

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of

**SOUTH GEORGIA HEALTH PARTNERS, L.L.C.,
a limited liability company,**

**COASTAL PLAINS HEALTH ALLIANCE, L.L.C.,
a limited liability company,**

Coastal Plains Health Alliance, L.L.C. (“Coastal Plains Health Alliance”); Colquitt County PHO, L.L.C. (“Colquitt County PHO”); Colquitt County Physicians Association, L.L.C. (“Colquitt County Physicians”); Georgia/Florida Preferred, L.L.C., dba Health Alliance of the South (“Health Alliance of the South”); Qualicare Physicians Association, L.L.C. (“Qualicare Physicians Association”); Satilla HealthNet, Inc. (“Satilla HealthNet”); South Georgia PHO, L.L.C. (“South Georgia PHO”); and South Georgia Physician Network, L.L.C. (“South Georgia Physician Network”); hereinafter referred to as “Respondents,” have violated and are violating Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

NATURE OF THE CASE

1. Fifteen hospitals and approximately 500 physicians in a large region of south Georgia have agreed to restrain competition by collectively setting the price and other terms of contracts that they enter into with employers, health insurers, and others that seek to provide health care coverage in that area (“payers”). Respondents have jointly refused to deal individually with payors not willing to meet Respondents' collective terms. These price-fixing agreements and concerted refusals to deal among competing hospitals and competing physicians have raised the cost of health care in south Georgia. Respondents have not shared substantial financial risk in their provision of physician or hospital services and have not integrated their practices in any other way, so as to justify their collective pricing agreements.

SOUTH GEORGIA HEALTH PARTNERS, L.L.C.

2. SGHP is a for-profit limited liability company that is organized, existing, and doing business under, and by virtue of, the laws of the State of Georgia. Its principal address is 160 East Second Street, Tifton, Georgia 31794. SGHP represents hospitals and physicians in the negotiation of contracts with payors, pursuant to which the payors compensate the hospitals and physicians for the services that they provide to enrollees in the payors' health care plans.

3. SGHP is the type of organization that is sometimes referred to as a “physician-hospital organization” or “PHO.” Five other PHOs (the “Owner PHOs”) jointly own and are part of SGHP. As such, SGHP is sometimes also referred to as a “Super PHO.” Each Owner PHO has multiple physician members and at least one hospital; in total, the Owner PHOs include 10 hospitals. Physician members in three of the Owner PHOs are also organized into independent practice associations (the “IPA Respondents”).

4. Five hospitals in south Georgia, although not members of any Owner PHO, are members of SGHP and enter into payor contracts that SGHP negotiates on their collective

behalf. These hospitals are: Bacon County Hospital in Alma; Berrien County Hospital in Nashville; Donalsonville Hospital in Donalsonville; Dorminy Medical Center in Fitzgerald; and Memorial Hospital in Adel.

5. SGHP has as members approximately 500 physicians and 15 hospitals that, collectively, have more than 2,200 staffed beds. The hospital and physician members of SGHP as a group provide services in a very large section of south Georgia, extending eastward in Georgia from the Alabama border through Ware County and including the cities of Valdosta, Tifton, Thomasville, Moultrie, and Waycross (“South Georgia”). The area has a population of approximately 550,000. Approximately 90% of all physicians practicing in South Georgia are SGHP members, and SGHP’s 15 hospital members are the sole hospitals (with the exception of one small hospital in Valdosta) in the mostly contiguous counties in which they are located.

THE OWNER PHO RESPONDENTS

Alice Street, Waycross, Georgia 31501. Satilla HealthNet is a PHO that jointly owns SGHP with the other Owner PHOs. Satilla Regional Medical Center, and approximately 90% of all physicians in Ware County, are its members.

10. South Georgia PHO is a for-profit limited liability company that is organized, existing, and doing business under, and by virtue of, the laws of the State of Georgia. Its principal address is 2501 North Patterson Street, Valdosta, Georgia 31602. It is a PHO that jointly owns SGHP with the other Owner PHOs. South Georgia Medical Center in Valdosta and Louis Smith Memorial Hospital in Lakeland, a hospital leased and managed by South Georgia Medical Center, along with approximately 90% of all physicians in Lowndes and Lanier counties, are members of South Georgia PHO.

THE IPA RESPONDENTS

11. Colquitt County Physicians is a for-profit limited liability company that is organized, existing, and doing business under, and by virtue of, the laws of the State of Georgia. Its principal address is 2421 South Main Street, Moultrie, Georgia 31768. Colquitt County Physicians is an IPA that includes approximately 90% of all physicians in Colquitt County, and is itself affiliated with Colquitt County PHO.

12. Qualicare Physicians Association is a for-profit limited liability company that is organized, existing, and doing business under, and by virtue of, the laws of the State of Georgia. Its principal address is 808 Gordon Avenue, Thomasville, Georgia 31792. Qualicare Physicians Association is an IPA that includes approximately 90% of all physicians in Thomas County, and is itself affiliated with Health Alliance of the South.

