Great Falls Hospital Merger - Summary of 1996 Decision

After conducting the extensive review required by state law, the Department of Justice has conditionally approved the proposed consolidation of the Montana Deaconess Medical Center and Columbus Hospital in Great Falls. The following summary outlines the Department's 71-page decision, which includes discussion of the legislation that authorized mergers of health care facilities, the review process, the Department's findings, and the conditions placed upon the merger of the two hospitals.

Legal Background

The 1993 Montana Legislature enacted legislation authorizing review of cooperative agreements between health care facilities. The 1995 Legislature subsequently amended the statute to authorize mergers and consolidations of those facilities. The express intent of this law is to make health care more affordable to Montanans by substituting state-level regulation for competition. Under the legislation, health care facilities wishing to merge may apply for a certificate of public advantage if they wish to secure immunity from antitrust laws. The 1995 Legislature also made the Department of Justice responsible for reviewing proposed mergers and either granting or denying them.

Under the new law, the Department must consider three major factors in analyzing proposed mergers:

- health care **costs**,
- **access** to health care services, and
- **quality** of health care services.

If the Department finds that a proposed merger is likely to result in lower health care costs or greater access to or quality of health care than would occur without a merger, it must issue a certificate. Conversely, if these criteria are not satisfied, the Department must deny the application. The Department's role in the merger process is to follow the policy and law established by the Montana Legislature. It has no authority to "second guess" the legislature and deny a certificate that meets the requirements of the law.

However, the Department does have the authority to impose certain conditions on a certificate to make sure that the objectives of the merger are achieved and to guard against any potential abuse of power resulting from reduced competition.

The Review Process

In the five months since the hospitals submitted their application to merge, the Department has:

- reviewed the application and requested additional information where necessary;
- interviewed approximately two dozen Great Falls physicians, ancillary care providers, insurance company representatives, Intermountain Planned Parenthood staff and others;
- reviewed hundreds of letters and petitions received during the 30-day public comment period;
- conducted a public hearing in Great Falls; and
- prepared an economic analysis of the proposed merger, including an independent evaluation of the projected cost savings claimed by the hospitals.

The Health Care Environment

Health care mergers and consolidations are sharply rising in the United States, as the industry attempts to respond to lower patient use rates and managed care pressure to bring down costs. More than 200 hospital mergers were announced in 1995, up from 50 in 1990. That included a record 43 hospital mergers in the third quarter of 1995, nine of which involved acquisitions by the for-profit Columbia/HCA Healthcare Corp. The Pew Health Professions Commission recently predicted that market pressures will force the closure of up to half of the nation's hospitals by the year 2000.

Managed care has not yet had a significant impact in the Great Falls area. While the two hospitals there do compete to some extent with hospitals in Billings, Missoula and other cities for specialized services, health care costs are higher than in similar cities in the state and region. In 1994, costs were 6.5% higher in Great Falls than in Billings and up to 20% higher than in other small cities in the western United States.

Findings and Conditions Relating to Costs

The hospitals contend that the elimination of duplicate emergency rooms, surgical facilities, obstetrics delivery suites and pediatric units, as well as duplicate administrative and support services, would result in the following savings:

- annual operating savings in excess of $10.7 million;
- annual capital expenditure savings of approximately $2 million; and
- a one-time capital allowance savings of $6.5 million.

The Department's economic analysis found these savings projections to be somewhat overstated. Some of the savings claimed could be achieved without a merger; were unlikely to be achieved at all; or would have been offset by a corresponding reduction in services. The Department believes the following are more realistic estimates of the financial benefits of the proposed merger:

- merger-specific annual operating savings of approximately $7.5 million;
- non-merger specific annual operating savings of nearly $1 million;
- annual capital cost savings of $1.6 million; and
- additional annual Medicare revenues of $6 million.

After the costs of the merger are taken into account, the net financial benefits resulting from the consolidation are approximately $8 million in the first year following the consolidation, increasing to more than $14 million by the fourth year.

Opponents of the merger questioned the hospitals' projected annual operating savings, noting a 1990 study of 18 hospital mergers between 1985 and 1987 in which expenses were reduced only 1 to 2 percent. However, the mergers reviewed in the 1990 study did not involve state regulation to ensure that projected savings were achieved or passed on to consumers. In granting the certificate of public advantage for the Great Falls merger, the Department has imposed terms and conditions to ensure that the new Consolidated Hospital does not abuse its economic power and that the promised cost savings are realized and passed on to consumers.

Specifically, the Department will set a cap on the revenues the Consolidated Hospital can collect from patient services. The cap will be based on what the hospital's revenues should be if the claimed cost savings are achieved and the profit earned by the hospital is limited to a reasonable margin approved by the Department. The economic analysts who advised the Department expect the cap to result in average price reductions of approximately 18 to 23 percent during the first four years after the consolidation.

In preparation for their application, the Great Falls hospitals commissioned an economic analysis by a private contractor, Lewin-VHI, Inc. The Lewin analysis predicted that the financial condition of both hospitals would seriously deteriorate over the next five years. Based on this analysis, the hospitals contend that, without a merger, costs will rise and the scope and quality of services will gradually erode.

The Department found these concerns to be overstated. Given their strong operating margins for 1995, both hospitals appear to be in sound financial condition. The Department therefore does not rely on the argument that, without a merger, health care services will inevitably decline as a basis for granting the certificate.

Nonetheless, the economists advising the Department concluded that the region surrounding Great Falls probably cannot support two full-service hospitals into the future. To run efficiently, hospitals are generally considered to require at least 300 beds. With the combined number of staffed beds for both hospitals in Great Falls at approximately 220, it does not appear that two full-service hospitals can operate in the Great Falls area indefinitely.

Findings and Conditions Related to Quality

While the hospitals did not establish that the scope and quality of hospital services would suffer without a merger, there is evidence to support the claim that more patients in a given specialty lead to the delivery of more efficient and higher quality health care.

Opponents to the merger raised a number of valid concerns about the effect that eliminating competition would have on the quality of hospital services available in Great Falls. To ensure that the Consolidated Hospital continues to respond to physician and patient needs, the Department will require that the hospital agree to a state-administered program that monitors the quality of care the hospital provides.

Merger opponents also argued that extensive construction would be necessary to ensure enough inpatient operating rooms at one of the hospitals. The hospitals claimed that, by scheduling inpatient operating rooms for 10.5 hours a day, construction could be kept to a minimum. The independent hospital management expert who analyzed this issue for the Department concluded that potential operating capacity at either facility is sufficient to handle projected needs since both hospitals could add up to three additional operating rooms.

However, the Department concluded that a schedule requiring 10.5 hour operating days would have a negative effect on the quality of service. The Department will therefore require the Consolidated Hospital to add a sufficient number of inpatient operating rooms so that surgeries can be scheduled consistent with accepted standards at similar hospitals.

The Department was not persuaded that it should grant a certificate on the sole basis that a merger was likely to result in higher quality health care. Nor did the Department find that the proposed merger was likely to reduce the quality of health care in Great Falls. Rather, the Department concluded that the quality of hospital services will be maintained, provided the terms and conditions it requires are met.

Findings and Conditions Related to Access

The Department concluded that the merger does not threaten geographic access to hospital services. Moreover, financial access to health care services is likely to improve in the Great Falls area since the hospitals will be required to pass the savings from the merger on to consumers.

Among the most emotional issues raised by Great Falls residents is the affiliation of the Consolidated Hospital with the Catholic Sisters of Providence. The hospitals have stated that, with the exception of abortion services, there will be no restrictions on any of the services currently offered by MDMC. In granting the certificate, the Department has required that the Consolidated Hospital agree to continue providing, without restrictions, the following services:

- information and counseling on post coital contraceptives for victims of rape;
- elective sterilization; and
- HIV risk reduction counseling.

The Consolidated Hospital will also be required to maintain the same level and type of services being provided by Columbus and MDMC immediately prior to the consolidation. Any reduction in services must be approved by the Department.

Abortion services will not be provided at the Consolidated Hospital. Of the 32 abortions performed at MDMC between February 1, 1994, and February 1, 1996, 28 involved a diagnosis of fetal abnormalities. Only nine involved patients from Cascade County; the other 23 patients came from all across Montana. While the vast majority of abortions are performed outside the hospital acute care setting, a small percentage must be performed in a hospital operating room. Furthermore, MDMC is currently the only hospital in the state where perinatal genetic counseling and related terminations are performed. Montana's sole perinatologist resides in Great Falls.

MDMC originally proposed to deed an office condominium to Intermountain Planned Parenthood, a condition the Department will require. The revenue generated by the condominium will be used to cover the nonmedical expenses of any woman who is required to travel to another city to obtain an abortion. To ensure that vital perinatal services remain available to women throughout Montana, the Department will require that the revenue generated is also sufficient to cover the expenses of any physician who is required to travel in order to provide this service in Montana. The additional travel costs to the physician will therefore not be passed on to the women needing this service.

Since the perinatologist has committed to continue providing the genetic-related terminations he previously performed at MDMC at other hospitals in the state, the Department finds that access to perinatal services will not be negatively affected.

The Department will also require the Consolidated Hospital to:

- adopt written guidelines regarding patient referrals so that competing health care providers are not unfairly denied access to potential customers;
- negotiate in good faith with health care payers so that the ability of health care payers to negotiate optimal payment and service arrangements is not adversely affected; and
- ensure that the economic power resulting from the consolidation will not be used to unfairly discriminate against physicians or other health care providers who require access to hospital services and facilities.

Monitoring and Enforcement

Among the many conditions imposed on the hospitals are a number relating specifically to monitoring and enforcing the terms of the consolidation. The Department of Justice will closely monitor conditions relating to revenues and ensure that savings are passed on to consumers. Quality issues will be monitored by the Montana Department of Public Health and Human Services. The hospital must collect extensive quality assurance data, including patient satisfaction surveys, staffing ratios, and medical and nursing staff surveys. Annual reporting will be required to demonstrate compliance with the cost reduction, quality and access requirements imposed.

The Consolidated Hospital also will be required to create and fund a 12-member Community Health Council. The Council will include representatives from the hospital, the medical staff, local government, consumers, third-party payers, the Great Falls public school system, the local military community, and local business or community organizations or other social and health agencies serving the community.

The goals of the Council will be to:

- establish community health goals and strategies;
- coordinate the services of various health providers;
- review and comment on the hospital's annual report and strategic plan; and
- receive and act on consumer complaints.

The hospital will also be required to set up a formal procedure for dealing with consumer complaints, including designating a consumer ombudsman to help consumers present their complaints to the Council.

If the hospital fails to correct any violation of the terms and conditions, the Department may enforce those conditions by seeking a court order to compel compliance.

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