

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

011 0222

COMMISSIONERS: Timothy J. Muris, Chairman
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour

In the Matter of

SOUTH GEORGIA HEALTH PARTNERS, L.L.C.,
a limited liability company,

COASTAL PLAINS HEALTH ALLIANCE, L.L.C.,
a limited liability company,

COLQUITT COUNTY PHO, L.L.C.,
a limited liability company,

COLQUITT COUNTY PHYSICIANS ASSOCIATION, L.L.C.,
a limited liability company,

GEORGIA/FLORIDA PREFERRED, L.L.C., dba HEALTH
ALLIANCE OF THE SOUTH,
a limited liability company,

QUALICARE PHYSICIANS ASSOCIATION, L.L.C.,
a limited liability company,

SATILLA HEALTHNET, INC.,
a corporation,

SOUTH GEORGIA PHO, L.L.C.,
a limited liability company, and

SOUTH GEORGIA PHYSICIAN NETWORK, L.L.C.,
a limited liability company.

Docket No. C-

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of South Georgia Health Partners, L.L.C. (“SGHP”); Coastal Plains Health Alliance, L.L.C. (“Coastal Plains Health Alliance”); Colquitt County PHO, L.L.C. (“Colquitt County PHO”); Colquitt County Physicians Association, L.L.C. (“Colquitt County Physicians”); Georgia/Florida Preferred, L.L.C., dba Health Alliance of the South (“Health Alliance of the South”); Qualicare Physicians Association, L.L.C. (“Qualicare Physicians Association”); Satilla HealthNet, Inc. (“Satilla HealthNet”); South Georgia PHO, L.L.C. (“South Georgia PHO”); and South Georgia Physician Network, L.L.C. (“South Georgia Physician Network”), hereinafter referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of the draft of Complaint that counsel for the Commission proposed to present to the Commission for its consideration and which, if issued, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order to Cease and Desist (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Order:

1. Respondent SGHP is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 160 East Second Street, Tifton, Georgia 31794.
2. Respondent Coastal Plains Health Alliance is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State

of Georgia, with its office and principal place of business located at 160 East Second Street, Tifton, Georgia 31794.

3. Respondent Colquitt County PHO is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 2421 South Main Street, Moultrie, Georgia 31768.
4. Respondent Colquitt County Physicians is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 2421 South Main Street, Moultrie, Georgia 31768.
5. Respondent Health Alliance of the South is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at John D. Archbold Memorial Hospital, 915 Gordon Avenue, Thomasville, Georgia 31792.
6. Respondent Qualicare Physicians Association is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 808 Gordon Avenue, Thomasville, Georgia 31792.
7. Respondent Satilla HealthNet is a non-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 1800 Alice Street, Waycross, Georgia 31501.
8. Respondent South Georgia PHO is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 2501 North Patterson Street, Valdosta, Georgia 31602.
9. Respondent South Georgia Physician Network is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 102 W. Moore Street, Valdosta, Georgia 31602.

10. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Respondent SGHP” means South Georgia Health Partners, L.L.C., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- B. “Respondent Coastal Plains Health Alliance” means Coastal Plains Health Alliance, L.L.C., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- C. “Respondent Colquitt County PHO” means Colquitt County PHO, L.L.C., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- D. “Respondent Colquitt County Physicians” means Colquitt County Physicians Association, L.L.C., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- E. “Respondent Health Alliance of the South” means Georgia/Florida Preferred, L.L.C., dba Health Alliance of the South, its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.

- F. “Respondent Qualicare Physicians Association” means Qualicare Physicians Association, L.L.C., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.

- G. “Respondent Satilla HealthNet” means Satilla HealthNet, Inc., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.

- H. “Respondent South Georgia PHO” means South Georgia PHO, L.L.C., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.

- I. “Respondent South Georgia Physician Network” means South Georgia Physician Network, L.L.C., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.

- J. “Hospital” means a health care facility that provides inpatient and outpatient care and services for the diagnosis and treatment of medical conditions.

- K. “Hospital system” means an organization comprising two or more hospitals where the same person(s) controls each hospital in the organization. For purposes of this definition, the definition of the term “control” under 16 C.F.R. § 801.1(b) shall apply. "Hospital system" includes a hospital that is managed under contract, or is leased, by a hospital member of a Respondent Owner PHO.

