

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

Case Type: Other Civil  
(Charitable/Nonprofit Violations)

Court File No. \_\_\_\_\_

In the Matter of Hutchinson Health

**ASSURANCE OF  
DISCONTINUANCE**

WHEREAS, this Assurance of Discontinuance (“Assurance”) is entered into pursuant to Minnesota Statutes section 8.31, subdivision 2b, between the State of Minnesota, through its Attorney General, Keith Ellison (the “State” or “AGO”) and Hutchinson Health (“Hutchinson”);

WHEREAS, the State and Minnesota nonprofit healthcare providers entered into regulatory agreements (the “Hospital Agreement”) relating to patient billing and medical debt collection practices to ensure that such providers collect medical debt in a fair, reasonable, and responsible manner;

WHEREAS, the AGO has authority to enforce Minnesota’s laws relating to consumer protection, nonprofit corporations, and fair, reasonable, and understandable billing practices by nonprofit healthcare providers, including as *parens patriae*. See, e.g., Minn. Stat. §§ 8.31, 317A.813, 325D.44, 325F.70, and the Hospital Agreement ¶¶ 41–42; and

WHEREAS, Hutchinson is a Minnesota nonprofit corporation organized under the Minnesota Nonprofit Corporation Act, Minn. Stat. ch. 317A, is registered with the State as a soliciting charitable organization pursuant to the Charitable Solicitation Act, Minn. Stat. §§ 309.50–.61, and is a signatory to the Hospital Agreement. Hutchinson’s registered office

address with the Minnesota Secretary of State is 1095 Hwy 15 South, Hutchinson, Minnesota 55350.

NOW, THEREFORE, the State and Hutchinson hereby agree to entry of an Assurance of Discontinuance with the following terms and conditions:

## **ALLEGATIONS**

### **I. THE ATTORNEY GENERAL'S HOSPITAL AGREEMENT.**

1. In 2005, following a compliance review of a Minnesota healthcare provider, 125 Minnesota hospitals (the "Hospitals") entered into two-year regulatory agreements—known as the Hospital Agreement—with the AGO pertaining to the entities' billing and debt collection practices. The Hospital Agreement was subsequently renewed in 2007, 2012, and 2017, each time for an additional five years. The current Agreement expires on July 1, 2022.

2. Pursuant to the Hospital Agreement, the Hospitals acknowledge their obligations as charitable organizations to meet certain standards of conduct imposed by their charitable missions and that the Agreement sets forth appropriate standards by which their conduct is regulated. The Agreements require each Hospital's board of directors to take an active role in managing their facilities' billing and debt collection practices. For example, the Hospitals' boards are required to adopt "[a] zero tolerance policy for abusive, harassing, oppressive, false, deceptive, or misleading language" when "collecting medical debt from patients."

3. The Hospital Agreement was founded on the principle that financial policies surrounding the collection of medical debt must be "consistent with the mission and values of the hospital" and "clear, understandable, and communicated in a dignified manner." In accordance with this principle, the Hospitals must offer patients reasonable payment plans that treat them fairly "taking into account each individual's ability to contribute to the cost of his or her care[.]" The provision of such reasonable payment plans is integral to various provisions in the

Agreement. For example, the Hospitals must offer patients reasonable payment plans before pursuing debt in litigation, garnishing patient wages, or referring debt to a collection agency. The Hospitals are further prohibited from referring “any medical debt” to a debt collection agency “if the patient has made payments on that debt in accordance with the terms of a payment plan previously agreed to” by a given Hospital.

## **II. HUTCHINSON HEALTH.**

### **a. Background.**

4. Hutchinson is a Minnesota nonprofit corporation that operates a hospital in Hutchinson, Minnesota. Among other things, Hutchinson offers services in primary and specialty care clinics, emergency care, and specialty programs. It first registered with the AGO as a charitable organization pursuant to the Charitable Solicitation Act, Minn. Stat. §§ 309.50–.61, in December 2007. Hutchinson joined HealthPartners on April 1, 2018. Hutchinson’s charitable mission “is to improve health and well-being in partnership with [its] members, patients and community.”

