

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the Matter of)
)
)
SPA HEALTH ORGANIZATION,) Docket No. C-
d/b/a SOUTHWEST PHYSICIAN)
ASSOCIATES,)
)
a corporation.)

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of SPA Health Organization, doing business as Southwest Physician Associates, hereinafter sometimes referred to as “Respondent,” and Respondent having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order to Cease and Desist (“Consent Agreement”), containing an admission by Respondent 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 Respondent 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 Respondent has violated the 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. SPA Health Organization (“SPA”), doing business as Southwest Physician Associates, is a non-profit corporation, organized, existing, and doing business under and by virtue of the laws of Texas, with its office and principal place of business at 8150 North Central Expressway, Suite 1250, Dallas, Texas 75206. SPA was incorporated by, and its officers and directors are, physicians engaged in the private practice of medicine. It was established and has operated in material part for the pecuniary benefit of physicians associated with SPA.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, 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” means SPA Health Organization, doing business as Southwest Physician Associates, its officers, directors, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.
- B. “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 also applies to all tenses and forms of the word “participate,” including, but not limited to, “participating,” “participated,” and “participation.”)
- C. “Payor” means any Person that pays, or arranges for payment, for all or any part of any Physician services for itself or for any other Person.
- D. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.

- E. “Preexisting Contract” means a contract that was in effect prior to the receipt, by all Payors that are parties to such contract, of notice sent by Respondent pursuant to Paragraph III.B. of this Order, of each such Payor’s right to terminate such contract.
- F. “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.
- G. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- H. “Qualified Risk-Sharing Joint Arrangement” means an arrangement to provide Physician services in which:
 - 1. all Physicians who Participate in the arrangement share substantial financial risk through their Participation in the arrangement and thereby create incentives for the Physicians who Participate to jointly control costs and improve quality by managing the provision of Physician services, such as risk-sharing involving:
 - a. the provision of Physician services to Payors at a capitated rate,
 - b. the provision of Physician services for a predetermined percentage of premium or revenue from Payors,
 - c. the use of significant financial incentives (e.g., substantial withholds) for Physicians who 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 Physicians in different specialties offering a complementary mix of services, for a fixed, predetermined payment, 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 reimbursement or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the joint arrangement.
- I. “Qualified Clinically-Integrated Joint Arrangement” means an arrangement to provide Physician services in which:
 - 1. all Physicians who 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 who Participate in the arrangement, in order to control costs and ensure the quality of services provided through the arrangement; and

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

II.

IT IS FURTHER ORDERED that Respondent, directly or indirectly, or through any corporate or other device, and all other Persons in active concert or participation with Respondent who receive notice of this Decision and Order by personal service or otherwise, 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.
- 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;
- 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, Respondent that is reasonably necessary to form, Participate in, or take any other action in furtherance of a Qualified Risk-Sharing Joint Arrangement or a Qualified Clinically-Integrated Joint Arrangement, 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 Respondent shall:

- A. Within thirty (30) days after the date on which this Order becomes final, distribute by first-class mail a copy of this Order and the Complaint to:
 1. each Physician who Participates, or has Participated, in Respondent, and
 2. each officer, director, manager, and employee of Respondent;
- B. Within thirty (30) days after the date on which this Order becomes final, send copies of this Order, the Complaint, and the notice specified in Appendix A to this Order, by first-class mail return receipt requested, to the chief executive officer of each Payor that is listed in Appendix B or that contracts with Respondent for the provision of Physician services;
- C. Terminate, without penalty or charge, any Preexisting Contract with any Payor for the provision of Physician services, upon receipt by Respondent of a written request to terminate such contract from any Payor that is a party to the contract or that pays for the Physician services provided through the contract; **PROVIDED, HOWEVER,** that nothing contained herein shall affect the operation of any Preexisting Contract provision pertaining to the continuation of patient care for patients undergoing a course of treatment, or payment therefor, following expiration or termination of the Preexisting Contract;
- D. For a period of three (3) years after the date this Order becomes final:
 1. Distribute by first-class mail a copy of this Order and the Complaint to:
 - a. each Physician who begins Participating in Respondent, and who did not previously receive a copy of this Order and the Complaint from Respondent, within thirty (30) days of the time that such Participation begins,

- b. each Payor that contracts with Respondent for the provision of Physician services, and that did not previously receive a copy of this Order and the Complaint from Respondent, within thirty (30) days of the time that such Payor enters into such contract, and
 - c. each person who becomes an officer, director, manager, and employee of Respondent, and who did not previously receive a copy of this Order and the Complaint from Respondent, within thirty (30) days of the time that he or she assumes such responsibility with Respondent; and
2. Annually publish a copy of this Order and the Complaint in an official annual report or newsletter sent to all Physicians who Participate in Respondent, with such prominence as is given to regularly featured articles;
- E. Notify the Commission at least thirty (30) days prior to any proposed change in Respondent, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in Respondent that may affect compliance obligations arising out of this Order; and
- F. 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, setting forth:
1. in detail, the manner and form in which Respondent has complied and is complying with this Order, including, but not limited to, (a) information sufficient to describe, for each Qualified Risk-Sharing Joint Arrangement established or operated by Respondent, the manner in which the Physicians who Participate in such arrangement share financial risk, and (b) information sufficient to describe, for each Qualified Clinically-Integrated Joint Arrangement established or operated by Respondent, the manner in which the Physicians who Participate in such arrangement have integrated their practices, and
 2. the name, address, and telephone number of each Payor with which Respondent has had any contact during the reporting period.

IV.

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

V.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, 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 their possession, or under their control, relating to any matter contained in this Order; and
- B. Upon five (5) days' notice to Respondent, and without restraint or interference from it, to interview officers, directors, or employees of Respondent.

VI.

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

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

Appendix A
[letterhead of SPA]

[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 SPA Health Organization ("SPA"), doing business as Southwest Physician Associates. I call to your attention Paragraph III.C. of the order, which gives you the right to terminate, without penalty or charge, any contracts with SPA that were in effect prior to your receipt of this letter.

Sincerely,

Appendix B

Accountable Health Plans of America, Inc.
Aetna U.S. Healthcare North Texas, Inc.
Beech Street Corp.
Blue Cross Blue Shield of Texas, A Division of Health Care Service Corp.
Carrollton-Farmers Branch Independent School District
City of Carrollton
First Health Group Corp.
Harris Select
HealthSmart Preferred Care, Inc.
Humana Health Plan of Texas, Inc.
Lewisville Independent School District
North Texas Healthcare Network
One Health Plan
Pacificare of Texas, Inc.
Plano Independent School District
ppoNext, Inc.
Private Healthcare Systems, Inc.
ProAmerica Managed Care, Inc.
Provider Networks of America, Inc.
Prudential Healthcare
TML Intergovernmental Employee Benefits Pool
Teacher Retirement System of Texas Coordinated Care
Unicare Life & Health Insurance Company
United Healthcare of Texas, Inc.