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US investigates Partners' contracts

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Health network examined for possible antitrust violations

By Robert Weisman and Liz Kowalczyk, Globe Staff | April 29, 2010

The US Department of Justice has opened a civil investigation into possible anticompetitive behavior by Partners HealthCare System Inc., the region's most powerful hospital and physician network.

In a letter sent to Partners and the state's three largest health insurers on April 19, investigators from the Justice Department's antitrust division demanded documents relating to Partners' "contracting and other practices in health care markets in Eastern Massachusetts."

The letter, obtained by the Globe, said the probe sought to determine whether the practices violated the Sherman Antitrust Act, which bars companies from using their market power to limit trade or artificially raise prices. The parties were told to respond by May 19.

In a separate correspondence, the parties were ordered to provide specific information about how Partners negotiates contracts with health insurance carriers and how much its Boston teaching hospitals, including Massachusetts General Hospital and Brigham and Women's Hospital, are reimbursed, according to industry executives. They spoke on the condition of anonymity because they weren't authorized to discuss the Justice Department inquiry.

Federal investigators typically subpoena documents from health care providers and insurers before deciding whether to file a complaint with formal allegations. In past instances where Justice Department officials have alleged antitrust violations against providers, the cases usually have been settled with agreements that providers change their practices or strike anticompetitive language from their contracts.

Alisa Finelli, a Justice Department spokeswoman in Washington, declined to confirm last week's letter or comment on the investigation.

Partners spokesman Rich Copp yesterday noted that the hospital network already has supplied similar information to investigators from the state attorney general's office, which launched its own review of Partners' contracting practices last year. He noted in Partners' defense that it vies with other providers in the area's "highly competitive" health care market.

"The Department of Justice has requested the same information that we have provided to the attorney general's office," said Copp. "We will continue to cooperate with both government agencies during this ongoing analysis of health care in Massachusetts."

Representatives of health insurance carriers Blue Cross and Blue Shield of Massachusetts, Harvard Pilgrim Health Care, and Tufts Health Plan confirmed that the Justice Department had asked them to turn over documents relating to their dealings with Partners. All said they plan to comply with the directive, formally known as a civil investigative demand. A fourth large state insurer, Fallon Community Health Plan based in Worcester, said it did not receive the Justice Department's order.

The federal probe comes as Massachusetts business and government officials wrangle over how to control soaring medical costs, and who is to blame for a decade of skyrocketing insurance premiums.

Boston-based Partners has been under growing scrutiny because of its market power and ability to draw high prices from insurers. The company employs about 5,500 physicians and operates a half dozen smaller hospitals, in addition to their prestigious Harvard-affiliated Boston teaching hospitals, Mass. General and the Brigham.

Earlier this year, Attorney General Martha Coakley issued a report documenting that Massachusetts insurance companies pay some hospitals and doctors, including those in the Partners network, twice as much money as others for essentially the same patient care. The report pointed to the market clout of the best-paid providers as a main driver of the state's spiraling health care costs.

A 2008 Globe Spotlight Team series focused on the Boston market found that hospitals such as Mass. General and the Brigham typically are paid 15 to 60 percent more for essentially the same work as other hospitals.

Soon after that series, Coakley launched her investigation into whether Partners and Blue Cross-Blue Shield, the state's largest health insurer, may have illegally colluded to increase the price of health insurance statewide over the last decade, according to several legal and government sources.

A spokeswoman for Coakley said yesterday that she would not comment on the status of the attorney general's investigation, or on whether Coakley called in federal investigators or is working with the Justice Department on its probe.

David Marx, an antitrust lawyer specializing in health care at McDermott Will & Emery's Chicago office, said many antitrust investigations are closed without a determination that laws were violated. He said he could not comment specifically on the Partners inquiry.

But in 40 to 50 cases over the past decade, Marx said, federal investigators have brought formal complaints. The violations typically involve large numbers of doctors negotiating contracts together when they legally should not be. Competing providers can negotiate as a group only if they are clinically integrated and share financial risk.

In other cases, Justice Department officials have charged influential providers with demanding "most favored nation" clauses in their contracts, which prohibit insurers from paying other providers more, thereby restricting competition in the market. Most of these cases have been settled, Marx said. Providers have been required to eliminate certain clauses in their contracts, among other measures.

"Networks that have been found to violate the law have been required to change the way they operate," he said.

"You're seeing more aggressive enforcement under this administration. It's a priority for the federal government because health care costs are significant, and there is a sense that competition is good."

The new Justice Department inquiry further complicates the outlook for Massachusetts health insurers, which have been battling state regulators for weeks over government's role in controlling costs. In administrative appeals and a lawsuit lodged in Suffolk Superior Court, the insurers are challenging a premium cap imposed by the state Division of Insurance on April 1 for small businesses and individuals.

Meanwhile, Governor Deval Patrick has proposed legislation to give regulators the power to approve or disapprove contracts between hospitals and insurers. And, state Senate President Therese Murray has said she plans to file a separate bill that would provide relief to small businesses.

Partners, saying it wanted to be part of the solution to rising costs, earlier this month offered \$40 million to help lower double-digit premium increases for small businesses and individuals.

Robert Weisman can be reached at weisman@globe.com. Liz Kowalczyk can be reached at kowalczyk@globe.com. ■