

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright

In the Matter of)
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)
 PRÁXEDES E. ALVAREZ SANTIAGO, M.D.,)
 an individual;)
 DANIEL PÉREZ BRISEBOIS, M.D.,)
 an individual;)
 JORGE GRILLASCA PALOU, M.D.,)
 an individual;)
 RAFAEL GARCÍA NIEVES, M.D.,) C-4402
 an individual;)
 FRANCIS M. VÁZQUEZ ROURA, M.D.,)
 an individual;)
 ANGEL B. RIVERA SANTOS, M.D.,)
 an individual;)
 COSME D. SANTOSTORRES, M.D.,)
 an individual; and)
 JUAN L. VILARÓ CHARDÓN, M.D.,)
 an individual.)

COMPLAINT

I. NATURE OF THE CASE

1. This matter concerns an agreement among eight independent nephrologists in southwestern Puerto Rico to fix the prices and conditions under which they would participate in Mi Salud, the Commonwealth of Puerto Rico's Medicaid program for providing health care services to indigent residents. In furtherance of their conspiracy, Respondents collectively terminated their participation in the Mi Salud program in southwestern Puerto Rico after the program's regional administrator, Humana Health Plans of Puerto Rico, Inc. ("Humana") refused to accede to Respondents' demands to restore a cut in reimbursements for certain patients eligible for benefits under both Medicaid and Mi Salud (dual eligibles). After Respondents terminated their service agreements with Humana, they refused to treat any of Humana's Mi Salud patients. As a result, Respondents have unreasonably restrained competition and engaged in unfair methods of competition in violation of the Federal Trade Commission Act.

II. RESPONDENTS

2. Respondents are individuals licensed to practice medicine in the Commonwealth of Puerto Rico and engaged in the business of providing nephrology services to patients for a fee. They represent a portion of the nephrologists in the southwestern region who participate in the Humana Mi Salud program and almost 90 percent of all nephrologists in the region. Their respective names and business addresses are

- (1) Praxedes E. Alvarez Santiago, M.D., 2916 Avenue Emilio Fagot, Suite 1, Ponce, PR 00716-3611.
- (2) Daniel Pérez Bischoff, M.D., 3011 Avenue Emilio Fagot, Ponce, PR 00716.
- (3) Jorge Grillasca Palou, M.D., 302 Torre San Cristobal, Coto Laurel, PR 00780.
- (4) Rafael Garcia Nieves, M.D., 909 Avenue Tito Castro, Torre Medica San Lucas, Suite 723, Ponce, PR 00716.
- (5) Francis M. Vázquez Roura, M.D., 1203 Avenue Muñoz Rivero, Ponce, PR 00717-0634.
- (6) Angel B. Rivera Santos, M.D., Caribe Medical Centre, Suite 202-2275, Ponce Bypass, Ponce, PR 00731.
- (7) Cosme D. Santos Torres, M.D., 3011 Avenue Emilio Fagot, Ponce, PR 00716.
- (8) Juan L Vilaró Chadón, M.D., Edificio Para, Oficina 302, Ponce, PR 00731.

III . JURISDICTION AND INTERSTATE COMMERCE

3. At all times relevant to this Complaint, Respondents have been engaged in the business of contracting with third parties for the provision of nephrology services to persons for a fee.

4. The general business practices of Respondents, including the acts and practices alleged herein, are in or affecting "commerce," as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

5. Except to the extent that competition has been restrained as alleged herein, Respondents have been, and are now, in competition with each other for the provision of nephrology services to persons for a fee.

6. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over Respondents, who are "persons" within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44, and the proceeding is in the public interest.

IV. BACK GROUND

7. Certain government-sponsored healthcare programs contract with physicians, hospitals, and other providers of healthcare services in a geographic area to create a network of healthcare providers that have agreed to provide healthcare services to enrollees covered under these healthcare programs.

8. To become members of these programs' provider networks, physicians often enter into contracts with the programs that establish the terms and conditions, including, but not limited to, competitively significant terms, for providing healthcare services to enrollees covered by the government-sponsored healthcare programs. Physicians entering into such contracts often agree to reductions in their usual compensation in order to obtain access to additional patients made available to them by the programs' coverage of their enrollees. Such reductions in physician fees may permit government-sponsored healthcare programs to reduce their costs and offer broader benefits coverage to their enrollees.

