

SGHP required payors to meet a single, fixed price list applicable to all physician members. The prices that SGHP demanded are substantially higher than the physicians could have obtained by negotiating unilaterally. When payors approached them directly in efforts to engage in contract negotiations, SGHP's physician members repeatedly refused to deal unilaterally, and instructed the payors to negotiate with SGHP for collective contracting purposes.

With respect to hospital services, the complaint alleges that SGHP orchestrated agreements among its hospital members not to discount from their respective list prices by an amount greater than 10%, and repeatedly refused payor requests during contract negotiations for larger discounts for specific SGHP member hospitals or combinations of member hospitals. SGHP successfully resisted payor attempts to contract separately with individual member hospitals. It also fostered agreements among its members to refuse payor requests for hospital services payable on the basis of a per diem (set charge per day for a particular inpatient service) or per case (set charge for a particular type of case, including "diagnosis related groups" or "DRGs"). These are methods that can make pricing more certain and provide incentives for hospitals to use resources more efficiently.

SGHP also allegedly orchestrated agreements among its member hospitals to participate only in SGHP's contract arrangements with payors. A hospital that wanted to deal with a payor outside of SGHP needed authorization from 75% of SGHP's board to do so. SGHP further required that, if the board authorized a member hospital to contract independently from SGHP, the hospital not discount from its list prices by more than 10%—unless the hospital provided that larger discount to every payor with which it was under contract through SGHP. This agreement created a substantial disincentive for any member hospital to deviate from the SGHP price agreement, because, by lowering prices to one payor, the hospital would have to do so for all payors that had contracts with the hospital.

Eight of the nine respondents are for-profit entities. The other respondent, Satilla HealthNet, is a non-profit corporation, but one that engages in substantial activities that confer pecuniary benefits on its for-profit physician members. The Commission has jurisdiction, therefore, over all respondents.

The Proposed Consent Order

The proposed order is designed to remedy the illegal conduct charged in the complaint and prevent its recurrence, while allowing respondents to engage in legitimate conduct that does not impair competition. It is similar to many previous consent orders that the Commission has issued to settle charges relating to unlawful agreements to raise prices. The proposed order applies to both hospital and physician services.

The proposed order's specific provisions are as follows:

The proposed order's core prohibitions are contained in Paragraphs II and III. Paragraph II.A prohibits respondents 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, refuse to deal, or threaten to refuse a deal with payors; (3) on what terms to deal with any payor, or (4) not to deal individually with any payor, or not to deal with any proper through arrangement other than respondents.

Paragraph II.B prohibit respondents from facilitating exchanges of information between 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 them from inducing anyone to engage in any action prohibited by Paragraph II.A through II.C.

Paragraph II also contains a proviso intended to clarify certain types of agreements that Paragraph II does not prohibit, except as to SGHP. It provides that nothing in Paragraph II prohibits the Owner PHO and IPA respondents from engaging in conduct that is reasonably necessary to form, participate in, or act in furtherance of, a "qualified risk-sharing joint arrangements" or a "qualified clinically-integrated joint arrangements." Such arrangements must not include another Owner PHO or IPA, and they must not be exclusive. As discussed below in connection with Paragraph IV, each respondent is required to notify the FTC about such an arrangement before negotiating on behalf of its members or before its 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 or 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 or 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 is substantially identical to Paragraph II, except that it applies to the provision of hospital, rather than physician, services.

Paragraph IV requires an Owner PHO or IPA respondent that has formed a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement 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. Paragraph IV.B sets out the information necessary to make the notification complete. Paragraph IV.C establishes the Commission's right to obtain additional regarding the arrangement.

Paragraphs V.A., V.B, and V.C set out the requirement that SGHP or Owner PHO respondents send the Order, the Complaint, and a letter of notice to each payor with which SGHP or an Owner PHO has been in contact since January 1, 1995. This notice provision, set out in Appendix A, will inform payors that any contract with SGHP may be terminated at the payor's written request, per Paragraph V.B. Absent such written request, however, Paragraph V.B. provides that all such contracts will terminate upon their termination or renewal date. This provision is intended to eliminate the effects of respondents' anticompetitive concerted actions.

The remaining provisions of Paragraph V and Paragraphs VI through VIII of the proposed order impose obligations on respondents with respect to distributing the proposed complaint and order to SGHP's members and to other specified persons, and reporting information to the Commission.