

attempts to engage in any action prohibited by Paragraph II.A, or II.B, and Paragraph II.D. proscribes BVIPA from inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

As in other Commission orders addressing providers' collective bargaining with health-care purchasers, Paragraph II excludes certain kinds of agreements from its prohibitions. First, BVIPA is not precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing physicians, such as a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement." The arrangement, however, must not restrict the ability of, or facilitate the refusal of, physicians who participate in it to contract with payers outside of the arrangement.

As defined in the proposed Order, a "qualified risk-sharing joint arrangement" possesses two characteristics. First, all physician participants must share substantial financial risks through the arrangement, such that the arrangement creates incentives for the physician participants jointly to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

A "qualified clinically-integrated joint arrangement," on the other hand, need not involve any sharing of financial risk. Instead, as defined in the proposed Order, physician participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns in Order to control costs and ensure the quality of services provided, and the arrangement must create a high degree of interdependence and cooperation among physicians. As with qualified risk-sharing arrangements, any agreement concerning price or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement.

Paragraph III, for three years, requires BVIPA to notify the Commission before it enters into any arrangements to act as a messenger or an agent on behalf of any physicians, with payers regarding contracts. Paragraph IV sets out the information necessary to make the notification complete.

Paragraph V, for three years, requires BVIPA to notify the Commission before participating in contracting with health

plans on behalf of either a qualified risk-sharing or a qualified clinically-integrated joint arrangement. Paragraph VI sets out the information necessary to satisfy the notification requirement.

Paragraph VII imposes other notification obligations on BVIPA and requires the termination of certain contracts that were entered into illegally. Paragraphs VII.A requires BVIPA to distribute the Complaint and the Order to (1) physicians who have participated in BVIPA since 2001; (2) to various past and current personnel of BVIPA; and (3) to payers with whom BVIPA has dealt since 2001. Paragraph VII.B requires BVIPA, at any payer's request and without penalty, to terminate its existing contracts with the payer for the provision of physician services. Paragraph VII.B. allows certain contracts currently in effect to be extended at the written request of the payer no longer than one year from the date that the Order becomes final. Paragraph VII.C requires BVIPA to distribute payer requests for contract termination to physicians who participate in the contract. Paragraph VII.D requires BVIPA, for three years, to provide new members, personnel, and payers not previously receiving a copy, a copy of the Order and the Complaint. Paragraph VII.D also requires BVIPA to publish annually a copy of the Order and the Complaint in its newsletter.

Paragraphs VIII, IX, and X impose various obligations on BVIPA to report or provide access to information to the Commission to facilitate the monitoring of compliance with the Order. Finally, Paragraph XI provides that the Order will expire in 20 years.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. E8-31384 Filed 1-2-09; 8:45 am]

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## FEDERAL TRADE COMMISSION

[File No. 061 0258]

### Independent Practice Associates Medical Group, Inc.; Agreement Containing Consent Order To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the

draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before January 22, 2009.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to "AllCareIPA, File No. 061 0258," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).<sup>1</sup> The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form by following the instructions on the web-based form at (<http://secure.commentworks.com/ftc-AllCareIPA>). To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at [www.ftc.gov](http://www.ftc.gov). As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (<http://www.ftc.gov/ftc/privacy.shtm>).

<sup>1</sup> The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

**FOR FURTHER INFORMATION CONTACT:** John P. Wiegand, FTC Western Region, San Francisco, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (415) 848-5174.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 24, 2008), on the World Wide Web, at (<http://www.ftc.gov/os/2008/12/index.htm>). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

#### **Analysis of Agreement Containing Consent Order To Aid Public Comment**

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.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. E8–31385 Filed 1–2–09; 8:45 am]

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## FEDERAL TRADE COMMISSION

[File No. 061 0123]

### **Inverness Medical Innovations, Inc.; Agreement Containing Consent Order To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before January 20, 2009.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to “Inverness Medical Innovations, File No. 061 0123,” to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Comments containing confidential material must be filed in paper form, must be clearly labeled “Confidential,” and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).<sup>1</sup> The

<sup>1</sup> The comment must be accompanied by an explicit request for confidential treatment,

FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form by following the instructions on the web-based form at (<http://secure.commentworks.com/ftc-Inverness>). To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at [www.ftc.gov](http://www.ftc.gov). As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC’s privacy policy, at (<http://www.ftc.gov/ftc/privacy.shtm>).

**FOR FURTHER INFORMATION CONTACT:** Lore Unt, FTC Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-3019.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 23, 2008), on the World Wide Web, at (<http://www.ftc.gov/os/2008/12/index.htm>). A paper copy can be obtained from the

including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).