v.)
)
ALLIANCE FOR HEALTHCARE,)
INC., a Maine corporation)
with offices in Portland,)
Cumberland County, Maine;)
KENNEBEC VALLEY HEALTH PLAN,)
INC., a Maine corporation)
with offices in Augusta,)
Kennebec County, Maine;)
MID-MAINE HEALTH PARTNERS,)
INC., a Maine corporation)
with offices in Waterville,)
Kennebec County, Maine; and)
MID-MAINE HEALTH PROFESSIONALS)
INC., a Maine corporation)
with offices in Waterville,)
Kennebec County, Maine,)
)
Defendants.)

COMPLAINT (Request for
Preliminary and
Permanent Injunction)

I. INTRODUCTION

1. This is an action to enjoin Defendants from engaging in unreasonable restraints of trade and unfair methods of competition with respect to negotiations between physicians and third-party payers in the State of Maine.

II. JURISDICTION, PARTIES, AND VENUE

2. This Court has jurisdiction over this matter pursuant to 4 M.R.S.A. § 152 (Supp. 1990), 5 M.R.S.A. § 209 (Supp. 1990), and 10 M.R.S.A. § 1104 (Supp. 1990).

3. The State of Maine, by and through its Attorney General, brings this action seeking injunctive relief for anticompetitive conduct of the Defendants in the negotiation of fees for physician services with third-party payers within the State of Maine.

4. Alliance for Healthcare, Inc. is a Maine non-profit corporation with offices in Portland, Cumberland County, Maine.

5. Defendant Mid-Maine Health Partners, Inc. is a Maine non-profit corporation with offices in Waterville, Kennebec County, Maine.

6. Defendant Mid-Maine Health Professionals, Inc. is a Maine professional services corporation with offices in Waterville, Kennebec County, Maine.

7. Defendant Kennebec Valley Health Plan, Inc. is a Maine non-profit corporation with offices in Augusta, Kennebec County, Maine.

8. Venue is proper in Kennebec County pursuant to 14 M.R.S.A. § 501 (1980) and 5 M.R.S.A. § 209 (Supp. 1990).

III. NATURE OF TRADE AND COMMERCE

9. Traditionally, health insurance companies, such as Blue Cross and Blue Shield plans, reimburse healthcare providers on a fee-for-service basis premised either on a maximum fee schedule or upon a determination of the usual, customary, and reasonable fee for a particular service. The insured person or subscriber generally pays an annual or monthly premium and may also pay a deductible or co-insurance.

10. Managed health care plans are designed to impose financial incentives upon physicians and other providers to scrutinize and limit healthcare utilization. Managed health care plans, such as health maintenance organizations (HMOs) and preferred provider organizations (PPOs), often reimburse physicians on a capitation basis, whereby the physician is paid a set amount annually for each patient. Under a capitation payment system, the physician has an incentive not to provide an excessive amount of medical care because he is not compensated for each particular service he provides.

IV. FACTUAL BACKGROUND

A. Waterville

11. Mid-Maine Health Professionals, Inc. was formed in 1987 by Waterville physicians for the purpose of negotiating participation in managed care plans with third-party payers.

12. The shareholders of Mid-Maine Health Professionals, Inc. are eighty-five (85) physicians practicing at Mid-Maine Medical Center. These physician shareholders include over sixty-five percent of the primary care specialists (internal medicine, family practice, pediatrics, obstetrics and gynecology, and general surgery) with active staff privileges at Mid-Maine Medical Center.

13. Mid-Maine Medical Center is the largest of two hospitals in Waterville and is the only allopathic hospital in that city.

14. Mid-Maine Health Partners, Inc. was formed in 1987 with two shareholders: Mid-Maine Ventures, Inc. (an affiliate of Mid-Maine Medical Center) and Mid-Maine Health Professionals, Inc. Mid-Maine Health Partners, Inc. was formed for the purpose of negotiating participation in managed care plans on behalf of physicians with third-party payers.

15. Since shortly after its formation, Mid-Maine Health Partners, Inc. has engaged in negotiations with HMOs including Lincoln National Health Plan, Inc., HMO Maine (an HMO operated by Blue Cross-Blue Shield of Maine), and Healthsource Maine, Inc.

