

Not for Publication

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

HACKENSACK MERIDIAN HEALTH, INC.
and ENGLEWOOD HEALTHCARE
FOUNDATION,

Defendants.

Civil Action No. 20-18140

**OPINION WITH FINDINGS OF
FACT & CONCLUSIONS OF LAW**

John Michael Vazquez, U.S.D.J.

In this hotly contested matter, Plaintiff Federal Trade Commission (“FTC”) seeks to stop Defendant Hackensack Meridian Health, Inc. (“HMH”), the largest health system in New Jersey, from acquiring Defendant Englewood Healthcare Foundation (“Englewood”), an alleged close and local competitor to two of HMH’s medical centers. Presently pending before the Court is the FTC’s motion for a preliminary injunction to prevent HMH and Englewood from consummating their proposed merger until completion of the pending administrative proceedings. D.E. 133. The parties agree to the relevant product market but little else. The relevant product market is a cluster of inpatient general acute care (“GAC”) services sold and provided to commercial insurers and their members.

Defendants filed a brief in opposition to the FTC’s motion, D.E. 157, to which the FTC filed a reply, D.E. 228. The parties also filed several motions *in limine* in advance of the evidentiary hearing, D.E. 246, 248, 260, 264, in addition to proposed findings of fact and conclusions of law, D.E. 320-21, 323-29. The Court reviewed the submissions in support of and

opposition to the motions and held a seven-day evidentiary hearing via videoconference. The parties also provided post-hearing submissions, D.E. 320, 324, and the Court heard closing arguments, also via videoconference, on June 2, 2021. For the reasons stated below, the motion for a preliminary injunction is **GRANTED**.¹

I. WITNESSES

During the evidentiary hearing, the Court heard testimony from the following individuals, in order of appearance:

- Michael Maron; President & Chief Executive Officer, Holy Name Medical Center;
- Michele Nielsen; Vice President of Network Contracting & New Jersey Market Lead, UnitedHealthcare;
- Lynda A. Grajeda; Director of Contracting for Medicaid & Medicare, Amerigroup of New Jersey²;
- Walter C. Wengel, III; Senior Director for the New Jersey Network, Aetna;
- Sue Anderson; Principal, The Chartis Group;
- Kevin Lenahan; Senior Vice President, Chief Administrative Officer, Chief Financial Officer, Atlantic Health System;
- Dr. Leemore Dafny; Plaintiff's expert in healthcare and antitrust economics³;
- Ken Kobylowski; Senior Vice President for Provider Contracting & Network Operations, AmeriHealth New Jersey & AmeriHealth Administrators;

¹ The Court has considered all submissions, testimony, and exhibits in this matter. To the extent the Court does not expressly address an argument raised by the parties, the Court has considered it and found that it does not change the Court's analysis.

² Ms. Grajeda testified that Amerigroup only offers Medicaid and Medicare plans in New Jersey. Tr. at 282:1-4. The FTC, however, expressly excludes Medicare Advantage and managed Medicaid insurers from its relevant product market. FTC Br. at 17 n.42. As a result, the Court finds little probative value to Ms. Grajeda's testimony.

³ Dr. Dafny also testified as a rebuttal expert.

- Ryan Tola; President, New Jersey Division, Doyle Alliance Group;
- Robert C. Garrett; President & Chief Executive Officer, HMMH;
- Warren Geller; President & Chief Executive Officer, Englewood;
- Dr. Lawrence Wu; Defendants' expert in healthcare and antitrust economics;
- Kristen Strobel; Senior Director of Global Benefits, Becton, Dickinson & Co.;
- Patrick Young; President of Population Health, HMMH;
- Allen Karp; Executive Vice President of Healthcare Management & Transformation, Horizon Blue Cross & Blue Shield of New Jersey;
- Mark Sparta; President & Chief Hospital Executive, Hackensack University Medical Center;
- Kevin C. "Casey" Nolan; Defendants' expert in hospital operations, capacity and strategic planning;
- Dr. Gautam Gowrisankaran; Defendants' expert in the areas of industrial organization, economics and econometrics in the healthcare industry;
- Dr. Stephen Brunnquell; President, Englewood Health Physician Network;
- Dr. Gregg Meyer; Defendants' expert in the area of healthcare quality, population health and value-based care;
- Lisa Ahern; Defendants' expert on cost savings and efficiencies for healthcare provider transactions; and
- Dr. Patrick Romano; Plaintiff's rebuttal expert on healthcare quality.⁴

