

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch

_____)
In the Matter of)
)
HEALTH CARE ALLIANCE)
OF LAREDO, L.C.,) Docket No. C-4158
a limited liability company.)
_____)

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that Health Care Alliance of Laredo, L.C. (“HAL”), hereinafter sometimes referred to as “Respondent,” has violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

Nature of the Case

1. This matter concerns agreements among competing physicians, acting through the Respondent, to fix the prices they charge to health plans and other third-party payors (“payors”), and to refuse to deal with payors except on collectively agreed upon terms. The Respondent had no legitimate justification for these agreements, which increased consumer health care costs in the Laredo, Texas, area.

Respondent

2. HAL, an independent practice association (“IPA”), is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its principal address at 230 Calle Del Norte, Laredo, Texas 78041.

3. HAL contracts with payors on behalf of its member physicians and establishes uniform prices and other contract terms applicable to its members.

4. HAL members include approximately 80 physicians licensed to practice allopathic or osteopathic medicine in Texas.

5. HAL's nine-member Board of Managers consists of physicians who are elected by the HAL members to represent the members' interests in HAL's affairs.

Jurisdiction

6. At all times relevant to this Complaint, HAL has been engaged in the business of contracting with payors, on behalf of HAL's physician members, for the provision of physician services.

7. Except to the extent that competition has been restrained as alleged herein, a substantial majority of HAL physician members have been, and are now, in competition with each other for the provision of physician services in the Laredo, Texas, area.

8. HAL, a for-profit entity, is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

9. The general business practices of HAL, and of its physician members, including the acts and practices herein alleged, are in or affect "commerce" as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

Overview of Physician Contracting with Payors

10. Physicians contract with payors to establish the terms and conditions, including price terms, under which they render physician services to the subscribers ("insureds") to the payors' health plans. Physicians entering into such contracts often agree to lower compensation to obtain access to additional patients made available by the payors' relationship with insureds. These contracts may reduce payors' costs and enable them to lower the price of insurance, and thereby result in lower medical care costs for insureds.

11. Absent agreements among them, otherwise competing physicians unilaterally decide whether to enter into payor contracts to provide services to insureds, and what prices they will accept pursuant to such contracts.

12. The Medicare Resource Based Relative Value Scale ("RBRVS") is a system used by the Centers for Medicare and Medicaid Services to determine the amount to pay physicians for the services they render to Medicare patients. Generally, payors in Texas make contract offers to individual physicians or groups at price levels specified by some percentage of the RBRVS fee for a particular year (e.g., "110% of 2004 RBRVS").

Anticompetitive Conduct

13. HAL, acting as a combination of its physician members, and in conspiracy with its members, has acted to restrain competition by, among other things, facilitating, entering into, and implementing agreements, express or implied, to fix the prices and other terms at which they would contract with payors; to engage in collective negotiations over terms and conditions of dealing with payors; and to have HAL members refrain from negotiating individually with payors or contracting on terms other than those approved by HAL.

14. HAL refers to its contracting system as a “messenger model.” Competing physicians sometimes use a “messenger” to facilitate their contracting with payors, in ways that do not constitute an unlawful agreement on prices and other competitively significant terms. Messenger arrangements can reduce contracting costs between payors and physicians. A messenger can be an efficient conduit to which a payor submits a contract offer, with the understanding that the messenger will transmit that offer to a group of physicians and inform the payor how many physicians across specialties accept the offer or have a counteroffer. A messenger may not negotiate prices or other competitively significant terms, however, and may not facilitate coordination among physicians on their responses to contract offers.

15. Although purporting to employ a messenger model, from 1998 to 2005, HAL attempted to and did negotiate higher reimbursement rates for its member physicians, sent payor offers to members only after HAL negotiated and approved the rates, and urged its members not to deal individually with payors.

16. HAL’s Board of Managers authorized and directed each step of the contracting process with payors. The Board initiated negotiations with payors by directing HAL personnel to contact a payor or by authorizing HAL personnel to respond to a payor inquiry. The Board required HAL personnel to report to the Board on the progress of negotiations and to seek authorization from the Board before making counterproposals. Ultimately, the Board either accepted or rejected contracts which HAL personnel presented to it. If the Board accepted the contract, HAL would then, and only then, “messenger” the contract to HAL’s members for their individual acceptance or rejection. HAL did not messenger any rates proposed by the payors during negotiations, and messengered only the rates that the Board approved.

17. HAL members were fully aware of the payor negotiations HAL was conducting on their behalf. HAL’s staff provided updates on the status of contract negotiations to members via telephone, monthly newsletters, and monthly meetings, at which contracts were frequently an important agenda item.

18. HAL members often had direct input in payor negotiations, aside from their representation on the Board. For example, in 1999, HAL’s Executive Director sent out a survey to members asking them for “the 20 most common codes used in the office and the maximum discount that you are willing to accept.” The Executive Director explained that “[t]his will help

me when I negotiate contracts on behalf of the organization, since I would present these codes as those for which I will seek the advantageous rates.” He also surveyed Board members and spoke to individual members in order to obtain information on fees for their respective specialties, which he used in negotiations with payors. Further, Board members were generally representative of the physician specialties within HAL, and Board members discussed the rate proposals with other members in their specialty when the rates affected their specialty.

Negotiations with United HealthCare of Texas, Inc. (“United”)

19. In the summer of 2003, United was attempting to form a physician network in the Laredo area by contracting individually with area physicians, including HAL’s physicians. When HAL learned of this, it informed United that HAL represented a number of Laredo physicians and that any rates would have to be first approved by HAL’s Board. Despite being warned by United of the antitrust ramifications of such joint negotiations, HAL negotiated the rates with United’s local representative and sent United’s offer to HAL members, many of whom accepted it, only after HAL’s Board approved United’s offer.