16. Mid-Maine Health Partners, Inc. has negotiated with HMOs on a variety of issues including the form and level of reimbursement to physicians and the amount of risk which would be borne by physicians. Mid-Maine Health Partners, Inc. has not accepted payment on a capitation basis and has instead insisted upon payment upon the fee-for-service basis using a maximum fee schedule. Furthermore, Mid-Maine Health Partners, Inc. has refused to accept any degree of risk in the reimbursement of physicians.

17. In June 1988, Mid-Maine Health Partners, Inc. and Lincoln National Health Plan, Inc. reached an agreement, which is still in effect, whereby Lincoln National Health Plan, Inc. would reimburse physicians belonging to Mid-Maine Health Professionals, Inc. on a fee-for-service basis subject to a maximum fee schedule negotiated by Lincoln National Health Plan, Inc. and Mid-Maine Health Partners, Inc.

18. Neither Healthsource Maine, Inc. nor HMO Maine have negotiated agreements with Mid-Maine Health Partners, Inc. Additionally, neither Healthsource Maine, Inc. nor HMO Maine have been able to recruit a significant number of individual physicians from the Waterville area to participate in their HMOs.

B. Augusta

19. Kennebec Valley Health Plan, Inc. was formed in 1987 for the purpose of negotiating on behalf of physicians participation in managed care plans with third-party payers.

20. The members of Kennebec Valley Health Plan, Inc. are Kennebec Valley Medical Center and approximately fifty physicians with staff privileges at the hospital. The physicians include over seventy percent of the primary care specialists (internal medicine, family practice, pediatrics, obstetrics and gynecology, and general surgery) with active staff privileges at Kennebec Valley Medical Center.

21. Kennebec Valley Medical Center is the only hospital in the Augusta area.

22. Since shortly after its formation, Kennebec Valley Health Plan, Inc. has negotiated with HMOs including Lincoln National Health Plan, Inc., HMO Maine; and Healthsource Maine, Inc.

23. Kennebec Valley Health Plan, Inc. negotiated with HMOs on a variety of issues including the form and level of

reimbursement to physicians and the amount of risk which would be borne by physicians. Kennebec Valley Health Plan, Inc. has negotiated fee arrangements on the basis of maximum allowable charges rather than on a capitation basis.

24. In December 1989, Kennebec Valley Health Plan, Inc. and Lincoln National Health Plan, Inc. reached an agreement, which is still in effect, whereby Lincoln National would reimburse participating physicians in Kennebec Valley Health Plan, Inc. on a fee-for-service basis subject to a maximum fee schedule negotiated by Lincoln National Health Plan, Inc. and Kennebec Valley Health Plan, Inc.

25. Neither Healthsource Maine, Inc. nor HMO Maine have concluded agreements with Kennebec Valley Health Plan. Additionally, neither Healthsource Maine, Inc. nor HMO Maine have been able to recruit a significant number of individual physicians from the Augusta area to participate in their HMOs.

C. Alliance for Healthcare, Inc.

26. The Alliance for Healthcare, Inc. was formed in 1989 with four members: Mid-Maine Health Partners, Inc., Kennebec Valley Health Plan, Inc., Integrated Healthcare, Corp., and Maine Medical Center.

27. The purpose of the Alliance for Healthcare, Inc. was and continues to be to negotiate collectively on behalf of physicians and hospitals with third-party payers offering managed care plans.

28. Beginning in 1990 the Alliance for Healthcare, Inc. began negotiating collectively on behalf of its shareholders with Lincoln National Health Plan, Inc., HMO Maine, and Healthsource Maine, Inc. The Alliance for Healthcare, Inc. and the HMOs negotiated on a number of issues including the level of fees which the HMOs would pay to the physicians represented by the members of the Alliance for Healthcare, Inc.

V. FIRST CAUSE OF ACTION

MID-MAINE HEALTH PROFESSIONALS, INC. AND

MID-MAINE HEALTH PARTNERS, INC.

29. Paragraphs 1 through 28 are incorporated by reference into this First Cause of Action.

30. By engaging in the acts or practices described in this Complaint, both Mid-Maine Health Partners, Inc. and Mid-Maine Health Professionals, Inc. have acted as a combination of their members or shareholders.