- L. “Respondent IPAs” means Respondents Colquitt County Physicians, Qualicare Physicians Association, and South Georgia Physician Network.

- M. “Respondent Owner PHOs” means Respondents Coastal Plains Health Alliance, Colquitt County PHO, Health Alliance of the South, Satilla HealthNet, and South Georgia PHO.
- N. “Participate” in an entity means (1) to be a partner, shareholder, owner, member, or employee of such entity, or (2) to provide services, agree to provide services, or offer to provide services to a payor through such entity. This definition applies to all tenses and forms of the word “participate,” including, but not limited to, “participating,” “participated,” and “participation.”
- O. “Payor” means any person that pays, or arranges for payment, for all or any part of any physician or hospital services for itself or for any other person. Payor includes any person that develops, leases, or sells access to networks of physicians or hospitals.
- P. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- Q. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- R. “Preexisting contract” means a contract that was in effect on the date of the receipt by a payor that is a party to such contract of notice sent by a Respondent, pursuant to Paragraph V.A.3. or Paragraph V.A.4. of this Order, of such payor’s right to terminate such contract.
- S. “Principal address” means either (1) primary business address, if there is a business address, or (2) primary residential address, if there is no business address.
- T. “Qualified clinically-integrated joint arrangement” means an arrangement to provide physician services, hospital services, or both physician and hospital services in which:
1. All physicians and hospitals that participate in the arrangement participate in active and ongoing programs of the arrangement to evaluate and modify the practice patterns of, and create a high degree of interdependence and cooperation among, the physicians and hospitals that participate in the arrangement, in order to control costs and ensure the quality of services provided through the arrangement; and

2. Any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the arrangement.

U. “Qualified risk-sharing joint arrangement” means an arrangement to provide physician services, hospital services, or both physician and hospital services in which:

1. All physicians and hospitals that participate in the arrangement share substantial financial risk through their participation in the arrangement and thereby create incentives for the physicians and hospitals that participate to jointly control costs and improve quality by managing the provision of physician and hospital services, such as risk-sharing involving:
 - a. the provision of physician or hospital services to payors at a capitated rate;
 - b. the provision of physician or hospital services for a predetermined percentage of premium or revenue from payors;
 - c. the use of significant financial incentives (*e.g.*, substantial withholds) for physicians or hospitals that participate to achieve, as a group, specified cost-containment goals; or
 - d. the provision of a complex or extended course of treatment that requires the substantial coordination of care by hospitals or physicians in different specialties offering a complementary mix of services, for a fixed, predetermined price, where the costs of that course of treatment for any individual patient can vary greatly due to the individual patient’s condition, the choice, complexity, or length of treatment, or other factors; and
2. Any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the arrangement.

II.

IT IS FURTHER ORDERED that each Respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of physician services in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, cease and desist from:

- A. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any physicians:
 - 1. To negotiate on behalf of any physician with any payor;
 - 2. To deal, refuse to deal, or threaten to refuse to deal with any payor;
 - 3. Regarding any term, condition, or requirement upon which any physician deals, or is willing to deal, with any payor, including, but not limited to, price terms; or
 - 4. Not to deal individually with any payor, or not to deal with any payor through any arrangement other than Respondent(s);
- B. Exchanging or facilitating in any manner the exchange or transfer of information among physicians concerning any physician’s willingness to deal with a payor, or the terms or conditions, including price terms, on which the physician is willing to deal with a payor;
- C. Attempting to engage in any action prohibited by Paragraph II.A. or II.B. above; and
- D. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A. through II.C. above.

PROVIDED, HOWEVER, that, nothing in this Paragraph II. shall prohibit any agreement involving, or conduct by any Respondent Owner PHO or any Respondent IPA, subject to the provisions of Paragraph IV. below, that is reasonably necessary to form, participate in, or take

any action in furtherance of a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement, so long as the arrangement does not include more than one Respondent Owner PHO or more than one Respondent IPA, and so long as the arrangement does not restrict the ability, or facilitate the refusal, of physicians who participate in it to deal with payors on an individual basis or through any other arrangement.

