

legitimate conduct that does not impair competition.

The proposed order's specific provisions are as follows:

The proposed order's core prohibitions are contained in Paragraphs II, III, and V. Paragraph II is intended to prevent the Respondents from participating in, or creating, future unlawful agreements for physician services. Paragraph II.A prohibits the Alliance and Mr. Diggins from entering into or facilitating any agreement between or among any physicians: (1) To negotiate with payors on any physician's behalf; (2) to deal, not to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or to deal with any payor only through the Alliance.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the respondents from facilitating exchanges of information among physicians 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. Paragraph II.D proscribes inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

Paragraph III is intended to prevent the Respondents from participating in, or creating, future unlawful agreements for hospital services. Paragraphs III.A through D are identical to Paragraphs II.A through D, except that they apply to the Alliance's or Mr. Diggins' actions regarding the provision of hospital, rather than physician, services. This matter is the Commission's first law enforcement action charging an organization with price-fixing and other anticompetitive collusive conduct in the market for hospital services, in violation of section 5 of the FTC Act. Thus, unlike previous orders involving collective bargaining with health plans, this order bars agreements relating to both physicians and hospitals.

As in other orders addressing providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations. Respondents would not be precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing physicians or competing hospitals, whether a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement."

As defined in the proposed order, a "qualified risk-sharing joint

arrangement" possesses two key characteristics. First, all physician or all hospital participants must share substantial financial risk through the arrangement, such that the arrangement creates incentives for the participants 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, all 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.

In the event that the Alliance forms a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement, Paragraph IV requires the Alliance to notify the Commission at least 60 days prior to negotiating or entering into agreements with payors, or discussing price or related terms among the participants of the arrangement. Notification is not required for negotiations or agreements with subsequent payors pursuant to any arrangement for which notice was given under Paragraph IV. Paragraph IV.B sets out the information necessary to make the notification complete. Paragraph IV.C establishes the Commission's right to obtain additional information regarding the arrangement.

Paragraph V prohibits Mr. Diggins, for three years, from negotiating with any payor on behalf of any Alliance physician or hospital member, and from advising any Alliance physician or hospital member to accept or reject any term, condition, or requirement of dealing with any payor. Mr. Diggins, however, is permitted to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement on behalf of the Alliance.

Paragraph VI.A requires the Alliance to distribute the complaint and order to all physicians and hospitals who have participated in the Alliance, and to

payors that contract with the Alliance. Paragraph VI.B requires the Alliance, at any payor's request and without penalty, to terminate its current contracts with respect to providing physician services. If a payor does request termination, Paragraph VI.B requires the Alliance to terminate the contract on its earliest termination or renewal date. Paragraph VI.B also provides that a contract may extend up to one year beyond the termination or renewal date if the payor affirms the contract in writing and the Alliance does not exercise its right to terminate the contract.

Paragraph VII.A requires Mr. Diggins to distribute the complaint and order to physician and hospital groups he represents in contracting with payors, and to payors with which he has dealt in contracting while representing any physician or hospital groups.

Paragraphs VII.B through IX of the proposed order impose various obligations on respondents to report or provide access to information to the Commission to facilitate monitoring respondents' compliance with the order.

The proposed order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

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FEDERAL TRADE COMMISSION

[File No. 021 0188]

Washington University Physician Network; Analysis 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 that accompanies the consent agreement 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 August 11, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: