

- H. “Preexisting contract” means a contract for the provision of physician services that was in effect on the date of the receipt by a payor that is a party to such contract of notice sent by Respondent Partners Health, pursuant to Paragraph V.A.3 of this Order, of such payor’s right to terminate such contract.
- I. “Principal address” means either (1) primary business address, if there is a business address, or (2) primary residential address, if there is no business address.
- J. “Qualified clinically-integrated joint arrangement” means an arrangement to provide physician services in which:
 - 1. all physicians that participate in the arrangement participate in active and ongoing programs of the arrangement to evaluate and modify the practice patterns of, and

can vary greatly due to the individual patient's condition, the choice, complexity, or length of treatment, or other factors; and

2. any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the arrangement.
- L. "Upstate South Carolina Area" means the area of South Carolina that comprises Pickens, Oconee, Greenville, and Anderson Counties.

II.

IT IS FURTHER ORDERED that Respondent Partners Health, directly or indirectly, or through any corporate or other device, in connection with the provision of physician 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 physicians:
1. to negotiate on behalf of any physician 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 physician 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 Partners Health;
- B. Exchanging or facilitating in any manner the exchange or transfer of information between or among physicians concerning any physician's willingness to deal with a payor, or the terms or conditions, including any price terms, on which the physician is willing to deal with a payor;
- C. Attempting to engage in any action prohibited by Paragraphs 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, subject to the requirements of Paragraph IV of this Order, nothing in this Paragraph II shall prohibit any agreement involving, or any conduct that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement that does not restrict the ability, or facilitate the refusal, of physicians who participate in it to deal with payors on an individual basis or through any other arrangement, or that solely involves physicians in the same medical group practice.

III.

IT IS FURTHER ORDERED that, for three (3) years after the date this Order becomes final, Respondent Partners Health shall notify the Secretary of the Commission in writing (“Paragraph III Notification”) at least sixty (60) days prior to entering into any arrangement with any physicians or any medical group practices under which Respondent Partners Health would act as a messenger, or as an agent on behalf of those physicians or those medical group practices, with payors regarding contracts. The Paragraph III Notification shall include the identity of each proposed physician participant; the proposed geographic area in which the proposed arrangement will operate; a copy of any proposed physician participation agreement; a description of the proposed arrangement’s purpose and function; a description of any resulting efficiencies expected to be obtained through the arrangement; and a description of procedures to be implemented to support the arrangement.

PROVIDED, HOWEVER, that Paragraph IV Notification shall not be required for an Arrangement whenever such Notification has been previously given for that Arrangement.

PROVIDED FURTHER:

1. that with respect to any Paragraph IV Notification, Respondent Partners Health shall include the following information:
 - a. the identity of each physician participant, the medical or other physician specialty, group practice, if applicable, and the name of each hospital where the physician has privileges;
 - b. a description of the Arrangement and its purpose, function, and geographic area of operation;
 - c. a description of the nature and extent of the integration and the efficiencies resulting from the Arrangement;
 - d. an explanation of how any agreement on prices, or on contract terms related to price, furthers the integration and achievement of the efficiencies resulting from the Arrangement;
 - e. a description of any procedures proposed to be implemented to limit possible anticompetitive effects resulting from the Arrangement or its activities; and
 - f. all studies, analyses, and reports that were prepared for the purpose of evaluating or analyzing competition for physician services in the Upstate

Commission from Respondent Partners Health of any Paragraph IV Notification, pursuant to Paragraph IV of this Order, is not to be construed as a determination by the Commission that any such Arrangement does or does not violate this Order or any law enforced by the Commission.

V.

