

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch

In the Matter of)
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New Century Health Quality Alliance, Inc.,)
a corporation, and)
Prime Care of Northeast Kansas, L.L.C.,)
a limited liability company,)
)
and)
)
Elizabeth Gallup, M.D., J.D.,)
Steven Buie, M.D.,)
Thomas Allen, M.D., and)
G. Robert Powers, M.D.,)
individuals,)
)
and)
)
Associates in Family Medicine, P.A.,)
Briarcliff Medical Associates, P.C.,)
College Park Family Care Center, P.A.,)
Family Health Group, Chartered,)
Family Medical Group, P.A.,)
Hickman Mills Clinic, Inc.,)
Kanza Multispecialty Group, P.A.,)
Landmark Medical Center, Inc.,)
Michael E. Monaco, M.D., d/b/a)
Select Healthcare, P.A.,)
Kenneth Norton, M.D., P.A.,)
Overland Park Family Health Partners, P.A.,)
Quivera Internal Medicine, L.L.C.,)
Seaport Family Practice, P.C.,)
Shawnee Family Care, P.A.,)
Statland Clinic Ltd.,)
Sunflower Medical Group, P.A.,)
United Medical Group, L.L.C., and)
Kimberly M. Wirths, M.D., P.A.)

Docket No. C - 4169

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of New Century Health Quality Alliance, Inc. (“New Century”), Prime Care of Northeast Kansas, L.L.C. (“Prime Care”), Elizabeth Gallup, M.D., J.D., Steven Buie, M.D., Thomas Allen, M.D., G. Robert Powers, M.D., Associates in Family Medicine, P.A., Briarcliff Medical Associates, P.C., College Park Family Care Center, P.A., Family Health Group, Chartered, Family Medical Group, P.A., Hickman Mills Clinic, Inc., Kanza Multispecialty Group, P.A., Landmark Medical Center, Inc., Michael E. Monaco, M.D., d/b/a Select Healthcare, P.A., Kenneth Norton, M.D., P.A., Overland Park Family Health Partners, P.A., Quivera Internal Medicine, L.L.C., Seaport Family Practice, P.C., Shawnee Family Care, P.A., Statland Clinic Ltd., Sunflower Medical Group, P.A., United Medical Group, L.L.C., and Kimberly M. Wirths, M.D., P.A. (hereinafter collectively referred to as “Respondents”), and Respondents having been furnished thereafter with a copy of the draft of Complaint that counsel for the Commission 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 in Case No. 06-1-0160, Respondents and Counsel (with

4. Respondent Steven Buie, M.D., an individual, was New Century's Chairman of the Board
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16. Respondent Kenneth Norton, M.D., P.A. is a Medical Group Practice that participates in Respondent New Century. Its principal address is 8901 West 74th Street, Suite 333, Shawnee Mission, Kansas 66204.
17. Respondent Overland Park Family Health Partners, P.A., is a Medical Group Practice that

assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.

- B. “Respondent Prime Care” means Prime Care of Northeast Kansas, L.L.C., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- C. “Respondent IPAs” means Respondent New Century and Respondent Prime Care, each of which is a “Respondent IPA”.
- D. “Respondent Gallup” means Elizabeth Gallup, M.D., J.D.
- E. “Respondent Buie” means Steven Buie, M.D.
- F. “Respondent Allen” means Thomas Allen, M.D.
- G. “Respondent Powers” means G. Robert Powers, M.D.
- H. “Respondent Officials” means Respondent Gallup, Respondent Buie, Respondent Allen, and Respondent Powers.
- I. “Physician Practice Respondents” means Respondent Associates in Family Medicine, P.A., Respondent Briarcliff Medical Associate

all tenses and forms of the word “participate,” including, but not limited to, “participating,” “participated,” and “participation.”

- M. “Payor” means any person that pays, or arranges for payment, for all or any part of any physician services for itself or for any other person, as well as any person that develops, leases, or sells access to networks of physicians.
- N. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- O. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- P. “Principal address” means either (1) primary business address, if there is a business address, or (2) primary

- 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 or conduct involving any Respondent: (a) that subject to the requirements of Paragraph IV of this Order, 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, so long as such qualified joint arrangement does not restrict the ability of, or facilitate the refusal of, physicians who participate in it to deal with payors on an individual basis or through any other arrangement; or (b) where such agreement or conduct 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, for any arrangement under which a Respondent IPA would act as an agent, or as a messenger, on behalf of any physician or any medical group practice with any payor regarding contracts, the Respondent IPA proposing to enter into such arrangement shall notify the Secretary of the Commission in writing (“Paragraph III Notification”) at least sixty (60) days prior to entering into the arrangement for which Paragraph III Notification is required. The Paragraph III Notification shall include the number of proposed physician participants in the proposed arrangement; the proposed geographic area in which the proposed arrangement would 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 proposed arrangement; and a description of procedures to be implemented to limit possible anticompetitive effects of the proposed arrangement, such as those prohibited by this Order. If, within fifteen (15) days from the date of the Commission’s receipt of the Paragraph III Notification, a representative of the Commission makes a written request for additional information to the Respondent IPA that provided the Paragraph III Notification then that Respondent IPA shall not enter into the arrangement described in the Paragraph III Notification prior to the expiration of sixty (60) days after substantially complying with such request.

