

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

_____)
In the Matter of)
)
SYSTEM HEALTH PROVIDERS, INC.,)
a corporation, and) Docket No. C-4064
)
GENESIS PHYSICIANS GROUP, INC.,)
a corporation.)
_____)

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of System Health Providers, Inc. and Genesis Physicians Group, Inc., hereinafter sometimes referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order to Cease and Desist (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated said Act, and that a Complaint should issue stating its

2. any agreement concerning reimbursement or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the joint arrangement.

K. “Qualified clinically-integrated joint arrangement” means an arrangement to provide Provider services in which:

1. all Providers who participate in the arrangement participate in active and ongoing programs of the arrangement to evaluate and modify the practice patterns of, and create a high degree of interdependence and cooperation among, the Providers who participate in the arrangement, in order to control costs and ensure the quality of services provided through the arrangement; and
2. any agreement concerning reimbursement or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the joint arrangement.

II.

IT IS FURTHER ORDERED that Respondents, directly or indirectly, or through any corporate or other device, in connection with the provision of Provider services in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, cease and desist from:

- A. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any Providers:
 1. to negotiate on behalf of any Provider with any Payor,
 2. to deal, refuse to deal, or threaten to refuse to deal with any Payor,
 3. regarding any term, condition, or requirement upon which any Provider deals, or is willing to deal, with any Payor, including, but not limited to, price terms, or
 4. not to deal individually with any Payor, or not to deal with any Payor through any arrangement other than Respondent SHP or other than Respondent GPG.

- B. Exchanging or facilitating in any manner the exchange or transfer of information among Providers concerning any Provider's willingness to deal with a Payor, or the terms or conditions, including price terms, on which the Provider is willing to deal;
- C. Attempting to engage in any action prohibited by Paragraph II.A. or II.B., above; and
- D. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any Person to engage in any action that would be prohibited by Paragraphs II.A. through II.C. above.

PROVIDED, HOWEVER, that nothing in this Paragraph II shall prohibit any agreement involving, or conduct by, Respondent SHP or Respondent GPG that is reasonably necessary to form, participate in, or take any other action in furtherance of a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement, so long as the arrangement does not restrict the ability, or facilitate the refusal, of Providers who participate in it to deal with Payors on an individual basis or through any other arrangement.

III.

IT IS FURTHER ORDERED that Respondent SHP shall:

- A. Within thirty (30) days after the date on which this Order becomes final, distribute by first-class mail a copy of this Order and the Complaint to:
 - 1. each Provider who participates, or has participated, in Respondent SHP or Respondent GPG, and
 - 2. each officer, director, manager, and employee of Respondent SHP or Respondent GPG;
- B. Within thirty (30) days after the date on which this Order becomes final, send copies of this Order, the Complaint, and the notice specified in Appendix A to this Order, by first-class mail return receipt requested, to the chief executive officer of each Payor that is listed in Appendix B or that contracts with Respondent SHP or Respondent GPG for the provision of Provider services;
- C. Terminate, without penalty or charge, any Preexisting Contract with any Payor for the provision of Provider services, upon receipt by Respondent SHP or Respondent GPG of a written request to terminate such contract from any Payor that is a party to the contract or that pays for the Provider services provided through the contract; **PROVIDED, HOWEVER**, that nothing contained herein shall affect the operation of any Preexisting Contract provision pertaining to the continuation of patient care for patients undergoing a course of treatment, or payment therefor, following termination of the Preexisting Contract;

- D. For a period of three (3) years after the date this Order becomes final:
1. Distribute by first-class mail a copy of this Order and the Complaint to:
 - a. each Provider who begins participating in Respondent SHP or Respondent GPG, and who did not previously receive a copy of this Order and the Complaint from Respondent SHP or Respondent GPG, within thirty (30) days of the time that such participation begins,
 - b. each Payor that contracts with Respondent SHP or Respondent GPG for the provision of Provider services, and that did not previously receive a copy of this Order and the Complaint from Respondent SHP or Respondent GPG, within thirty (30) days of the time that such Payor enters into such contract, and
 - c. each person who becomes an officer, director, manager, and employee of Respondent SHP or Respondent GPG, and who did not previously receive a copy of this Order and the Complaint from Respondent SHP or Respondent GPG, within thirty (30) days of the time that he or she assumes such responsibility with Respondent SHP; and
 2. Annually publish in an official annual report or newsletter sent to all Providers who participate in Respondent SHP or Respondent GPG, a copy of this Order and the Complaint with such prominence as is given to regularly featured articles;
- E. Notify the Commission at least thirty (30) days prior to any proposed change in Respondent SHP or Respondent GPG, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in Respondent SHP or Respondent GPG that may affect compliance obligations arising out of this Order; and
- F. File verified written reports within sixty (60) days after the date this Order becomes final, annually thereafter for three (3) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require, setting forth:
1. in detail, the manner and form in which Respondent SHP and Respondent GPG have complied and are complying with this Order, including, but not limited to, (a) information sufficient to describe, for each qualified risk-sharing joint arrangement established or operated by Respondent SHP or Respondent GPG, the manner in which the Providers who participate in such arrangement share financial risk, and (b) information sufficient to describe, for each qualified clinically-integrated joint arrangement established or operated by Respondent SHP or Respondent GPG, the manner in which the Providers who participate in such arrangement have integrated their practices, and

Appendix A
[letterhead of SHP/GPG]

[name of payor's CEO]
[address]

Dear _____:

Enclosed is a copy of a complaint and a consent order issued by the Federal Trade Commission against System Health Providers, Inc. ("SHP") and Genesis Physicians Group, Inc. ("GPG"). I call to your attention Paragraph III.C. of the order, which gives you the right to terminate, without penalty or charge, any contracts with SHP or GPG that were in effect prior to your receipt of this letter.

Sincerely,

Appendix B

Aetna U.S. Healthcare North Texas, Inc.

Beech Street Corp.

Blue Cross Blue Shield of Texas, A Division of Health Care Service Corp.

Cigna Healthcare of Texas, Inc.

First Health Group Corp.

HealthSmart Preferred Care, Inc.

Humana Health Plan of Texas, Inc.

IMS Managed Care, Inc.

Pacificare of Texas, Inc.

Private Healthcare Systems, Inc.

ProAmerica Managed Care, Inc.

Regional Healthcare Alliance

United Healthcare of Texas, Inc.