III.

IT IS FURTHER ORDERED that each Respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of hospital services in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, cease and desist from:

- A. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any hospitals:
 - 1. To negotiate on behalf of any hospital with any payor;
 - 2. To deal, refuse to deal, or threaten to refuse to deal with any payor;
 - 3. Regarding any term, condition, or requirement upon which any hospital deals, or is willing to deal, with any payor, including, but not limited to, price terms; or
 - 4. Not to deal individually with any payor, or not to deal with any payor through any arrangement other than Respondent(s);
- B. Exchanging or facilitating in any manner the exchange or transfer of information between or among hospitals concerning any hospital’s willingness to deal with a payor, or the terms or conditions, including price terms, on which the hospital is willing to deal with a payor;
- C. Attempting to engage in any action prohibited by Paragraph III.A. or III.B. above; and
- D. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs III.A.

through III.C. above.

PROVIDED, HOWEVER, that, nothing in this Paragraph III. shall prohibit any agreement involving, or conduct by any Respondent Owner PHO or any Respondent IPA, subject to the provisions of Paragraph IV. below, that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement, or that solely involves hospitals in the same hospital system, so long as the arrangement does not include more than one Respondent Owner PHO or more than one Respondent IPA, and so long as the arrangement does not restrict the ability, or facilitate the refusal, of hospitals that participate in it to deal with payors on an individual basis or through any other arrangement.

IV.

IT IS FURTHER ORDERED that:

- A. Each Respondent Owner PHO and each Respondent IPA that has formed a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement (“Arrangement”) shall, for five (5) years from the date this Order becomes final, notify the Secretary of the Commission in writing (“Notification”) at least sixty (60) days prior to:
 - 1. Participating in, organizing, or facilitating any discussion or understanding with or among any physicians or hospitals in such Arrangement relating to price or other terms or conditions of dealing with any payor; or
 - 2. Contacting a payor, pursuant to an Arrangement to negotiate or enter into any agreement concerning price or other terms or conditions of dealing with any payor, on behalf of any physician or hospital in such Arrangement. Notification is not required for contacts with subsequent payors pursuant to any Arrangement for which this Notification was given;

- B. With respect to any Arrangement, each Respondent Owner PHO and each Respondent IPA shall include the following information in the Notification:
 - 1. For each physician participant, his or her name, address, telephone number, medical specialty, medical practice group, if applicable, and the name of each hospital where he or she has privileges;

2. For each hospital participant, the hospital name and the name and telephone number of the person responsible for that hospital participant's relationship with that Respondent;
 3. A description of the Arrangement and its purpose, function, and geographic area of operation;
 4. A description of the nature and extent of the integration and the efficiencies resulting from the Arrangement;
 5. An explanation of how any agreement on prices (or on contract terms related to price) furthers the integration and achieves the efficiencies of the Arrangement;
 6. A description of any procedures proposed to be implemented to limit possible anticompetitive effects resulting from the Arrangement or its activities; and
 7. All studies, analyses, and reports that were prepared for the purpose of evaluating or analyzing competition for physician or hospital services in any relevant market, including, but not limited to, the market share of physician services in any relevant market or the market share of hospital services in any relevant market;
- C. If, within sixty (60) days from the Commission's receipt of the Notification, a representative of the Commission makes a written request for additional information to a Respondent Owner PHO or to a Respondent IPA, that Respondent Owner PHO or Respondent IPA shall not engage in any conduct described in Paragraph IV.A. prior to the expiration of thirty (30) days after substantially complying with such request for additional information, or such shorter waiting period as may be granted in writing from the Bureau of Competition. The expiration of any waiting period described herein without a request for additional information or without the initiation of an enforcement proceeding shall not be construed as a determination by the Commission, or its staff, that a violation of the law, or of this Order, may not have occurred. Further, receipt by the Commission from a Respondent Owner PHO or a Respondent IPA of any Notification of an Arrangement is not to be construed as a determination by the Commission that any such Arrangement does or does not violate this Order or any law enforced by the Commission, including, but not limited to, Sections 7 and 7A of the Clayton Act, 15 U.S.C. §§ 18 and 18a.

