

ANALYSIS OF AGREEMENT CONTAINING
CONSENT ORDER TO AID PUBLIC COMMENT
In the Matter of Roaring Fork Valley Physicians I.P.A., Inc., File No. 0610172

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order ("proposed order") with Roaring Fork Valley Physicians I.P.A., Inc., ("RFV"). The agreement settles charges by the Federal Trade Commission that RFV violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, among other things, orchestrating and implementing price-related agreements and concerted refusals to deal among competing physician members of RFV to maintain and raise the price at which RFV's physician members contract with payers.

The proposed order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way. Further, the proposed order has been entered into for settlement purposes only and does not constitute an admission by the proposed respondent that it violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint

The allegations of the complaint are summarized below.

RFV is a type of organization commonly referred to in the health care industry as a "health maintenance organization" (HMO) and is located in

County, Colorado.

The complaint alleges that since at least 2003 RFV, although purporting to use a messenger model, negotiated price-related terms on behalf of its members for the purpose of increasing and maintaining the rates for services provided by RFV's otherwise competing physician members. RFV increased rates by demanding that payers include automatic annual cost of living adjustments (COLAs) in their contracts. RFV held lengthy

contracting with RFV to persuade 80 percent of all RFV members and 50 percent of each RFV specialty ("80/50 rule") to acce

As defined in the proposed order, a “qualified risk-sharing joint arrangement” possesses two characteristics. First, all physician participants must share substantial financial risks through the arrangement, such that the arrangement creates incentives for the physician participants jointly to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

A “qualified clinically-integrated joint arrangement,” on the other hand, need not involve any sharing of financial risk. Instead, as defined in the proposed order, physician participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns in order to control costs and ensure the quality of services provided, and the arrangement must create a high degree of interdependence and cooperation among physicians. As with qualified risk-sharing arrangements, any agreement concerning price or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement.

Paragraph II, for three years, requires RFV to notify the Commission before it enters into any arrangements to act as a messenger or an agent on behalf of any physicians, with payers regarding contracts. Paragraph V sets out the information necessary to make the notification complete.

Paragraph V, for three years, requires RFV to notify the Commission before participating in contracting with health plans on behalf of either a qualified risk-sharing or a qualified clinically-integrated joint arrangement. Paragraph VI sets out the information necessary to satisfy the notification requirement.

Paragraph VII imposes other notification obligations on RFV and requires the termination of certain contracts that were entered into illegally. Paragraph VII.A requires RFV to distribute the complaint and order (1) to physicians who have participated in RFV since 2001; (2) to various past and current personnel of RFV; and (3) to payers with whom RFV has dealt since 2001. Paragraph VII.B requires RFV, at any payer’s request and without penalty, to terminate its existing contracts with the payer for the provision of physician services.