13. South Georgia Physician Network is a for-profit limited liability company that is organized, existing, and doing business under, and by virtue of, the laws of the State of Georgia. Its principal address is 102 W. Moore Street, Valdosta, Georgia 31602. South Georgia Physician Network is an IPA that includes approximately 90% of all physicians in Lowndes County, and is itself affiliated with South Georgia PHO.

JURISDICTION

14. Respondents' general business practices and conduct, including the acts, practices, and conduct alleged herein, are in or affecting "commerce" as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

15. Respondent Satilla HealthNet is organized in substantial part, and is engaged in substantial activities, for its members' pecuniary benefit, and therefore is a "corporation" within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

OVERVIEW OF PHYSICIAN AND HOSPITAL CONTRACTING WITH PAYORS

16. Physicians, hospitals, PHOs, and IPAs often enter into contracts with payors that establish the terms and conditions, including prices and other competitively significant terms, upon which such health care providers will provide professional services to subscribers of the payors' health care plans. Physicians, hospitals, PHOs, and IPAs contracting with payors often agree to reductions in their compensation to obtain access to additional patients made available by the payors' relationship with their health plan enrollees. These contracts may reduce payors' costs, enable them to lower the price of health insurance, and reduce out-of-pocket medical care expenditures by subscribers to the payors' health insurance plans.

17. Physicians organize their practices under several models, including, but not limited to, sole proprietorships, partnerships, and professional corporations (collectively "physician entities"). Absent agreements among them on the terms on which they will provide services to payors' health plan enrollees, competing physician entities decide unilaterally whether to enter into contracts with payors to provide services to the payor's enrollees, and at what prices and upon what other terms and conditions they will accept such contracts.

18. Likewise, absent agreements among them on the terms on which they will provide services to payors' health plan enrollees, competing hospitals decide unilaterally whether to enter into contracts with payors to provide hospital services to the payor's enrollees, and at what prices and upon what other terms and conditions they will accept such contracts.

19. Physicians sometimes participate in IPAs that enter into contracts with payors for the provision of physician services. An IPA may involve integration among its participating physicians in ways that create efficiencies sufficient to justify the IPA's negotiation and execution of payor contracts on its physicians' collective behalf. For example, in some IPAs, physicians share with each other the risk that the total costs of member physician services to a payor's health plan enrollees may exceed targeted levels. Such physicians usually agree to follow guidelines relating to quality assurance, utilization review, administrative efficiency, and other components of cost, to improve efficiency and minimize this risk of financial loss. Agreement among such financial risk-sharing IPA members on the price to charge for the provision of their services may be reasonably necessary to achieve these efficiencies.

20. Absent agreements with non-member physicians on the terms on which they will provide services to payors' health plan enrollees, integrated IPAs decide unilaterally whether to

enter into contracts with payors to provide physician services to the payor's enrollees, and at

25. At all times relevant to this Complaint, the hospital members of SGHP and the Owner PHOs were engaged in the business of providing hospital services for a fee. Except to the extent that competition has been restrained as alleged herein, hospital members of such Respondents have been, and are now, in competition with each other for the provision of hospital services.

26. To be competitive in South Georgia, a payor's health insurance plan must include in its provider networks at least one of the SGHP member hospitals and a large number of the physicians who practice in that region. In any given area of South Georgia, approximately 90% of the practicing physicians are members of SGHP.

financial officers of the flagship hospital members of the Owner PHOs, along with physician representatives, constitute the Contract Review Committee.

31. After forming SGHP, the Owner PHOs, member hospitals, and member physicians began to cancel contracts with payors and to inform them that SGHP was the sole entity through which they would enter into future payor contracts. Thereafter, SGHP began to negotiate fee-for-service contracts with payors on behalf of its physician and hospital members. Members bill payors directly for services rendered, and payors remit payment directly to the physicians and hospitals. SGHP has not entered into any payor contracts that did not include both hospital and physician members. As an SGHP executive stated in a July 1997 board of directors meeting concerning a particular payor contract, “we want to include the physician component in this contract, not just negotiate on behalf of the hospitals but negotiate on behalf of South Georgia Health Partners as one entity.”

SGHP Physician Contracting Practices

32. SGHP has a single price list for its member physicians. Payors must agree to pay the prices on SGHP’s price list or forfeit the ability to enter into an SGHP contract for physician services. Payors have tried, but failed, to negotiate with SGHP for price reductions from this list. On a weighted average, SGHP’s physician prices are approximately 187% of RBRVS, which is a substantially higher rate than payors pay elsewhere in Georgia.

