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UNITED STATES OF AMERICA
BEFORE F

4. HAL members include approximately 80 physicians licensed to practice allopathic or osteopathic medicine in Texas.

5. HAL's nine-member Board of Managers consists of physicians who are elected by the HAL members to represent the members' interests in HAL's affairs.

Jurisdiction

6. At all times relevant to this Complaint, HAL has been engaged in the business of contracting with payors, on behalf of HAL's physician members, for the provision of physician services.

7. Except to the extent that competition has been restrained as alleged herein, a substantial majority of HAL physician members have been, and are now, in competition with each other for the provision of physician services in the Laredo, Texas, area.

8. HAL, a for-profit entity, is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

9. The general business practices of HAL, and of its physician members, including the acts and practices herein alleged, are in or affect "commerce" as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

Overview of Physician Contracting with Payors

10. Physicians contract with payors to establish the terms and conditions, including price terms, under which they render physician services to the subscribers ("insureds") to the payors' health plans. Physicians entering into such contracts often agree to lower compensation to obtain access to additional patients made available by the payors' relationship with insureds. These contracts may reduce payors' costs and enable them to lower the price of insurance, and thereby result in lower medical care costs for insureds.

11. Absent agreements among them, otherwise competing physicians unilaterally decide whether to enter into payor contracts to provide services to insureds, and what prices they will accept pursuant to such contracts.

12. The Medicare Resource Based Relative Value Scale ("RBRVS") is a system used by the Centers for Medicare and Medicaid Services to determine the amount to pay physicians for the services they render to Medicare patients. Generally, payors in Texas make contract offers to individual physicians or groups at price levels specified by some percentage of the RBRVS fee for a particular year (e.g., "110% of 2004 RBRVS").

Anticompetitive Conduct

13. HAL, acting as a combination of its physician members, and in conspiracy with its members, has acted to restrain competition by, among other things, facilitating, entering into, and implementing agreements, express or implied, to fix the prices and other terms at which they would contract with payors; to engage in collective negotiations over terms and conditions of dealing with payors; and to have HAL members refrain from negotiating individually with payors or contracting on terms other than those approved by HAL.

14. HAL refers to its contracting system as a “messenger model.” Competing physicians sometimes use a “messenger” to facilitate their contracting with payors, in ways that do not constitute an unlawful agreement on prices and other competitively significant terms. Messenger arrangements can reduce contracting costs between payors and physicians. A messenger can be an efficient conduit to which a payor submits a contract offer, with the understanding that the messenger will transmit that offer to a group of physicians and inform the payor how many physicians across specialties accept the offer or have a counteroffer. A messenger may not negotiate prices or other competitively significant terms, however, and may not facilitate coordination among physicians on their responses to contract offers.

15. Although purporting to employ a messenger model, from 1998 to 2005, HAL attempted to and did negotiate higher re

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22. Aetna warned HAL that its conduct potentially violated the antitrust laws, noting that “you may also be aware that the Federal Trade Commission has been interested in cases involving price fixing by physicians.”

23. Nonetheless, HAL proceeded to negotiate a contract with Aetna. Aetna initially provided HAL with its standard market fee schedule, known as the Aetna Market Fee Schedule (“AMFS”). HAL rejected Aetna’s offer because the rates in the AMFS were “no where close” to HAL’s demanded RBRVS rate.

24. Aetna ultimately succumbed and offered the RBRVS-based rate demanded by HAL, which was, depending on the particular billing code, between 20% and 90% higher than Aetna’s initial offer. HAL then, for the first time, sent out Aetna’s offer to its members, many of whom accepted the group-negotiated rates.

Boycott of PacifiCare of Texas (“PacifiCare”)

25. HAL sought to negotiate with PacifiCare in 2003, and boycotted PacifiCare after PacifiCare declined to do so. In the spring of 2003, PacifiCare was attempting to form its own network of providers by offering contracts to individual physicians in Laredo. Up until that time, PacifiCare was renting the provider network of Private Healthcare Systems, Inc. (“PHCS”), a third-party administrator, to service its customers. PHCS, in turn, had a contract with HAL, which set the prices HAL members received for seeing PacifiCare patients.

26. PacifiCare’s individual contracting efforts were a significant threat to HAL physicians, because HAL’s rates through PHCS were significantly higher than PacifiCare’s individual contract rate.

27. In May 2003, HAL’s Board authorized HAL personnel to negotiate a group contract with PacifiCare. After PacifiCare refused to negotiate with HAL, HAL urged its physician members not to sign up with PacifiCare. HAL reminded them that they already had access to PacifiCare patients through PHCS, and that they would continue to have access to PacifiCare patients, even if they did not sign the lower-paying PacifiCare contracts. When PacifiCare contacted individual HAL members to offer them contracts, PacifiCare was repeatedly told by HAL members that HAL had instructed them not to contract with PacifiCare, that HAL told them it was attempting to negotiate a group contract with PacifiCare, and that PacifiCare would have to deal with HAL. A year after starting efforts to obtain contracts with individual physicians, PacifiCare had signed individual contracts with only ten HAL members, though PacifiCare’s individual contract rates were sufficient to gain acceptance by many non-HAL members in Laredo.

Contracting with Other Payors

28. HAL, on behalf of its phy

Violation of the Federal Trade Commission Act

32. The combination, conspiracy, acts, and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 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 _____, 2006, issues its Complaint against Respondent HAL.

By the Commission.

Donald S. Clark
Secretary

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