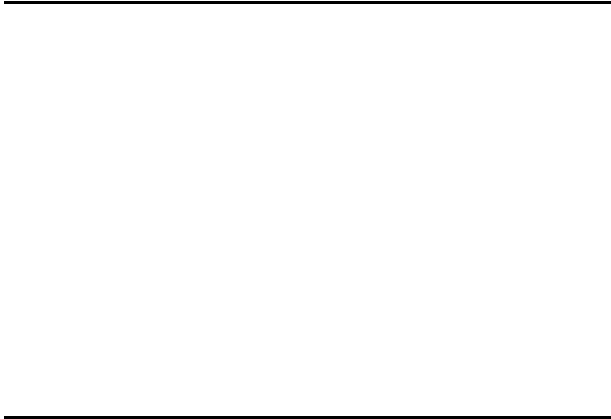


0510234

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



issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent American Renal Associates Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 66 Cherry Hill Drive, Beverly, Massachusetts 01915.
2. Respondent Fresenius Medical Care Holdings, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 95 Hayden Avenue, Lexington, Massachusetts 02420.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “ARA” means American Renal Associates, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by ARA including, but not limited to, ARA-East Providence Dialysis LLC, ARA-Johnston Dialysis LLC, ARA-Fall River Dialysis LLC, and Dialysis Center of West Warwick LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Fresenius” means Fresenius Medical Care Holdings, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Fresenius Medical Care Holdings, Inc.

- F. “Cranston-Warwick Area” means the area within ZIP codes 02818, 02886, 02888, 02889, 02893, 02905, 02907, 02909, 02910, 02920, 02921, that portion of 02919 south of U.S. Route 6, and those portions of 02831 and 02816 east of Route 116, which are the ZIP codes in and around the cities of Cranston and Warwick, Rhode Island.
- G. “Dialysis Services” means the provision of outpatient hemodialysis or peritoneal dialysis services to patients suffering from kidney disease.
- H. “Governmental Approvals” means any permissions or sanctions issued by any government or governmental organization, including, but not limited to, licenses, permits, accreditations, authorizations, registrations, certifications, certificates of occupancy, and certificates of need.
- I. “Joint Venture Clinic” means a Clinic in which a Respondent owns an interest of at least 50%, but less than 100%.

7. contracting for the services of medical directors for the Clinic;
 8. dealing with Payors that pay for products or services offered by the Clinic, including but not limited to, negotiating contracts with such Payors and submitting claims to such Payors; and
 9. dealing with Governmental Approvals Relating To the Clinic or that otherwise regulate the Clinic.
- M. “Ordinary Patient Transfer” means the occasional or periodic transfer of an individual patient from one Clinic to another Clinic at the request of the patient, or the patient’s family, care giver or physician.
- N. “Payor” means any Person that purchases, reimburses for, or otherwise pays for medical goods or services for themselves or for any other Person, including, but not limited to: health insurance companies; preferred provider organizations; point of service organizations; prepaid hospital, medical, or other health service plans; health maintenance organizations; government health benefits programs; employers or other Persons providing or administering self-insured health benefits programs; and patients who purchase medical goods or services for themselves.
- O. “Person” means any natural person, partnership, corporation, association, trust, joint venture, government, government agency, or other business or legal entity.
- P. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- Q. “Relating To” or “Related To” means pertaining in any way to, and is not limited to that which pertains exclusively to or primarily to.

II.

IT IS FURTHER ORDERED that each Respondent shall not, expressly or implicitly, directly or indirectly, enter into, continue, maintain, enforce, or offer to enter into any agreement with any Clinic Operator to (1) close any Clinic, or (2) allocate any Dialysis Services market, territory, or customer.

PROVIDED, HOWEVER, that nothing in this Paragraph shall prohibit each Respondent from (i) unilaterally deciding to close any of its own Clinics (or, in the case of a Joint Venture Clinic, from making any such decision with its Joint Venture Partner for that Clinic), (ii) assisting the owner of any Clinic managed by such Respondent with respect to the closure of such managed Clinic, (iii) entering into non-competition agreements of reasonable duration and geographic

scope (a) ancillary to a lawful sale, acquisition, or formation of a Clinic or Joint Venture Clinic, or (b) ancillary to a contract for employment or professional services of an employee or medical director, or (iv) continuing the current non-competition agreements of employees, medical directors, Clinics and Joint Venture Clinics.

PROVIDED FURTHER, HOWEVER, that nothing in this Paragraph shall apply to any agreement

16 C.F.R. § 801-803, relating to the proposed transaction (hereinafter referred to as “the Notification), *PROVIDED, HOWEVER*, (i) no filing fee will be required for the Notification, (ii) an original and one copy of the Notification shall be filed only with the Secretary of the Commission and need not be submitted to the United States Department of Justice, and (iii) the Notification is required from ARA and not from any other party to the transaction. ARA shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), ARA shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

PROVIDED, HOWEVER, that prior notification shall not be required by this paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

IV.

IT IS FURTHER ORDERED that ninety (90) days after the date this order becomes

VI.