

We are spending more and more time chasing less and less money.

The long-term effect of this will be that insurance will be worth less even as one pays more for it. Fewer physicians will be on managed-care panels because they cannot afford to and one will have to pay out of pocket for one's medical care and submit one's own claim for insurance reimbursement. That is already happening in several local medical offices. The competition will not be among providers but among patients to see who can get medical care. My hope is that some type of reform will prevent that, while allowing physicians to collect for services provided.

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Myths and Facts About Mountain Health Care

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Since the federal government's announcement of a forced dissolution of Mountain Health Care a few weeks ago, some of the facts of the case have gone unanswered. Here are answers to some of the misunderstandings and most commonly-asked questions about this issue.

Myth: Mountain Health Care is an insurance company and/or contracts with managed care companies.

Fact: Mountain Health Care is a fully credentialed network of providers (physicians, therapists, nurses and medical laboratories, to name a few) which contracts directly with self funded employers and fully insured companies. Mountain Health Care does not approve or pay claims, and has no contracts with managed care companies.

Myth: In order for an individual to see a Mountain Health Care provider his/her employer must participate with Mountain Health Care.

Fact: Since Mountain Health Care is not an exclusive network, providers are free to participate with any network or plan they choose. Your employer does not have to contract with Mountain Health Care in order for you to see those providers.

Myth: The Mountain Health Care fee schedule resulted in artificially higher reimbursements for physicians.

Fact: The majority of health plans covering lives in Western North Carolina have fee schedules, most of which offer higher total reimbursements than Mountain Health Care's fee schedule. In response to existing antitrust guidelines, Mountain Health Care has transitioned to a messenger model where each payer negotiates directly with each physician.

Myth: Mountain Health Care providers set their office charges based on the Mountain Health Care fee schedule.

Fact: Providers in WNC establish their own office charges. These charges apply to all patients seen by the provider regardless of their health plan, are set independently and are not shared with other providers.

Myth: All Mountain Health Care providers are company shareholders.

Fact: Of the 1800 participating providers in the Mountain Health Care network only 401 physicians have chosen to be stockholding members.

Myth: Mountain Health care has no competition in the Western North Carolina market.

Fact: Employers in the Western North Carolina market place are contracted with many different health plans. Mountain Care members make up an average of only 8% of our providers patient base, and the overwhelming majority of Mountain Health Care providers participate with other plans.

Myth: The federal government discovered the Mountain Health Care's fee schedule is so high it has led to higher health care costs in Western North Carolina.

Fact: Premiums have increased in all types of health care plans and in most regions across the country; the increase in healthcare costs in Western North Carolina is not unusual. There are many factors that influence overall health care costs across the nation including improved technology, rapidly escalating drug prices, an aging population, the trend toward higher jury awards in medical malpractice cases and hospital consolidations. Physician fees account for less than 22% of total health-care costs and it is difficult to see how Mountain Health Care, whose covered lives represent only 8% of our providers' patient base, could be held primarily responsible for these increases. The January 21 issue of *Modern Healthcare* magazine stated, "The government blamed the acceleration [of health-care costs] on larger increases in the indices for prescription drugs and hospital services," while MHC's prices, with minor exceptions, did not increase between 1994 and the present.

Myth: The doctors who formed Mountain Health Care did so in an attempt to secure comparatively higher reimbursement rates.

Fact: Mountain Health Care was formed to ensure quality, cost effective health care for the residents of western North Carolina. We hope that our members and all residents of western North Carolina, after considering all the facts, understand that the existence of Mountain Health Care did not cause your health care costs to increase. We also hope you will realize that the forced dissolution of Mountain Health Care will in no way lower or drastically alter health care costs within the region. Now, as always, Mountain Health Care and its participating providers have the best interest of our members and community at heart and will do all that we can to continue to provide cost effective, quality health care to you.

Appendix B

Brief of S.M. Oliva as *Amicus Curiae*

Statement of Interest

I, S.M. Oliva, declare that I have no financial interest in this case, nor do I have a financial interest in any competitor of Mountain Health Care, P.A. The views expressed in this brief are my own, and are based on my experience as a public policy analyst in the field of antitrust and competition law.

Summary

In reviewing the Proposed Final Judgment before the Court in this case, *amicus* offers two arguments:

- The United States failed to disclose material facts in their complaint and Competitive Impact Statement (CIS).
- The United States provided insufficient information in the CIS regarding the status and role of Mountain Health Care in the relevant marketplace, as well as how Mountain's acts directly impacted competition in those markets.

A major purpose of the Tunney Act¹ is to facilitate public comments which may assist the Court in determining whether a proposed consent decree is in the public interest. The CIS, in part, is supposed to provide the public with an adequate description of the "practices or events" giving rise to an alleged antitrust violation, as well as disclosure of any "determinative materials or documents" considered by the government in preparing the proposed Final Judgment.

In this case, the CIS failed both of these tests. The United States took substantial shortcuts in complying with the Tunney Act, and in the process failed to fulfill Congress's underlying objectives. This Court, however, possesses broad statutory power to remedy this situation, by directing the United States to file a revised CIS that provides the public—and the Court—with adequate information to decide whether the proposed decree is in the public interest.

Failure To Disclose Material Facts

In the complaint, the United States asserts that Mountain "organized and directed an effort to develop a uniform fee schedule to be used to negotiate and contract for fees for physician reimbursement"² from a number of managed care companies and other third-party benefit providers. This fee schedule, according to the government, "unreasonably restrained competition" in violation of section 1 of the Sherman Act.³ As a result, the United States filed suit to obtain the dissolution of Mountain "before further injury to consumers in North Carolina or elsewhere occurs."⁴

This "uniform fee schedule" is the nexus of the complaint and the resulting proposed Final Judgment. So long as Mountain maintains this schedule, consumers remain in danger under the Sherman Act. The only way to get rid of the schedule, in the government's view, is for Mountain to be denied its very existence. Otherwise, this fee schedule will continue to run amok, spreading its anti-competitive effects throughout western North Carolina.

But the problem is, the fee schedule the government speaks of may no longer be in play. According to statements made to *amicus* by Ellen Wells, Mountain's president and chief executive, Mountain's current "fee schedule" is nothing more than individual doctors informing an independent consultant about their general pricing terms. In other words, a third party spoke to Mountain's

¹ 15 U.S.C. § 16(b)–(h).

² Compl. ¶ 1.

³ *Id.*

⁴ *Id.*