

between or among physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C bans them from attempting to engage in any action prohibited by Paragraph II.A or II.B. Paragraph II.D prohibits Respondents from inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

As in other orders addressing health care providers' collective bargaining with payors, certain kinds of agreements are excluded from the general bar on joint negotiations. First, Tenet and Frye would not be barred from activities solely involving their employed physicians. Second, Tenet and Frye are not precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing hospitals and physicians, whether a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement." However, such arrangements must not restrict the ability, or facilitate the refusal, of the arrangements' physician members to deal with payors on an individual basis or through any other arrangement. As discussed below in connection with Paragraph V, Tenet and Frye are required to notify the Commission about such an arrangement prior to negotiating on behalf of the arrangement's members or before those members jointly discuss any terms of dealing with a payor.

As defined in the proposed order, a "qualified risk-sharing joint arrangement" must satisfy two conditions. First, all physician and hospital participants must share substantial financial risk through the arrangement and thereby create incentives for the physician or hospital 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.

As defined in the proposed order, a "qualified clinically-integrated joint arrangement" also must satisfy two conditions. First, all physician and hospital participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns, creating a high degree of interdependence and cooperation among physicians and/or hospitals, in order to control costs and ensure the quality of services provided. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain

significant efficiencies through the joint arrangement.

Paragraph III requires Tenet to assure that no physician practicing in a medical group practice owned or controlled in any manner by Tenet or Frye submits claims for payment pursuant to a preexisting contract between PHA and any payor, where such claims are for services provided at any time 90 or more days after the date the order becomes final. However, the order permits these physicians to continue to submit claims for services pursuant to certain PHA contracts listed in Confidential Appendix A. The purpose of Paragraph III is to prevent Tenet and Frye employed or contracted physicians from continuing to receive the benefit of the unlawfully fixed prices under PHA's contracts with payors.

Paragraph IV prohibits Tenet and Frye, for four years, from directly or indirectly entering into any arrangements with any physicians practicing in the Unifour area under which Tenet or Frye would act as an agent or messenger for those physicians regarding contracting or terms of dealing with payors. An exception is made for those physicians employed by Tenet or Frye.

In the event that Frye or Tenet forms a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement, Paragraph V requires the Respondents, for five years, to notify the Commission at least 60 days prior to initially contacting, negotiating, or entering into agreements with payors concerning the arrangement. This notice is not required for arrangements in which all the physician participants are employed by Frye or Tenet. Notification is not required for subsequent negotiations or agreements with payors pursuant to any arrangement for which notice was already given under Paragraph V. Paragraph V.B sets out the information necessary to make the notification complete. Paragraph V.C establishes the Commission's right to obtain additional information regarding the arrangement.

Paragraph VI.A prohibits Tenet and Frye from challenging or interfering with the termination, required by any Commission order, of any contract between PHA and any payor, pursuant to which Frye is reimbursed for hospital, physician, or other healthcare services. This provision helps to ensure the effectiveness of any future Commission order against PHA.

Paragraph VI.B requires Tenet to distribute the order and complaint, within 30 days after the order becomes final, to each officer who is at the level

of senior vice-president or higher, each member of the board of directors, and each Tenet regional director of managed care; to the CEO, the CFO, and each person having primary responsibility for managed care contracting of each hospital, other than Frye, owned or controlled by Tenet; and to each officer, each member of the board of directors, and each person having primary responsibility for managed care contracting for Frye.

Paragraph VI.C requires Tenet to distribute the complaint and order, within 30 days after the order becomes final, to every payor with which Frye has been in contact since January 1, 1994, regarding the provision of hospital or physician services.

Paragraph VI.E.3 requires Tenet to cooperate with Commission staff in any litigation, or other action taken by the Commission, against PHA and any of its member physicians.

The remaining provisions of Paragraph VI, and Paragraphs VII through IX, of the proposed order impose obligations on Tenet (or Frye, if it is no longer owned or controlled by Tenet), with respect to distributing the proposed complaint and order to payors that contract with Frye and to other specified persons, and the reporting of certain information to the Commission.

The proposed order will expire in 20 years.

By direction of the Commission.

C. Landis Plummer,

Acting Secretary.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Statement of Organization, Functions, and Delegations of Authority

Part T (Agency for Toxic Substances and Disease Registry) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (50 FR 25129-25130, dated June 17, 1985, as amended most recently at 67 FR 67858, dated November 7, 2002) is amended to reflect the reorganization of the Agency for Toxic Substances and Disease Registry (ATSDR).

Section T-B, Organization and Functions, is hereby amended as follows:

After the functional statement for the *Office of the Administrator (TA)*, delete