5. Like every Minnesota nonprofit hospital, Hutchinson provides free or discounted care to qualifying patients pursuant to the Hospital Agreement and in exchange for its favorable tax treatment. Specifically, Hutchinson maintains a Financial Assistance Policy (“FAP”) that provides charity care discounts based on eligibility. The level of discount is based on income level in relation to the then-current Federal Poverty Line and family size. For example, in calendar year 2020, a family of four with a household income of \$50,000 may be eligible for a 100% discount on a bill for health care services from Hutchinson.

6. Pursuant to the FAP and the Hospital Agreement, uninsured patients receive a discount from Hutchinson on medically necessary services as well. In addition to providing free

or discounted care to low-income and uninsured patients, pursuant to its charitable mission and similar to other Minnesota nonprofit hospitals, Hutchinson provides other community benefits such as sponsoring blood drives and supporting community building activities.

7. In 2018 and early 2019, Hutchinson decided to change its electronic health records (“EHR”) system and scheduled the change to occur on November 1, 2019. It further decided that it would transition to a new payment plan policy on the same date, as the existing payment plan policy had not been modified in many years and was due for an update.

**b. Hutchinson’s Payment Plan Before November 1, 2019.**

8. Before November 1, 2019, Hutchinson offered payment plans (each an “Original Payment Plan,” all subject to the “Original Payment Plan Policy”) to patients that had difficulty paying their balance in a single installment. As of September 17, 2019, Hutchinson had agreed to terms and entered into payment plans with 896 of its patients.

9. The terms offered by Hutchinson’s Original Payment Plan Policy were as follows: balances of \$1,000 or less had to be paid within one year. Balances greater than \$1,000 had to be paid within 24 months. Under the Original Payment Plan Policy, Hutchinson allowed for payments as low as \$50 per month. Patients experiencing a temporary financial hardship were eligible for a 90-day reduction in their monthly payment amounts.

**c. Hutchinson Changes Its Payment Plan Policy.**

10. Given that a change to a new EHR system would result in patients potentially having to make two separate monthly payments (due to having payment plans managed in separate systems) with separate payment terms, Hutchinson opted to move all existing patients and guarantors to one new, unified payment plan and policy in the new EHR.

11. Hutchinson began an outreach campaign to potentially affected patients, notifying patients of the change to the new EHR system and its desire to move such patients to a new payment policy.

12. On or about September 20, 2019, Hutchinson sent a letter to all patients with an Original Payment Plan stating that it would be adopting a new policy for payment plans (the “New Payment Plan Policy” covering “New Payment Plans”). The New Payment Plan Policy would be applied to existing patients’ balances, thereby changing the payment timeframe and monthly payment amounts to which the patients agreed under their Original Payment Plans. The letter stated that “[d]ue to upgrades to our health record system and updates to our collection policy your current payment plan . . . will be inactivated on November 1, 2019.” It further noted that “balances that aren’t paid in full by the end of the repayment timeline may be sent to collections.”

13. The New Payment Plan Policy gave patients owing \$1,000 or less six months to repay the debt, \$1,001–\$3,000 were given 12 months, \$3,001–\$10,000 were given 24 months, and patients owing more than \$10,000 were given 36 months. Under this Policy, the monthly amount patients are required to pay is calculated by dividing the balance of their debt by the applicable repayment timeline. Patients experiencing a temporary financial hardship remain eligible for a 90-day reduction in their monthly payment amounts. Unlike the Original Payment Plan Policy, the New Payment Plan Policy does not allow for \$50 minimum monthly payments.

14. After sending the September 20 letter, Hutchinson representatives called patients with Original Payment Plans to secure their purported agreement to the terms of the New Payment Plan Policy. Echoing Hutchinson’s September 20 letter, the representatives told patients that their Original Payment Plan would be deactivated on November 1, 2019. At that

time, the Original Payment Plans were scheduled to be deactivated regardless of whether the patients “agreed” to the terms of the New Payment Plan Policy. Hutchinson representatives further told patients they needed to make the new minimum monthly payment to keep their accounts from being sent to collections. When patients indicated they were unable to afford the increased monthly costs, Hutchinson representatives sometimes asked if they could secure a loan or use their retirement savings to satisfy the debt.

