

("APPA"), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The plaintiff filed a civil antitrust Complaint on December 13, 2002, in the United States District Court for the Western District of North Carolina, alleging that Mountain Health Care and its participating physicians have participated in an agreement which has unreasonable restrained interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. As alleged in the Complaint, this agreement has artificially raised the reimbursements paid to physicians in Western North Carolina by managed care companies, health insurance companies, third party administrators and employers (collectively "managed care purchasers") who provide health care benefits directly to their employees and enrollees. The Complaint requests that Mountain Health Care be ordered to promptly dissolve.

The proposed Final Judgment requires Mountain Health Care to dissolve within one hundred twenty (120) calendar days after the filing of the Final Judgment, or within ten (10) days after notice of entry of the Final Judgment by the Court, whichever is later, unless the United States grants an extension of time.

The plaintiff and the defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment, and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

A. Background

Mountain Health Care, a physician network joint venture, is a professional corporation that incorporated in 1994 under the laws of North Carolina, and which is located in Asheville, North Carolina. Mountain Health Care is comprised of more than 1,200 participating physicians practicing in Western North Carolina, consisting of Buncombe, Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey counties. It is entirely owned by its participating physicians, although not all participating physicians are owners; the shareholders and the majority of its board are physicians. Mountain Health Care sells its physician network to managed care purchasers, and its member physicians and medical practices offer health care services to consumers located in North Carolina.

Mountain Health Care's members constitute the vast majority of the physicians in private practice in Asheville, North Carolina, and surrounding Buncombe County, representing virtually every medical specialty. In certain practice specialties, 100 percent of the Asheville area physicians are

Mountain Health Care members. The group includes the majority of physicians with admitting privileges at Mission St. Joseph's Hospital, the only hospital available to the general public in Asheville, North Carolina, and surrounding Buncombe County.

Physicians frequently contract with managed care purchasers who provide health care benefits directly to their employees and enrollees. These contracts establish the terms and conditions, including price, under which physicians will provide care to the employees and enrollees of the health care plans offered by managed care purchasers. In order to gain access to managed care purchasers' enrollees, physicians often negotiate rates below their customary fees. As a result of these lower rates, contracts with managed care purchasers may lower the costs of health care for their enrollees. Independent physicians and medical practices compete against each other to offer health care services to managed care purchasers. Each physician or medical group decides whether or not to enter into a contract with a particular managed care purchaser, and independently negotiates the terms of such an agreement. Managed care purchasers are representatives of the ultimate consumers, and higher rates to managed care purchasers lead to higher health care costs for the ultimate consumers.

B. The Violation

The Mountain Health Care joint venture brought together a large group of physicians with the objective of increasing their bargaining power with managed care purchasers; indeed, Mountain Health Care was created by its participating physicians to maximize physician reimbursement in Western North Carolina. The participating physicians authorized Mountain Health Care to represent them in negotiations with managed care purchasers, even though many of the independent physicians and medical practices that make up Mountain Health Care would have competed against each other. To facilitate such negotiations, Mountain Health Care and its participating physicians developed a uniform fee schedule for use in negotiations with managed care purchasers. The fee schedule was developed, in part, by comparing and blending the rates of multiple physicians. Mountain Health Care then adopted the uniform fee schedule that applied to all its members—nearly every physician in Asheville and the surrounding area.

For several years, using the uniform fee schedule, Mountain Health Care has negotiated for its participating physicians with managed care purchasers. Thus, it has acted as a vehicle for collective decisions by its participating physicians on price and other significant terms of dealing. Mountain Health Care has incorporated the fee schedule into contracts with health plans, thereby setting reimbursement rates its various participating physicians would receive from managed care purchasers. Under such contracts that provide access to the Mountain Health Care network of physicians, each competing physician is paid the same amount for the same service.

Mountain Health Care did not engage in any activity that might justify collective

agreements on the prices its members would charge for their services. Its participating physicians have not clinically or financially integrated their practices to create significant efficiencies to the benefit of managed care purchasers and their employees and enrollees.

C. The Competitive Effects of the Violation

The agreement on a uniform fee schedule has had anticompetitive results. Through use of the uniform fee schedule, Mountain Health Care has operated as a price-setting organization. Without Mountain Health Care, the participating physicians normally would have competed against each other for managed care purchasers. Instead, the participating physicians authorized Mountain Health Care to negotiate and set common prices and other competitively significant terms with managed care purchasers. Through Mountain Health Care, its participating physicians collectively agreed on prices for services rendered under Mountain Health Care contracts, an agreement in violation of Section 1 of the Sherman Act.

Mountain Health Care's imposition of a uniform fee schedule increased physician reimbursement fees to managed care purchasers throughout Western North Carolina. The physician reimbursement rates that have resulted from Mountain Health Care's negotiations with managed care purchasers are higher than those which would have resulted from individual negotiations with each competing independent physician or medical practice that participates in Mountain Health Care. With the large majority of physicians in Asheville and the surround area as members of Mountain Health Care and adhering to its uniform fee schedule, few, if any, competitive alternatives remained for managed care purchasers. The agreement on a uniform fee schedule, implemented through Mountain Health Care, eliminated meaningful competition for health care services in Asheville and the surrounding area.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment is designed to end the illegal concerted action alleged in the Complaint by requiring the defendant to dissolve within 120 days. This time period will allow the defendant's customers adequate time to seek alternative means of procuring physician services. This dissolution will reestablish competition below many of the independent participating physicians and medical practices of Mountain Health Care. This competition will benefit the purchasers of physician services by enabling them to negotiate with independent physicians and practice groups and enabling them to negotiate price independently, instead of being forced to pay the fees outlined in Mountain Health Care's uniform fee schedule.

Unless the United States grants an extension of time, Mountain Health Care's dissolution must be completed within one hundred twenty (120) calendar days after the filing of the Final Judgment, or ten (10) days