20. HAL’s President later sent a memo to members urging them not to sign individual contracts with Aetna, noting that members should let HAL work on Aetna “similar to what we did with UNITED HEALTHCARE where they were offering . . . individual contracts, but we worked out [a] group contract” at rates that were 30% higher than United’s individual contract offers.

Negotiations with Aetna Health, Inc. (“Aetna”)

21. In July of 2003, Aetna began soliciting physicians to join a network it was attempting to establish in Laredo. After learning of this, HAL contacted Aetna and informed Aetna that HAL would negotiate and contract for the HAL physicians. At the same time, HAL began to urge its members not to deal individually with Aetna. HAL’s then-President sent a memo addressed to “All HAL Members” and captioned with “**UPDATE - PLEASE READ**” and “**IMPORTANT**”:

Regarding **AETNA** we know many are receiving individual contracts. We have contacted AETNA and will try to negotiate a group contract for the benefit of all of us.

PLEASE DO NOT sign individual contract[s] with very low reimbursement rates. Let us work on this similar to what we did with UNITED HEALTHCARE where they were offering . . . individual contracts, but we worked out [a] group contract [at rates that were 30% higher than United’s individual contract offers].

22. Aetna warned HAL that its conduct potentially violated the antitrust laws, noting that “you may also be aware that the Federal Trade Commission has been interested in cases involving price fixing by physicians.”

23. Nonetheless, HAL proceeded to negotiate a contract with Aetna. Aetna initially provided HAL with its standard market fee schedule, known as the Aetna Market Fee Schedule (“AMFS”). HAL rejected Aetna’s offer because the rates in the AMFS were “no where close” to HAL’s demanded RBRVS rate.

24. Aetna ultimately succumbed and offered the RBRVS-based rate demanded by HAL, which was, depending on the particular billing code, between 20% and 90% higher than Aetna’s initial offer. HAL then, for the first time, sent out Aetna’s offer to its members, many of whom accepted the group-negotiated rates.

Boycott of PacifiCare of Texas (“PacifiCare”)

25. HAL sought to negotiate with PacifiCare in 2003, and boycotted PacifiCare after PacifiCare declined to do so. In the spring of 2003, PacifiCare was attempting to form its own network of providers by offering contracts to individual physicians in Laredo. Up until that time, PacifiCare was renting the provider network of Private Healthcare Systems, Inc. (“PHCS”), a third-party administrator, to service its customers. PHCS, in turn, had a contract with HAL, which set the prices HAL members received for seeing PacifiCare patients.

26. PacifiCare’s individual contracting efforts were a significant threat to HAL physicians, because HAL’s rates through PHCS were significantly higher than PacifiCare’s individual contract rate.

27. In May 2003, HAL’s Board authorized HAL personnel to negotiate a group contract with PacifiCare. After PacifiCare refused to negotiate with HAL, HAL urged its physician members not to sign up with PacifiCare. HAL reminded them that they already had access to PacifiCare patients through PHCS, and that they would continue to have access to PacifiCare patients, even if they did not sign the lower-paying PacifiCare contracts. When PacifiCare contacted individual HAL members to offer them contracts, PacifiCare was repeatedly told by HAL members that HAL had instructed them not to contract with PacifiCare, that HAL told them it was attempting to negotiate a group contract with PacifiCare, and that PacifiCare would have to deal with HAL. A year after starting efforts to obtain contracts with individual physicians, PacifiCare had signed individual contracts with only ten HAL members, though PacifiCare’s individual contract rates were sufficient to gain acceptance by many non-HAL members in Laredo.

Contracting with Other Payors

28. HAL, on behalf of its physician members, has also orchestrated collective negotiations with other payors who do business, or have attempted to do business, in the Laredo, Texas, area, including Preferred Health Arrangement, Inc.; TML Intergovernmental Employee Benefits Pool; Humana; HealthSmart Preferred Care, Inc.; Advantage Care Network, Inc.; COASTALCOMP HEALTHNETWORKS®; MultiPlan, Inc.; National Healthcare Alliance, Inc.; Texas True Choice, Inc.; Texas Employers Associated Medical Services, Inc.; and Private Healthcare Systems, Inc. HAL negotiated with these payors on price, making proposals and counter-proposals, as well as accepting or rejecting offers, without transmitting the payors' offers to HAL members until HAL's Board of Managers approved the negotiated prices.

29. These coercive tactics were successful in raising the prices paid to HAL's physician members.

Respondent's Price-Fixing Is Not Justified

30. The physician members of HAL have not integrated their practices in any economically significant way, nor have they created efficiencies sufficient to justify their acts or practices described in the foregoing paragraphs 13 through 29.

Respondent's Actions Have Had Substantial Anticompetitive Effects

31. Respondent's actions described in Paragraphs 13 through 29 of this Complaint have had, or tend to have had, the effect of restraining trade unreasonably and hindering competition in the provision of physician services in the Laredo area in the following ways, among others:

- a. price and other forms of competition among physician members of HAL were unreasonably restrained;
- b. prices for physician services were increased; and
- c. health plans, employers, and individual consumers were deprived of the benefits of competition among physicians.

Violation of the Federal Trade Commission Act

32. The combination, conspiracy, acts, and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Such combination, conspiracy, acts, and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief herein requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-third day of March, 2006, issues its Complaint against Respondent HAL.

By the Commission.

Donald S. Clark
Secretary

SEAL