15. Hutchinson claims that 397 of the 896 (or 44%) of patients contacted by Hutchinson were agreeable and accepted the terms of the New Payment Plan Policy. On November 1, 2019, Hutchinson deactivated the remaining 499 patients’ Original Payment Plans, causing them to receive invoices reflecting the full balance of their debt as being due. After it took this action, Hutchinson continued to call these patients in an attempt to secure their purported acceptance to the terms of the New Payment Plan Policy.

16. Of the patients that Hutchinson alleges agreed to the terms of the New Payment Plan Policy, 310 (or 78%) saw an increase in their required monthly payment. Of the 499 patients that did not agree to the terms of Hutchinson’s New Payment Plan Policy and had their Original Payment Plan deactivated, 173 patients made either no payment or inconsistent payments after the change in policy. Prior to the change, all of these patients made consistent payments under their Original Payment Plans. In addition, 46 patients made \$50 monthly payments to Hutchinson under their Original Payment Plans, but 43 of those patients defaulted after the change in policy. Many of these patients saw their monthly payment requirement balloon to more than \$300 or \$400 per month.

17. Hutchinson enters into this Assurance for settlement purposes only and neither admits nor denies the allegations contained in this Assurance.

## INJUNCTIVE RELIEF

18. Hutchinson shall not hereinafter, whether directly, indirectly, individually, representatively, or through or in combination with any other person or entity, engage in any of the following conduct:

- (a) establish or apply a new payment plan policy that materially changes the terms of any patient's or guarantor's then existing payment plan in a manner that increases the patient's or guarantor's monthly payment obligation in a manner that is inconsistent with the existing plan;
- (b) deactivate the payment plan of any patient or guarantor that has not defaulted, breached, missed any payment, or otherwise materially violated the terms of the payment plan;
- (c) state or imply that any patient or guarantor will be sent to collections for defaulting on their payments to Hutchinson when that is not the case or there is no intention by Hutchinson to do so; or
- (d) violate any terms of the Hospital Agreement, the Minnesota Nonprofit Corporation Act, Minn. Stat. ch. 317A, the Charitable Solicitation Act, Minn. Stat. §§ 309.50–.61, the Minnesota Consumer Fraud Act, Minn. Stat. §§ 325F.68–.695, or the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43–.48.

19. Hutchinson shall take all necessary and appropriate actions to provide patients and guarantors owing medical debt incurred before November 1, 2019, with the terms of the payment plan that offers the lowest monthly payment as between such patient's or guarantor's Original Payment Plan and New Payment Plan, and shall furnish to the State within 180 days of this Assurance (the date of Court approval) a report detailing the steps Hutchinson has taken to comply with this Paragraph 19.

20. The terms of this Assurance shall apply to any successor or assign of Hutchinson and any entity that otherwise obtains title to, an ownership interest in, or the right to payment on the medical debt owed by patients and guarantors to Hutchinson incurred before November 1, 2019, that is the subject of this Assurance and referred to in Paragraphs 12–15 of this Assurance.

Hutchinson is further permanently enjoined from effecting any change in its ownership stake in, or management authority over, any entity in which it has such ownership stake or management authority as a method of, or if the effect is, assisting the entity in avoiding the terms of this Assurance.

### **STAYED RELIEF**

21. Hutchinson shall be liable for a civil penalty of \$25,000 per violation if the Court finds, after a motion by the State, and pursuant to a hearing as determined by the Court, that Hutchinson violated any provision of Paragraph 18 of this Assurance. The State shall provide notice to Hutchinson of any alleged violation prior to seeking relief from the Court under this Paragraph and offer a reasonable opportunity for Hutchinson to respond to the State's allegations, which Hutchinson shall do in a timely manner.

### **GENERAL TERMS**

22. Hutchinson understands that, after the date of the approval of this Assurance by the Court, a violation of this Assurance may subject it to sanctions for contempt pursuant to Minnesota Statutes section 8.31, and the AGO may thereafter, in its sole discretion, initiate legal proceedings against Hutchinson for any and all violations of this Assurance.

23. The claims, remedies, and relief provided for in this Assurance are in addition to all other claims, remedies, and relief available to the State of Minnesota or the AGO.

24. Hutchinson shall not state or imply, directly or indirectly, that the State of Minnesota or the AGO have approved of, condone, or agree with any conduct, actions, or inactions by Hutchinson.