31. By engaging in the acts or practices described in this Complaint, Mid-Maine Health Professionals, Inc. and Mid-Maine Health Partners, Inc. have combined or conspired with their members or shareholders to fix or increase the prices charged by, or otherwise to restrain competition among, physicians in the Waterville area.

32. The conduct of Mid-Maine Health Professionals, Inc. and Mid-Maine Health Partners, Inc. described in this Complaint has had the following effects, among others:

- a. fixing or increasing the prices that physicians in the Waterville area charge for their services to HMOs;
- b. restraining competition among physicians in the Waterville area; and
- c. depriving third-party payers offering prepaid health insurance plans of the benefits of competition among physicians in the Waterville area.

33. The conduct of Mid-Maine Health Professionals, Inc. and Mid-Maine Health Partners, Inc. as described in this Complaint constitutes a contract, combination, or conspiracy in unreasonable restraint of trade in violation of 10 M.R.S.A. § 1101 (1980) and an unfair method of competition in violation of 5 M.R.S.A. § 207 (1979).

VI. SECOND CAUSE OF ACTION:

KENNEBEC VALLEY HEALTH PLAN, INC.

34. Paragraphs 1 through 28 are incorporated by reference into this First Cause of Action.

35. By engaging in the acts or practices described in this Complaint, Kennebec Valley Health Plan, Inc. has acted as a combination of its members.

36. By engaging in the acts or practices described in this Complaint, Kennebec Valley Health Plan, Inc. has combined or conspired with its members to fix or increase the prices charged by, or otherwise to restrain competition among, physicians in the Augusta area.

37. The conduct of Kennebec Valley Health Plan, Inc. described in this Complaint has had the following effects, among others:

- a. fixing or increasing the prices that physicians in the Augusta area charge for their services to HMOs;
- b. restraining competition among physicians in the Augusta area; and
- c. depriving third-party payers offering prepaid health insurance plans of the benefits of competition among physicians in the Augusta area.

38. The conduct of Kennebec Valley Health Plan, Inc. as described in this Complaint constitutes a contract, combination, or conspiracy in unreasonable restraint of trade in violation of 10 M.R.S.A. § 1101 (1980) and an unfair method of competition in violation of 5 M.R.S.A. § 207 (1979).

VII. THIRD CAUSE OF ACTION:

ALLIANCE FOR HEALTHCARE, INC.

39. Paragraphs 1 through 28 are incorporated by reference into this First Cause of Action.

40. By engaging in the acts or practices described in this Complaint, Alliance for Healthcare, Inc. has acted as a combination of its members.

41. By engaging in the acts or practices described in this Complaint, Alliance for Healthcare, Inc. has combined or conspired with its members to fix or increase the prices

charged by, or otherwise to restrain competition among, physicians in the Waterville, Augusta, Lewiston, and Portland areas.

42. The conduct of Alliance for Healthcare, Inc. described in this Complaint has had the following effects, among others:

a. restraining competition among physicians and hospitals in the Waterville, Augusta, Lewiston, and Portland areas; and

b. depriving third-party payers offering prepaid health insurance plans of the benefits of competition among physicians and hospitals in the Waterville, Augusta, Lewiston, and Portland areas.

43. The conduct of Alliance for Healthcare, Inc. as described in this Complaint constitutes a contract, combination, or conspiracy in unreasonable restraint of trade in violation of 10 M.R.S.A. § 1101 (1980) and an unfair method of competition in violation of 5 M.R.S.A. § 207 (1979).

WHEREFORE, Plaintiff State of Maine respectfully requests that this Court:

1. Declare that the conduct of Defendants as set forth in this Complaint constitutes violations of 10 M.R.S.A. § 1101 (1980) and 5 M.R.S.A. § 207 (1979).

2. Preliminarily and permanently enjoin Defendants, their agents, employees, assigns, or other persons acting for them or under their control, from entering into or continuing in any combination or conspiracy in violation of 10 M.R.S.A. § 1101 (1980) and from engaging in any unfair methods of competition in violation of 5 M.R.S.A. § 207 (1979).

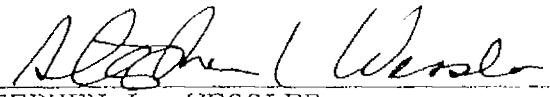
3. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

MICHAEL E. CARPENTER
Attorney General

DATED:

2/15/91


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