PROVIDED, HOWEVER, that written confirmation reducing the applicable waiting period may be granted, upon request to the Bureau of Competition. The expiration of any waiting period described herein without a request for additional information or without the initiation of an enforcement proceeding shall not be construed as a determination by the Commission, or its staff, that a violation of the law, or of this Order, may not have occurred.

Receipt by the Commission of any Paragraph III Notification is not to be construed as a determination by the Commission that any action described in such Paragraph III Notification does or does not violate this Order or any law enforced by the Commission.

IV.

IT IS FURTHER ORDERED that for three (3) years from the date this Order becomes final, pursuant to each qualified clinically-integrated joint arrangement or qualified risk-sharing joint arrangement (referred to in this Paragraph IV as “Arrangement”) in which any Respondent is a participant, that Respondent participant shall notify the Secretary of the Commission in writing (“Paragraph IV Notification”) at least sixty (60) days prior to:

PROVIDED FURTHER if, within sixty (60) days from the Commission's receipt of the Paragraph IV Notification, a representative of the Commission makes a written request for additional information to the Respondent that provided that Paragraph IV Notification, that Respondent shall not engage in any conduct described in Paragraph IV.A or Paragraph IV.B of this Order prior to the expiration of thirty (30) days after substantially complying with such request for additional information, or such shorter waiting period as may be granted in writing from the Bureau of Competition. The expiration of any waiting period described herein without a request for additional information shall not be construed as a determination by the Commission, or its staff, that a violation of the law, or of this Order, may not have occurred. In addition, the absence of notice that the Arrangement has been rejected, regardless of a request for additional information, shall not be construed as a determination by the Commission, or its staff, that the Arrangement has been approved. Further, receipt by the Commission of any Paragraph IV Notification regarding activity pursuant to an Arrangement 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;

PROVIDED, FURTHER, that Paragraph IV Notification shall not be required prior to engaging in any activity described at Paragraph IV.A or Paragraph IV.B of the Order pursuant to any Arrangement for which Paragraph IV Notification has previously been given.

V.

IT IS FURTHER ORDERED that, for three (3) years from the date this Order becomes final, Respondent Officials, 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. Negotiating, or acting as an agent or messenger, on behalf of any physician or any medical group practice that participates or has participated in either Respondent IPA with any payor, notwithstanding whether such conduct also is prohibited by Paragraph II of this Order; and
- B. Advising any physician or medical group practice that participates, or has participated, in either Respondent New Century or Respondent Prime Care, to accept or reject any contract, offer, contract term, condition, or requirement of dealing with any payor, notwithstanding whether such conduct also is prohibited by Paragraph II of this Order.

PROVIDED, HOWEVER,

VI.

IT IS FURTHER ORDERED that each Respondent IPA shall:

- A. Within thirty (30) days after the date on which this Order becomes final:
 - 1. send by first-class mail with delivery confirmation or electronic mail with return confirmation, a copy of this Order and the Complaint to:
 - a. every physician who participates, or has participated, in Respondent IPA at any time since January 1, 2000; and
 - b. each current officer, director, manager, and employee of Respondent IPA; and
 - 2. send by first-class mail, return receipt requested, a copy of this Order and the Complaint to the chief executive officer of each payor that has contracted with Respondent IPA for that has

C. Notify the Commission at least thirty (30) days prior to any proposed:

2. copies of the signed return receipts required by Paragraph VIII.A of this Order; and
- C. Notify the Commission at least thirty (30) days prior to any proposed change in the Physician Practice Respondent that may affect compliance obligations arising out of this Order.

IX.

IT IS FURTHER ORDERED that, for three (3) years from the date this Order becomes final, each Respondent shall notify the Commission of any change in his, her, or its respective principal address within twenty (20) days of such change in address.

X.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order:

- A. Each Respondent shall permit any duly authorized representative of the Commission 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 the possession, or under the control, of such Respondent relating to any matter contained in this Order; and
- B. Upon five (5) days' notice:
 1. Each Respondent IPA and each Physician Practice Respondent, in the presence of counsel and without restraint or interference, permit any duly authorized representative of the Commission to interview its officers, directors, employees, agents or representatives, or any participant in any Physician Practice Respondent; and
 2. Each Respondent Official shall, in the presence of counsel and without restraint or interference, permit any duly authorized representative of the Commission to interview him or her.

XI.

IT IS FURTHER ORDERED that this Order shall terminate on September 29, 2026.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: September 29, 2006