25. Nothing in this Assurance shall relieve Hutchinson of its obligations to comply with all applicable Minnesota and federal laws and regulations, and court or administrative orders and directives.

26. If this Assurance is violated, Hutchinson agrees that any statute of limitations, statute of repose, or other time-related defense applicable to the subject matters of the operative Complaint in this action or this Assurance, and any claims arising out of or relating thereto, are retroactively tolled from and after the date of this Assurance.

27. The person signing this Assurance for Hutchinson warrants that Hutchinson has authorized the person to execute this Assurance, that he or she executes this Assurance in an official capacity that binds Hutchinson and its successors, and that Hutchinson has been fully advised by its counsel or has voluntarily forgone such advisement before entering into the Assurance.

28. This Assurance may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement. This Assurance may be executed by facsimile or electronic copy in any image format.

29. This Assurance constitutes the full and complete terms of the agreement entered into by Hutchinson and the AGO.

30. Service of notices or other documents required or permitted by this Assurance shall be served on the following persons, or any person subsequently designated to receive such notices, by mail and email at the addresses identified below:

**As to the AGO:**

Collin R. Ballou, Assistant Attorney General  
Office of the Minnesota Attorney General  
445 Minnesota Street, Suite 1200  
St. Paul, Minnesota 55101  
collin.ballou@ag.state.mn.us

**As to Hutchinson:**

Kevin Roberge, Senior Counsel  
HealthPartners  
PO Box 1309  
Minneapolis, MN 55440  
kevin.c.roberge@healthpartners.com

31. The failure of a party to exercise any rights under this Assurance shall not be deemed to be a waiver of any right or any future rights.

32. This Assurance, including any issues relating to interpretation or enforcement, shall be governed by the laws of the State of Minnesota.

33. Nothing in this Assurance shall be construed to limit the jurisdiction, power, or authority of the State of Minnesota or the AGO, except as expressly set forth herein in with regard to Hutchinson.

34. The AGO shall have all powers specified by Minn. Stat. §§ 8.31, 317A.813, 309.57, 501B.40, the Hospital Agreement, and all other authority otherwise available to it for purposes of investigating any suspected violations of this Assurance.

35. Hutchinson shall full, completely, truthfully, and promptly cooperate with the AGO in its compliance monitoring or investigating of any suspected violations of this Assurance, including promptly providing information or documents requested by the AGO.

36. Each of the parties participated in the drafting of this Assurance and agree that the Assurance's terms may not be construed against or in favor of any of the parties by virtue of draftsmanship.

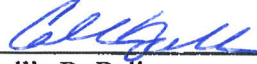
37. Each signatory hereto shall perform such further acts and execute and deliver such further documents as may reasonably be necessary to carry out this Assurance, including that Hutchinson shall promptly comply with any reasonable request from the AGO for information regarding verification of Hutchinson's compliance with this Assurance.

38. The AGO may file this Assurance with the Court without further notice to Hutchinson, and the Court may approve and enter this Assurance without further proceedings.

39. The Court shall retain jurisdiction of this matter for purposes of enforcing this Assurance, notwithstanding any judgment that may be entered dismissing this proceeding with prejudice or otherwise. All signatories hereto further consent to the jurisdiction of the Court for the purposes of enforcing this Assurance. The State may move the Court, as appropriate, to enforce or interpret the provisions of this Assurance, or to maintain an action for other relief as it determines is proper for the enforcement of this Assurance. The parties agree that, in any such motion or action brought by the State, the Court shall have authority to award all appropriate legal and equitable relief, including but not limited to specific performance.

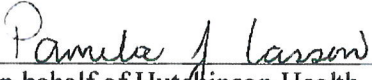
KEITH ELLISON  
Attorney General  
State of Minnesota

Dated: 10-29-20

By:   
Collin R. Ballou  
Assistant Attorney General

HUTCHINSON HEALTH  
a Minnesota nonprofit corporation

Dated: 10-19-2020

By:   
On behalf of Hutchinson Health

**ORDER**

Having reviewed the terms of the foregoing Assurance, which is incorporated herein by reference, and which the Court finds reasonable and appropriate, it is SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
Judge of District Court

**LET JUDGMENT BE ENTERED ACCORDINGLY.**