⁴ Plaintiff also sought to qualify Dr. Romano as an expert on capacity issues from the hospital operations perspective, including calculations of capacity or steps that a hospital could take to relieve capacity issues. Defendants challenged Dr. Romano's qualification regarding capacity issues, outside of the limited scope of how capacity challenges impact the quality of care. D.E. 264. Dr. Romano is a clinical practitioner. He does not have experience with healthcare system capacity constraints from the operational viewpoint. As a result, the Court grants Defendants' request to preclude Dr. Romano as an expert on operational capacity issues.

II. BACKGROUND, EVIDENCE, and FINDINGS OF FACT

Defendants Englewood and HMH both have hospitals in Bergen County, a densely populated county in northern New Jersey. Englewood operates a single hospital, while HMH has two in the county, including one that it owns with a non-party partner.

Hospitals provide inpatient and outpatient care. Outpatient care generally refers to a same-day medical service, whereas inpatient care requires an overnight stay. Tr. at 48:11.⁵ The focus of this case is inpatient care, specifically inpatient GAC services. As to inpatient GAC services, the type of care is divided into four categories: primary, secondary, tertiary, and quaternary care. The categories reflect the level of complexity of care; primary care is the least complex and quaternary care is the most complex. On average, patients need primary and secondary care more frequently than the higher levels of tertiary and quaternary care. Tr. at 49:7-19. For example, delivery of a baby without complications is considered primary care. A C-section, by comparison, reflects secondary care. A baby born with medical complications requiring neonatal treatment receives tertiary care. Tr. at 49:23-9. Quaternary care includes complex procedures such organ transplants and high-end cancer care. Tr. at 73:23-25; 736:15-19. Hospitals that provide only primary and secondary care are often referred to as community hospitals (although some witnesses used community hospital to refer to an entity that also provided limited tertiary services). *See, e.g.*, Tr. at 46:24-47:6.

A. Healthcare Providers

The following hospitals and healthcare systems are relevant to the Court's analysis: (1) Englewood; (2) Hackensack University Medical Center; (3) Pascack Valley Medical Center; (4) Holy Name Medical Center; (5) Valley Hospital Medical Center; (6) Bergen New Bridge Medical

⁵ Citations to "Tr." refer to the transcript from the seven-day evidentiary hearing in this matter.

Center; (7) Palisades Medical Center; (8) Mountainside Medical Center; (9) St. Joseph's Hospital (2 locations); (10) St. Mary's General Hospital; (11) RWJBarnabas Health; (12) Atlantic Health System; and (13) New York city hospitals, including New York Presbyterian, Hospital for Special Surgery, Mt. Sinai, and Memorial Sloan Kettering.

1. Bergen County Hospitals

Defendant Englewood is a high-quality, community teaching hospital in Bergen County. Englewood provides primary, secondary, and some tertiary care, including cardiac and cancer surgery programs. Tr. at 845:13-19, 24-25; 845:25-846:3; 865:12-13. Englewood is licensed for 531 beds and is currently able to operate 350. Englewood, however, frequently operates under its 350-bed capacity. For example, the day before Englewood's President & Chief Executive Officer Warren Geller testified in this matter, Englewood's census was just 222 patients. Tr. at 847:20-848:16. As to payor mix, about half of Englewood's patients use government programs, such Medicare and Medicaid, while the other half have commercial insurance. Tr. at 849:14-18. Of the commercially insured patients, approximately 55% are Bergen County residents. The remaining 45% come from Hudson, Essex, Passaic, and Rockland counties, which all border Bergen County. Tr. at 850:2-6. About half of Englewood's revenue is generated from patients outside of Bergen County. Tr. at 851:3-5. Englewood's growth over the last several years has come from counties other than Bergen County. Tr. at 850:11-18.

Defendant HMH's flagship hospital, Hackensack University Medical Center ("HUMC"), is also located in Bergen County, approximately five miles from Englewood. HUMC is licensed for 781 beds and has 711 operational beds. Tr. at 1148:9-13. HUMC is the busiest hospital in New Jersey and more than 50% of HUMC's commercially insured patients come from outside of Bergen County. Tr. at 735:3-17; 783:10-14. HUMC is HMH's only hospital that performs

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