

ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT

In the Matter of Independent Practice Associates Medical Group, Inc. File No. 061 0258

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed Consent Order with Independent Practice Associates Medical Group, Inc., dba AllCare IPA (“AllCare” or “Respondent”). The agreement settles charges that AllCare violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by fixing prices charged to those offering coverage for health care services (“payors”) in the Modesto, California, area and refusing to deal with payors. The proposed Consent Order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed Consent Order final.

The purpose of this analysis is to facilitate public comment on the proposed Consent Order. The analysis is not intended to constitute an official interpretation of the agreement and proposed Consent Order or to modify their terms in any way. Further, the proposed Consent Order has been entered into for settlement purposes only and does not constitute an admission by Respondent that it violated the law or that the facts alleged in the Complaint (other than jurisdictional facts) are true.

The Complaint’s Allegations

AllCare is a multi-specialty independent practice association consisting of multiple, independent medical practices with a total of approximately 500 physician members, of which approximately 200 are devoted to primary care, in the Modesto, California, area. Since its formation, AllCare has negotiated contracts with payors under which it has received capitated (per member per month) payments. These contracts shift the risk of patient illness to the IPA by specifying that the health plan will pay the IPA a flat monthly fee for each enrollee, with almost no regard for patient utilization. This type of contracting is a form of financial integration. The Complaint does not challenge AllCare’s activities concerning these contracts.

AllCare and its physicians also contract with Preferred Provider Organizations (“PPOs”) to provide fee-for-service medical care. In PPO arrangements, the payor compensates physicians or group practices for services actually rendered pursuant to agreed-upon fee schedules. PPO contracts may or may not entail financial risk-sharing or clinical integration on the part of providers. It is AllCare’s negotiation of certain PPO contracts that is the subject of the Commission’s Complaint.

The Complaint alleges that AllCare, since at least 2005, has acted to restrain competition on fee-for-service contracts by facilitating, entering into, and implementing agreements to fix the prices and other terms in contracts with PPO payors; to engage in collective negotiations over terms and conditions of dealing with such payors; and to have AllCare members refrain from

negotiating individually with such payors or contracting on terms other than those approved by AllCare. The Complaint further alleges that AllCare, to enforce the joint negotiation efforts, caused a significant number of AllCare physicians to sent to at least one payor the same form termination letter. These letters terminated the physicians' individual agreements with the payor and affirmed that the physicians would contract with the payor only through an agreement with AllCare.

AllCare did not engage in any activity that might justify collective agreements on the prices its members would accept for their services. The physicians in AllCare, with respect to PPO contracts, do not share any financial risk in providing medical services, do not collaborate in programs to monitor and modify clinical practice patterns to control members' costs and ensure quality, or otherwise integrate their delivery of health care services. The Respondent's actions have restrained price and other forms of competition among physicians in the Modesto, California, area and thereby harmed consumers (including health plans, employers, and individual consumers) by increasing the prices for physician services.

The Proposed Consent Order

The proposed Consent Order is designed to prevent the continuance and recurrence of the unlawful conduct alleged in the Complaint while allowing AllCare to engage in legitimate, joint conduct. The proposed Consent Order does not affect AllCare's activities in contracting with the payors on a capitated basis.

Paragraph II.A prohibits Respondent from entering into or facilitating agreements between or among any health care providers (1) to negotiate on behalf of any physician with any payor, (2) to 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 except through AllCare.

The other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the Respondent from facilitating exchanges of information between health care providers concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B, and Paragraph II.D proscribes 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.

As in other Commission orders addressing health care providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations. Paragraph II does not preclude AllCare from engaging in conduct that is reasonably necessary to form or participate in legitimate "qualified risk-sharing" or "qualified clinically-integrated" joint arrangements, as defined in the proposed Consent Order. Also, Paragraph II would not bar agreements that only involve physicians who are part of the same medical group practice, defined in Paragraph I.B, because it is intended to reach agreements between and among independent competitors.

Paragraphs III and IV require AllCare to notify the Commission before it initiates any arrangement to act as an agent or messenger with respect to physician contracting with payors. The Order also would require AllCare to provide to the Commission key details of the arrangement and to delay the implementation of that arrangement to permit further factual discovery by the Commission at its option. Paragraph III applies such requirements to arrangements under which AllCare would be acting as a messenger, and Paragraph IV applies them to arrangements under which AllCare plans to achieve financial or clinical integration.

Paragraph V.A requires AllCare to send a copy of the Complaint and Consent Order to its physician members, its management and staff, and any payors who communicated with AllCare, or with whom AllCare communicated, with regard to any interest in contracting for physician services.

Part V.B. of the Order requires AllCare to terminate preexisting payor contracts held by physicians who were AllCare participants since January 1, 2005, upon (1) receipt by AllCare of a written request for termination by relevant payors, or (2) the termination date, renewal date, or anniversary date of the contract, whichever is earlier. This termination can be delayed for up to one year after the effective date of the Order, upon the written request of the payor. This provision is intended to eliminate the effects of AllCare's joint price setting behavior.

Paragraph V.C requires that AllCare send a copy of any payor's request for termination to every physician who participates in each group. Paragraph V.D contains further notification provisions relating to future contact with physicians, payors, management, and staff. This provision requires AllCare to distribute a copy of the Complaint and Consent Order to each physician who begins participating in each group; each payor who contacts each group regarding the provision of physician services; and each person who becomes an officer, director, manager, or employee for three years after the date on which the Consent Order becomes final. In addition, Paragraph V.D requires AllCare to publish a copy of the Complaint and Consent Order, for three years, in any official publication that it sends to its participating physicians.

Paragraphs V.E and VI-VII impose various obligations on AllCare to provide to the Commission information that would assist in the monitoring of Respondent's compliance with the Consent Order.

Pursuant to Paragraph VIII, the proposed Consent Order will expire in 20 years from the date it is issued.