

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION No. 14-2033-BLS2

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

PARTNERS HEALTHCARE SYSTEM, INC.,
et al.

Defendants.



**NOTICE OF POSITION OF ATTORNEY GENERAL MAURA HEALEY
CONCERNING THE PENDING CONSENT JUDGMENT BETWEEN
PARTNERS AND THE OFFICE OF THE ATTORNEY GENERAL**

The Court having inquired, I hereby respectfully inform the Court of my position on the proposed Amended Final Judgment by Consent ("Consent Judgment") in this civil action.

I am familiar with the diligent investigation by the Office of the Attorney General of Partners' proposed expansion. I respect Attorney General Coakley's exercise of her prosecutorial discretion, and as Attorney General, will vigorously enforce the Consent Judgment's terms if the Superior Court enters it.

Having now been sworn into office, it is my obligation, under that oath and by statute, to protect and advance the public interest and to do so exercising my own independent judgment. With those obligations in mind, I provide to the Court my views with respect to the pending Consent Judgment which was first submitted for this Court's approval in June 2014 and amended in September 2014.

As a threshold matter, I fully understand that the Office of the Attorney General and Partners reached agreement on the Consent Judgment only after intense negotiations during which the Office assessed, among other things, the risks of litigation and the remedies that would attach to successful litigation as compared to the remedies of the negotiated resolution. I am acutely aware that litigation inherently is uncertain, and that is no different here. But since the parties first submitted the Consent Judgment, the Court has been presented with voluminous information about the Massachusetts health care market, Partners' place in it, and the impact of Partners' expansion on the future of the Commonwealth's health care market. Numerous stakeholders offered public comment and raised concerns, including health care analysts, competing providers, members of the public, the Health Policy Commission, and the health insurers that would directly benefit from the proposed tools of the Consent Judgment. In reaching my own assessment of the Consent Judgment, I considered those comments carefully and appreciate that the public had that opportunity to be heard on a matter so significant to health care in the Commonwealth.

With all that in mind, I share with the Court certain concerns with respect to the potential efficacy of the Consent Judgment, even when it is properly compared to uncertain enforcement litigation. Foremost among my concerns are:

- The terms of the Consent Judgment vary in duration from five years (limits on physicians) to 6.5 years (price growth restrictions) to ten years (component contracting), which raise the concern that after those terms expire—albeit after several years—a larger, post-expansion Partners may wield market leverage that is greater than its current, already significant market leverage.
- Because the community physician cap in the Consent Judgment refers to Partners' 2012 levels, the Consent Judgment permits meaningful growth in the number of Partners' physicians from current levels, even after growth attributable to the two acquisitions (South Shore and Hallmark).

- “Component Contracting” is a key aspect of the Consent Judgment, designed to mitigate Partners’ market leverage in contract negotiations with payers and to end “all or nothing” contracting. Although the remedy appears to be a useful tool for health insurers, in its comment, the Massachusetts Association of Health Plans—comprising the very entities that would benefit from this new tool—declines to vouch for its utility, which concerns me as to the insurers’ willingness and ability to obtain the benefits of this remedy.
- In a very general sense, the Consent Judgment would allow Partners to grow but conditions that expansion on the promise of future price restrictions and changes to Partners’ contracting practices. I would prefer to reverse that order of events and instead consider any future proposed Partners’ expansion only after Partners demonstrates an ability to contribute to health care cost containment in Massachusetts.

I also wish to be clear with the Court with respect to my response to the Court’s potential decision: Should the Court decline to enter the Consent Judgment, I fully anticipate that my Office will exercise its right under paragraph 61 of the Consent Judgment to void the Office’s agreement with Partners. I anticipate we then would litigate to enjoin Partners’ proposed acquisition of South Shore Hospital, and likely use additional time to further evaluate the proposed Hallmark transaction.

Respectfully Submitted,



MAURA T. HEALEY
ATTORNEY GENERAL
COMMONWEALTH OF MASSACHUSETTS