

RE:
MERCY HOSPITAL
Docket No. INS 04-230

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CONSENT AGREEMENT

This document is a Consent Agreement authorized by 10 M.R.S.A. § 8003(5)(B), entered into by and between Mercy Hospital (hereafter also "Mercy") and the Superintendent of the Maine Bureau of Insurance (hereafter "Superintendent") and the Office of the Attorney General. The purpose of this Consent Agreement is to resolve, without resort to an adjudicatory proceeding, violation of 24-A M.R.S.A. § 4204(6) as set forth below:

FACTS

1. The Superintendent of Insurance is the official charged with administering and enforcing Maine's insurance laws and regulations.
2. Mercy Hospital is a hospital provider with its principal offices at 144 State Street in Portland, Maine.
3. The Health Maintenance Organization Act at 24-A M.R.S.A. § 4204(6) requires that "every contract between a health maintenance organization and a participating provider must set forth that in the event the health maintenance organization fails to pay for health care services as set forth in the contract, the subscriber or enrollee may not be liable to the provider for any sums owed by the health maintenance organization." Specifically, Section 4204(6)(B) goes on to state that "no participating provider...may maintain any action at law against a subscriber or enrollee to collect sums owed by the health maintenance organization."
4. Mercy Hospital entered into a Participating Hospital Agreement with Harvard Pilgrim Health Care, a licensed health maintenance organization in the State of Maine. The Participating Hospital Agreement between Mercy Hospital and Harvard Pilgrim complied with the requirements of 24-A M.R.S.A. § 4204(6).
5. On January 20, 2004, a patient who had received treatment at Mercy Hospital filed a complaint with the Bureau after unsuccessfully attempting to resolve a \$214.15 charge through Mercy's billing department. Under the patient's Harvard Pilgrim HMO contract, the patient was not responsible for the charge. The facts are summarized below:
 1. The patient received a bill from Mercy hospital in the Fall of 2003 for \$214.15, arising from a hospital stay on July 9, 2002.
 2. The patient contacted Mercy and was told the charge was still being negotiated with Harvard Pilgrim, and to disregard the bill as it was not the patient's responsibility.
 3. The patient contacted Mercy again after receiving bills in October and November of 2003, and was again told to disregard the bill as it was not the patient's responsibility.

4. On December 30, 2003, a collection agency employed by Mercy Hospital sent a letter to the patient stating that Mercy had placed the patient's account with the agency for collection of charges for medical services in the amount of \$214.15.
5. The patient contacted Mercy Hospital, the collection agency, and Harvard Pilgrim to resolve the charge. Mercy placed the patient's account on hold for 30 days and asked the patient to file a complaint with the Bureau of Insurance in order to collect the \$214.15 from Harvard Pilgrim. The collection agency sent the patient a letter dated January 5, 2004, advising that Mercy has placed the account on hold for 30 days. Harvard Pilgrim told the patient that the amount due to Mercy was in dispute, and advised that the bill was not the patient's responsibility.
6. The patient contacted Mercy on January 9, 2004 to explain Harvard Pilgrim's position. On January 12, 2004, Mercy contacted the patient to advise that the hospital was not going to be able to write off the \$214.15 and that the patient should have Harvard Pilgrim send the bill back to Mercy for reprocessing.
7. On January 22, 2004, Harvard Pilgrim wrote to Mercy Hospital, stating in part: "According to your contract with Harvard Pilgrim you cannot bill the member. This is not a member issue. It is a claims follow-up issue. Please review this...and adjust the patient's account."
8. On January 28, 2004, a Harvard Pilgrim representative discussed the patient's billing with the responsible patient account representative at Mercy Hospital. Harvard Pilgrim told Mercy that, according to their contract, Mercy should write the charges off. Mercy's account representative said that Mercy would continue to bill the patient.
9. On February 5, 2004, Harvard Pilgrim sent a message to the CFO at Mercy Hospital via email, stating in part:

" ... you have committed Mercy Hospital to discontinue the practice of balance billing any HPHC member for charges and fees which are not considered patient liability in accordance with current provisions in our agreement. As such I am confirming that the immediate member issue which escalated this conversation will be addressed immediately. That is, Mercy will adjust the outstanding balance of \$214.15...with a date of service 7/9/02 and remove this member from collection activities instituted on Mercy's behalf."
10. On February 20, 2004, Mercy removed the account from the collection agency. On February 25, 2004 the collection agency sent a letter of apology to the patient, stating that the account was not reported to the three national credit bureaus. On March 18, 2004, the patient's account was written off and a statement was mailed to the patient indicating a zero balance on the account.

CONCLUSIONS OF LAW

6. As described in paragraphs 1-5 above, Mercy Hospital violated 24-A M.R.S.A. § 4204 by seeking payment for a covered benefit from an enrollee of a health maintenance organization, and by placing the patient's account with a collection agency.

COVENANTS

- 7. A formal hearing in this proceeding is waived and no appeal will be taken.
- 8. At the time of executing this agreement, which is an enforceable agency action under the Maine Administrative Procedure Act, Mercy Hospital shall pay to the Maine Bureau of Insurance a civil penalty in the amount of One Thousand Dollars and No Cents (\$1,000.00) drawn to the Treasurer of the State of Maine.
- 9. In consideration of Mercy’s execution of and compliance with the terms of this Consent Agreement, the Superintendent agrees to forego pursuing any disciplinary measure or civil sanction for the violations described above, other than those agreed to herein.

MISCELLANEOUS

- 10. Mercy Hospital understands and acknowledges that this agreement will constitute a public record within the meaning of 1 M.R.S.A. § 402, and will be available for public inspection and copying as provided by 1 M.R.S.A. § 408.
- 11. Before executing this agreement, Mercy Hospital was informed of its right to consult with its counsel.
- 12. Nothing herein shall prohibit the Superintendent of Insurance from seeking an order to enforce this Consent Agreement, or from seeking additional sanctions in the event Mercy Hospital does not comply with the above terms, or in the event the Superintendent receives evidence that further legal action is necessary for the protection of Maine consumers.
- 13. The parties understand that nothing herein shall affect any rights or interests of any person who is not a party to this agreement.

SIGNATURE PAGE

Dated: _____, 2004

FOR MERCY HOSPITAL

By: _____

Its _____

Printed Name and Title

Subscribed and sworn to before me
this _____ day of _____, 2004.

Notary Public

Printed name

Date of commission expiration

Dated: _____, 2004

**FOR THE OFFICE
OF THE ATTORNEY GENERAL**

Thomas C. Sturtevant, Jr.
Assistant Attorney General

Effective
Date: _____, 2004

FOR THE MAINE BUREAU OF INSURANCE

Alessandro A. Iuppa
Superintendent of Insurance