

**ANALYSIS OF AGREEMENT CONTAINING**

The proposed complaint alleges that Coopharma's member pharmacies restrained competition by jointly negotiating and entering into agreements with third-party payers. Coopharma achieved this result by encouraging its members: (1) to refuse to deal with third-party payers except through Coopharma; and (2) to threaten termination, or actually terminate, contracts with payers that refused to deal with Coopharma on the terms it demanded.

Coopharma collectively negotiated reimbursement rates with more than ten payers and has reached agreements on behalf of its members with seven of them. The mere threat of Coopharma members' collective action led two additional payers to pay higher rates. The proposed complaint alleges that Coopharma's actions caused payers to pay higher reimbursement rates to Coopharma members, and that this price increase ultimately may be passed along to consumers in the form of higher premium payments, diminished service, or reduced coverage. As a result, Coopharma's actions caused substantial harm to the consumers of Puerto Rico. Coopharma's conduct was unrelated to any efficiency-enhancing integration among its members.

#### ~~Negotiation with CVS-Caremark~~

As a specific example of Coopharma's misconduct, the proposed complaint alleges that CVS-Caremark ("Caremark"), a pharmacy benefits manager operating in Puerto Rico, was forced to rescind a rate cut and to enter into a master contract at a higher rate because of <sup>trade</sup> 0.00( CVS)Tj24.3600 ipaan0 C

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constitute less than 20 percent of providers in a particular area, do not engage in boycotts, submit to mandatory arbitration in the case of an impasse, and comply with certain other requirements.<sup>4</sup> Coopharma has not – and cannot – satisfy these requirements.<sup>5</sup>

The proposed complaint also alleges that Puerto Rico has not actively supervised Coopharma’

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<sup>4</sup> *E.g.*, 26 L.P.R.A. §§ 31.040; 31.050; 31.060.

<sup>5</sup> The Commission is aware that Law 239, which regulates cooperatives generally, declared that cooperatives “shall not be considered conspiracies or cartels to restrict business.” 5 L.P.R.A. § 4516 (Law 239, § 20.5). The Commission and the Puerto Rico Department of Justice interpret Law 203 (which was passed after Law 239) to supersede Law 239. At the very least, Law 203 imposes additional requirements on health care cooperatives, which Coopharma cannot meet.

<sup>6</sup> *Cf. Patrick v. Burget*, 486 U.S. 94, 101 (1988) (“The active supervision prong of the *Midcal* test requires that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy.”).

any action prohibited by Paragraph II.A or II.B, and Paragraph II.D proscribes 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.

Paragraph III is designed to prevent the challenged conduct from reoccurring. Paragraph III.A requires Coopharma to send a copy of the complaint and consent order to its members, its management and staff, and any payers with whom Coopharma has contracted at any time since January 1, 2008. Paragraph III.B allows for contract termination if a payer voluntarily submits a request to Coopharma to terminate its contract. Pursuant to such a request, Paragraph III.B requires Coopharma to terminate, without penalty, any pre-existing payer c equest, Paragraph I