

5. Respondent is a -“person,” “partnership,” or “corporation” within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

6. Respondent’s general business practices, including the acts and practices herein alleged, are in or affecting “commerce” as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

OVERVIEW OF PHYSICIAN CONTRACTING WITH PAYORS

7. Individual physicians and physician group practices contract with payors of healthcare services and benefits, health maintenance organizations (HMOs), preferred provider organizations (PPOs), self-insured employers, and others, to establish the terms and conditions, including price terms, under which the physicians will render their professional medical services to the payors’ subscribers or covered employees and dependents. Physicians and physician group practices entering into such contracts often agree to accept lower compensation from payors in order to obtain access to additional patients made available by the payors’ relationship with the covered individuals. These contracts may reduce payors’ costs and enable them to lower the price of insurance or of providing health benefits, thereby resulting in lower medical costs for covered individuals.

8. Physicians and physician group practices sometimes form or participate in financially integrated joint ventures to provide physician services under agreements with payors willingly seeking such arrangements. Under such arrangements, the physicians and physician group practices may share financial risks and rewards in several ways. For example, the physicians may provide services at a “capitated” rate or share rewards/penalties based on their collective success in achieving pre-established targets or goals regarding aggregate utilization and costs of the services provided to covered individuals. Physicians on

covered physician services needed by patients covered under a payor's program would be provided by AllCare's physician members for the predetermined capitation charge, regardless of the actual quantity or type of services needed and provided.

11. The member physicians participation in AllCare, and their offering of services through AllCare's capitated contracts, was not, however, the member physicians' exclusive or even primary method of selling their professional medical services. Rather, the member physicians also continued to sell their medical services individually, on a fee-for-service basis, outside of AllCare, to individual patients and through contracts individually and directly entered into with payors.

ANTICOMPETITIVE CONDUCT

12. Since at least 2005, AllCare, acting as a combination of its physician members, and in conspiracy with its members, has acted to restrain competition on fee-for-service contracts 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 AllCare members refrain from negotiating individually with payors or contracting on terms other than those approved by AllCare.

13. Since at least 2005, AllCare has engaged in contract talks with payors regarding the payors' offers of fee-for-service contracts. Those talks included negotiations over price and other terms that AllCare would present to its physician members.

14. To enforce these joint negotiation efforts, a significant number of AllCare physicians sent at least one payor the same form termination letter. In those letters, the physicians terminated their individual agreements with the payor "with the exception of [their] participation through the agreement with AllCare IPA." Each letter stressed that "I enjoy my relationship with [the payor's] members and wish to continue that relationship, but only through AllCare IPA."

RESPONDENT'S CONDUCT IS NOT LEGALLY JUSTIFIED

15. Respondent's joint refusal to deal and negotiation of fees and other competitively significant terms, and the agreements, acts, and practices described above, have not been, and are not, reasonably related to any efficiency-enhancing integration among the physician members of AllCare.

RESPONDENT'S ACTIONS HAVE HAD, OR COULD BE EXPECTED TO HAVE, SUBSTANTIAL ANTICOMPETITIVE EFFECTS

16. Respondent's actions described in Paragraphs 12 through 14 of this Complaint have had, have tended to have, or if successful would have had, the effect of restraining trade

unreasonably and hindering competition in the provision of physician services in the Modesto area in the following ways, among others:

- A. unreasonably restraining price and other forms of competition among physicians who are members of AllCare;
- B. increasing prices for physician services;
- C. depriving payors, including insurers and employers, and individual consumers, of the benefits of competition among physicians; and
- D. depriving consumers of the benefits of competition among payors.

17. 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 second day of February, 2009, issues its Complaint against Respondent AllCare.

By the Commission.

Donald S. Clark
Secretary

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