still permitting defendants to market a provider-controlled plan.<sup>4</sup>

## A. Scope of the Proposed Final Judgment

Section III of the proposed Final Judgment provides that the Final Judgment shall apply to defendants and to all other persons (including SJPI stockholders) who receive actual notice of this proposed Final Judgment by personal service or otherwise and then act or participate in concert with any defendant. The proposed Final Judgment applies to SJPI, Health Choice, Heartland, and Heartland's healthcarerelated entities. The proposed Final Judgment does not apply to Heartland's entities that do not provide health care services.

## B. Prohibitions and Obligations

Sections IV through VIII of the proposed Final Judgment contain the substantive provisions of the consent decree. Section IV applies to SJPI, Section V to Health Choice, and Section VI to Heartland. Section VII contains additional provisions that apply to Health Choice and to Heartland. Section VIII applies only to Heartland.

In Sections IV(A) and V(A), SJPI and Health Choice are enjoined from requiring any physician to provide physician services exclusively through SJPI, Health Choice, or any managed care plan in which SJPI or Health Choice has an ownership interest. SJPI and Health Choice are also barred from precluding any physician from contracting, or urging any physician not to contract, with any purchaser of physician services.

Sections IV(B), V(B), and VI(A) prohibit the sharing of competitively sensitive information. SJPI, Health Choice, and Heartland are enjoined from disclosing to any physician any financial, price, or similarly competitively sensitive business information about any competing physician or any competitor of defendants. An exception permits any defendant to disclose such information if disclosure is reasonably necessary for the operation of a qualified managed care plan ("QMCP"—as defined in the proposed Final Judgment and discussed below) in which that defendant has an ownership interest, or if the information is already generally available to the medical community or the public.

Sections IV(C) and V(C) prohibit fee setting and provide that SJPI and Health Choice, respectively, are enjoined from collectively negotiating or setting fees or other terms of reimbursement, or negotiating on behalf of competing physicians, unless the negotiating entity is a QMCP. However, SJPI and Health Choice are permitted to use a messenger model (as defined in the proposed Final Judgment and discussed below).

Sections IV(D), V(D), and VI(B) enjoin SJPI, Health Choice, and Heartland, respectively, from owning an interest in any organization that sets fees or other terms of reimbursement, or negotiates for competing physicians, unless that organization is a QMCP and it complies with Sections IV(Å) and (B) (for SJPI) and Sections V(Å) and (B) (for Health Choice and Heartland). However, defendants may own an interest in an organization that uses a messenger model, as discussed below.

Section VI(C) enjoins Heartland from agreeing with a competitor to allocate or divide any markets or set the price for any competing service, except as is reasonably necessary for the operation of any QMCP or legitimate joint venture in which Heartland has an ownership interest.<sup>5</sup>

Section VI(D) enjoins Heartland from acquiring any family or general internal medicine practice without plaintiff's prior approval, or from acquiring any other physician practice located in Buchanan County without 90 days prior notification.

Section VI(E) enjoins Heartland from conditioning the provision of its inpatient hospital services on the purchase or use of Heartland's utilization review program, managed care plan, or ancillary, outpatient, or physician services, unless such services are intrinsically related to the provision of acute inpatient care. (These prohibitions, however, do not apply to any organization or any contract in which Heartland has a substantial financial risk.)

Section VII of the proposed Final Judgment contains additional provisions with respect to Health Choice and Heartland. Section VII(A) requires Health Choice to notify participating physicians annually that they are free to contract separately with any other managed care plan on any terms, and to notify in writing each payor with whom Health Choice has or is negotiating a contract that each of its participating physicians is free to contract separately with such payor on any terms and without consultation with Health Choice.

Under Section VII(B)(1), Heartland is required to observe its formal written policy relating to the provision of ancillary services. This policy was developed by Heartland and is attached to the proposed Final Judgment. Heartland must under Section VII(B)(2) file with plaintiff annually on the anniversary of the filing of the Complaint a written report disclosing the rates, terms, and conditions for inpatient hospital services that Heartland provides to any managed care plan or hospice program, including those affiliated with Heartland.

Heartland is required under Section VII(B)(3) to give plaintiff reasonable access to its credentialing files for the purpose of determining if Heartland misused its credentialing authority, such as by denying hospital privileges to physicians affiliated with managed care plans that compete with Health Choice.

Section VIII permits Heartland to engage in certain activities. Under Section VIII(A), Heartland may own 100% of an organization that includes competing physicians on its provider panel and sets fees or other terms of reimbursement or negotiates for physicians, provided the organization complies with Sections V(A) and (B) and with the subcontracting requirements of a QMCP.

Section VIII(B) permits Heartland to employ or acquire the practice of any physician not located in Buchanan County, who derived less than 20% of his or her practice revenues from patients residing in Buchanan County in the year before employment or acquisition.

Section VIII(C) permits Heartland to employ or acquire the practice of any general practice, family practice, or internal medicine physician, provided Heartland actively recruited the physician to begin offering those services in Buchanan County, gave either substantial financial support or an income guarantee to such physician, and is employing the physician or acquiring the practice within two years of the first offering of those services by that physician in Buchanan County. Heartland must give plaintiff 30 days notice and all information in its possession necessary to determine

<sup>&</sup>lt;sup>4</sup> This relief comports with the Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust that the U.S. Department of Justice and the Federal Trade Commission issued jointly on September 27, 1994, 4 Trade Reg. Rep. (CCH) ¶ 13,152, at 20,787–98, and in particular with the principles enunciated therein that a provider network (1) should not prevent the formation of rival networks; and (2) may not negotiate on behalf of providers, unless those providers share substantial financial risk or offer a new product to the market place. Statement 8, *id.* at 20,788–89; Statement 9, *id.* at 20,793–94, 20,796.

<sup>&</sup>lt;sup>5</sup> Statements 2 and 3 of the Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust, 4 Trade Reg. Rep. (CCH) ¶ 13,152 at 20,775–81 (1994), discuss how to assess whether collateral agreements are reasonably necessary for the operation of a particular legitimate joint venture.