V.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date on which this Order becomes final:
1. Respondent SGHP shall send by first-class mail, with delivery confirmation, a copy of this Order and the Complaint to:
 - a. each physician and hospital that participates or has participated in Respondent SGHP; and
 - b. each officer, director, manager, and employee of Respondent SGHP;
 2. Each Respondent Owner PHO shall send by first-class mail, with delivery confirmation, a copy of this Order and the Complaint to:
 - a. each physician and hospital that participates or has participated in that Respondent Owner PHO and has not been sent this required notice by Respondent SGHP; and
 - b. each officer, director, manager, and employee of that Respondent Owner PHO;
 3. Respondent SGHP shall send by first-class mail, return receipt requested, copies of this Order, the Complaint, and the notice specified in Appendix A to this Order to the chief executive officer of each payor with which the Respondent SGHP has a record of having been in contact since January 1, 1995, regarding contracting for the provision of physician or hospital services;
 4. Each Respondent Owner PHO shall send by first-class mail, return receipt requested, copies of this Order, the Complaint, and the notice specified in Appendix A to this Order to the chief executive officer of each payor with which the Respondent Owner PHO has a record of having been in contact since January 1, 1995, regarding contracting for the provision of physician or hospital services and that has not been sent this required notice from Respondent SGHP;

- B. Each Respondent having a preexisting contract with any payor for the provision of physician or hospital services shall terminate, without penalty or charge, and in compliance with any applicable laws of the State of Georgia, that preexisting contract at the earlier of: (1) the termination or renewal date (including any automatic renewal date) of such contract; or (2) receipt by Respondent of a written request to terminate such contract from any payor that is a party to the preexisting contract;
- C. For three (3) years from the date this Order becomes final, each Respondent shall:
1. Distribute by first-class mail, return receipt requested, a copy of this Order and the Complaint to:
 - a. each physician or hospital that begins participating in Respondent and did not previously receive a copy of this Order and the Complaint, within thirty (30) days of the time that such participation begins;
 - b. each payor that contracts with such Respondent for the provision of physician or hospital services and did not previously receive a copy of this Order and the Complaint, within thirty (30) days of the time that such payor enters into such contract;
 - c. each person who becomes an officer, director, manager, or employee of such Respondent and did not previously receive a copy of this Order and the Complaint, within thirty (30) days of the time that he or she assumes such responsibility with such Respondent; and
 2. Annually publish a copy of this Order and the Complaint in an official report or newsletter sent to all physicians and hospitals that participate in any Respondent, with such prominence as is given to regularly featured articles;

- D. Each Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in such Respondent, such as dissolution, assignment, sale resulting in the emergence of a successor company or corporation, the creation or dissolution of subsidiaries, or any other change in such Respondent that may affect compliance obligations arising out of this Order; and

- E. Each Respondent shall file verified written reports within sixty (60) days after the date this Order becomes final, annually thereafter for three (3) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require. Each report shall include:
 - 1. A detailed description of the manner and form in which such Respondent has complied and is complying with this Order;
 - 2. The name, address, and telephone number of each payor with which such Respondent has had any contact; and
 - 3. Copies of the signed return receipts and delivery confirmation required by this Paragraph V.

VI.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission of any change in its respective principal address within twenty (20) days of such change in address.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, each Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and documents in its possession, or under its control, relating to any matter contained in this Order; and

- B. Upon five (5) days' notice to Respondent, and in the presence of counsel, and without restraint or interference from it, to interview officers, directors, or

employees of Respondent.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate [twenty (20) years from its date of issuance].

By the Commission

Donald S. Clark
Secretary

SEAL

ISSUED:

Appendix A

[letterhead of Respondent sending letter]

[name of payor's CEO]

[address]

Dear _____:

Enclosed is a copy of a complaint and a consent order issued by the Federal Trade Commission against South Georgia Health Partners (SGHP) and eight other organizations.

Pursuant to Paragraph V.B. of the order, you have the immediate right, upon written request, to terminate any contracts with SGHP or the other organizations subject to this order that were in effect prior to the receipt of this letter, without penalty or charge. In accordance with Paragraph V.B., any contract that you do not thus terminate will end at its termination or renewal date (including any automatic renewal date).

Sincerely,