33. SGHP’s rules do not prohibit member physicians from contracting with payors separately from SGHP, and permit member physicians to choose whether to "opt in" or "opt out" of payor contracts that SGHP negotiates. In practice, however, SGHP physicians regularly insist on dealing with payors only pursuant to an SGHP contract, to maximize the negotiating leverage that results from acting in concert with their competitors. For example, at a 1997 board meeting, SGHP directors agreed to send a letter to physician members, warning them that they should not

SGHP Hospital Contracting Practices

35. SGHP negotiates payor contracts, including price terms, on its member hospitals' collective behalf. Member hospitals determine their own respective price lists and submit them to SGHP negotiators. SGHP, in turn, through the authority vested in it by the board of directors, fixes the maximum allowable percentage discount from member hospital price lists. SGHP has fixed the discount at a level not to exceed 10%, and has refused repeated payor requests for deeper discounts for particular, and for all, member hospitals. SGHP has also successfully resisted payor attempts to negotiate changes in hospital list prices, or to obtain hospital pricing on a per diem or per case basis.

36. SGHP member hospitals have agreed, and memorialized into the SGHP operating agreement, that they will not deal independently of SGHP for most payor contracts, unless 75% of the SGHP board votes to authorize an exception to this practice. The board enforces this requirement. For example, in 2001, the City of Valdosta, Georgia, which insures its employees, desired to contract separately with South Georgia Medical Center, an SGHP member and Owner PHO member. SGHP's contract review committee "did not feel that allowing [the hospital] to contract independently with the City of Valdosta was wise" and recommended that the board forbid the hospital from doing so. On June 25, 2001, the board voted unanimously to forbid the contract.

37. The SGHP hospitals have agreed that even if an SGHP member hospital is authorized by the SGHP board to contract independently with a payor, that hospital cannot provide a discount from its respective list prices greater than 10%, unless that hospital agrees to provide the deeper discount to every payor with which SGHP has a contract. Members have referred to this as SGHP's "most-favored-nations" clause. This agreement creates a substantial disincentive for any member hospital to deviate from the 10% discount level, because, by lowering prices to one payor, the hospital would have to do so for all payors with which it was under contract. For example, in negotiations with one payor, at least one SGHP hospital member would have accepted a proposed 15% discount from list prices, but ultimately refrained from doing so because – under the most-favored-nations requirement in its SGHP agreement – the hospital would have had to extend this price savings to all other payors with which it had a contract.

38. The most-favored-nations clause served SGHP hospital members' collusive purposes, therefore, by creating a substantial disincentive for any member hospital to offer a discount greater than the organization's fixed 10% discount. In practice, hospitals have not deviated from this fixed discount maximum – resulting in substantially higher prices to payors. To enforce this requirement as to the five member hospitals not belonging to an Owner PHO, moreover, SGHP can demand that the hospital certify that it is not providing more favorable pricing terms to any payor, and may audit the hospital's prices to assess the accuracy of the certification.

39. The SGHP hospitals have also agreed that all of them must perform under any payor contract that SGHP enters, unless 75% of th

47. SGHP told Cigna that, to obtain a contract for services from SGHP's hospital members, Cigna must pay what would have amounted to approximately an 80% increase in the prices that Cigna had been paying to SGHP hospitals under this plan. SGHP also insisted that Cigna pay its physicians according to SGHP's physician services price list, which contained, on average, the highest prices in Georgia. SGHP's price demands were too costly for Cigna to continue marketing its low-cost health plan to employers; consequently, it stopped selling the plan in South Georgia. As a result, employers were compelled to purchase a higher-priced, alternative health plan, or to discontinue their provision of health insurance to their employees.

Other Payors

48. Respondents have orchestrated collective negotiations with other payors that do business, or attempted to do business, in South Georgia, including Blue Cross and Blue Shield of Georgia, NovaNet, One Health Plan of Georgia, Beech Street Corporation, and Private Health Care Systems. Respondents, through and with SGHP, fixed price terms for physician and hospital services and refused to enter contracts with payors that would not meet those terms. Due to SGHP's dominant market position in South Georgia, its tactics have been highly successful. SGHP member physicians and hospitals have been able to extract far higher prices from these payors than they could have obtained by negotiating unilaterally.

RESPONDENTS HAVE ENGAGED IN RESTRAINTS OF TRADE

49. Respondents, acting as a combination of competing physicians and hospitals, have restrained competition by, among other things:

- A. facilitating, negotiating, entering into, and implementing agreements on price and other competitively significant terms;
- B. refusing to deal with payors except on collectively agreed-upon terms; and
- C. negotiating prices and other competitively significant terms in contracts with payors.

NO SIGNIFICANT EFFICIENCIES JUSTIFY RESPONDENTS' CONDUCT

50. Respondents' joint negotiation of prices and other competitively significant terms has not been, and is not, reasonably related to any efficiency-enhancing integration sufficient to justify the acts and practices described above.

ANTICOMPETITIVE EFFECTS

51. Respondents' actions described in paragraphs 1 and 27 through 49 of this Complaint have had, or have tended to have, the effect of restraining trade unreasonably and hindering competition in the provision of physician and hospital services in South Georgia in the following ways, among others:

52. The combination, conspiracy, acts and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such combination, conspiracy, acts and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief herein requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this _____ day of _____, 2003, issues its Complaint.

By the Commission.

Donald S. Clark
Secretary

ISSUED:
SEAL