IT IS FURTHER ORDERED that Respondent Partners Health shall:

- A. Within thirty (30) days after the date on which this Order becomes final, send a copy of this Order and the Complaint by first-class mail:
 1. with delivery confirmation, to each physician and hospital that participates in Respondent Partners Health;
 2. with return receipt requested, to each present officer, director, manager, and employee of Respondent Partners Health; and
 3. with return receipt requested, and with the letter attached as Appendix A to this Order, to the chief executive officer of each payor with whom Respondent Partners Health has a record of being in contact since January 1, 2001, regarding contracting for the provision of physician services; *provided, however*, that a copy of Exhibit A need not be included in the mailings to those payors with whom Respondent Partners Health has not entered into or renewed (including any automatic renewal of) a contract since January 1, 2001.
- B. For a period of three (3) years after the date this Order becomes final:
 1. Distribute by first-class mail, return receipt requested, a copy of this Order and the Complaint to:
 - a. each physician and hospital that begins participating in Respondent Partners Health, and that did not previously receive a copy of this Order and the Complaint from Respondent Partners Health, within thirty (30) days of the day that such participation begins;
 - b. each payor that contracts with Respondent Partners Health for the provision of physician services, and that did not previously receive a copy of this Order and the Complaint from Respondent Partners Health, within thirty (30) days of the day that such payor enters into such contract; and
 - c. each person who becomes an officer, director, manager, or employee of Respondent Partners Health, and who did not previously receive a copy of

this Order and the Complaint from Respondent Partners Health, within thirty (30) days of the day that he or she assumes such responsibility with Respondent Partners Health; and

2. Annually publish a copy of this Order and the Complaint in an official annual report or newsletter sent to all physicians who participate in Respondent Partners Health, with such prominence as is given to regularly featured articles;
- C. File a verified written report within sixty (60) days after the date on which 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. Each such report shall include:
1. A detailed description of the manner and form in which Respondent Partners Health has complied and is complying with this Order;
 2. The name, address, and telephone number of each payor with which Respondent Partners Health has had any contact; and
 3. Copies of the delivery confirmations required by Paragraph V.A.1 of this Order, and copies of the signed return receipts required by Paragraphs V.A.2, V.A.3, V.B.1, and V.E of this Order;
- D. Terminate, without penalty or charge, and in compliance with any applicable laws, any preexisting contract with any payor for the provision of physician services, at the earliest of:
1. the termination date specified in a written request from a payor to Respondent Partners Health to terminate such contract;
 2. the earliest termination or renewal date (including any automatic renewal date) of such contract; or
 3. one year from the date this Order becomes final.

PROVIDED, HOWEVER, a preexisting contract may extend beyond any such termination or renewal date no later than one (1) year from the date that the Order becomes final if, prior to such termination or renewal date, (a) the payor submits to Respondent Partners Health a written request to extend such contract to a specific date no later than one (1) year from the date that this Order becomes final, and (b) Respondent Partners Health has determined not to exercise any right to terminate;

PROVIDED FURTHER, that any payor making such request to extend a contract retains the right, pursuant to part (1) of Paragraph V.D of this Order, to terminate the contract at any time; and

- E. Within ten (10) days of receiving a written request from a payor, pursuant to Paragraph V.D (1) of this Order, distribute, by first-class mail, return receipt requested, a copy of that request to each physician and hospital participating in Respondent Partners Health as of the date Respondent Partners Health receives such request.

VI.

IT IS FURTHER ORDERED that Respondent Partners Health shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of Respondent Partners Health, (2) acquisition, merger or consolidation of Respondent Partners Health, or (3) other change in Respondent Partners Health that may affect compliance obligations arising out of the order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in Respondent Partners Health.

VII.

IT IS FURTHER ORDERED that Respondent Partners Health shall notify the Commission of any change in its principal address within twenty (20) days of such change in address.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, Respondent Partners Health shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and documents in its possession, or under its control, relating to any matter contained in this Order; and
- B. Upon five (5) days' notice, and in the presence of counsel, and without restraint or interference from it, to interview officers, directors, or employees of the Respondent.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on September 19, 2025.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: September 19, 2005

Appendix A

[letterhead of Respondent Partners Health]

[date]

[name and address of payor's CEO]