V. MI SALUD PROGRAM

9. Puerto Rico's Mi Salud program is administered by Administración de Seguros de Salud ("ASES"), a public corporation that is charged with ensuring that the more than 1.5 million indigent residents of Puerto Rico have access to a full complement of medical services. ASES determines the benefits Mi Salud members will receive. ASES contracts with two health plans, Human and Triple S, to facilitate the provision of medical services to Mi Salud members and payments to participating providers. Administration of the Mi Salud program takes place in eight regions in Puerto Rico. Human administers and insures the program in three regions: the east, the southeast and the southwest. Triple S administers the program in the other five

regions.

10. In October 2010, the Mi Salud reimbursement program was modified for persons eligible for both Medicare and Medicaid ("dual eligibles"). Under the previous program, called La Reforma, providers received 100 percent of the Medicare established rate for dual eligibles. As the primary payer, Medicare paid 80 percent, and payers administering the Mi Salud program paid the remaining 20 percent coordination of benefits amount (20 percent COB). Under the Mi Salud program, providers no longer received a coordination of benefits amount for dual eligibles, except in rare circumstances. Thus, Response reimbursements were lower under Mi Salud than they had previously been under La Reforma.

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GrillascaPalou, MD, wrote:

Under the present conditions, I can anticipate that I will not continue offering services to Humana patients if these [policies for payment for services to dual eligibles] are not modified. Please remember that the real population requires our services to stay alive and in good health. I am legitimately concerned that services may be affected for patients that can only [emphasis in original] be attended by a nephrologist. Losing [sic] nephrology services for your population may create a complicated and dangerous situation, especially for critical care patients in a hospital.

He requested that Humana hold an urgent meeting with me and other colleagues that share the same concern." Dr. Grillasca copied the other Respondents on the email.

15. On December 8, 2011, Humana met with two of the Respondents, Dr. Angel Rivera Santos and Dr. Daniel Perez Eisebois, to discuss the reimbursement policy. During the meeting they pressed Humana to pay the 20 percent COB and Dr. Perez handed to Humana a proposed schedule of codes for which Respondents wanted rate increases.

16. On December 9, 2011, the day after the meeting, Respondent Dr. Rivera sent to Humana an email stating,

I understand as well that I have the right to receive the 20 percent that has been denied. I will depend on these issues if I decide to continue my professional relationship with Humana Mi Salud. Also remember that I am waiting for your response related to the newly proposed rates that were handed to you yesterday by my colleague Dr. Daniel Perez. I will expect your answer concerning these issues on or before December 16, 2011.

Dr. Rivera copied all of the other Respondents on the email.

17. In a separate email sent to H12.0000 0.0000 TD (. I)00 0.000s0e

19. Two weeks later Respondents again sent Humana schedule of proposed fee increases and threatened to terminate their contracts with D (c)T8200 0.0000 TD (c)Tj 8.2800 0.0000 TD

miles away but the family objected because of the distance

24. Respondents eventually began treating patients again only after being ordered to do so by the Office of the Health Advocate, who determined that Respondents' immediate terminations violated the notice provision in their contracts and the continuation of services requirement in the Puerto Rico Patient's Bill of Rights and Responsibilities.

C. Resulting Increase in Reimbursement

25. Respondents' refusal to treat Human's Mi Salud patients forced ASES to ultimately accede to Respondents' demands for reinstatement of the policy requiring payment of the 20 percent COB. On June 13, 2012, ASES issued Circular No. 12-0613, stating that retroactive to March 16, 2012, it would require insurers to pay the 20 percent COB to all healthcare providers, essentially abandoning the new reimbursement formula and adopting the reimbursement policy under la Reforma. ASES reinstated the 20 percent COB because it was concerned about lack of access to nephrology services for its Mi Salud members, and believed that it had no other choice but to accede to adopting the 20 percent COB reimbursement policy. ASES believes that reinstating this reimbursement will increase the annual costs of the Mi Salud program by between \$4 and \$6 million.

VII. NO LEGITIMATE JUSTIFICATION FOR THE CONDUCT

26. Respondents' conduct is not reasonably related to achieving any efficiency-enhancing integration. Respondents have undertaken no activities to integrate their delivery of nephrology services and thus cannot justify the conduct described in the foregoing paragraphs. They neither shared financial risk in providing nephrology services nor clinically integrated their delivery of care to patients.

VIII. ANTICOMPETITIVE EFFECTS

27. Respondents' actions have the purpose and had the effect of unreasonably restraining trade and hindering competition in the provision of nephrology services in the southwest region of Puerto Rico by:

- (a) depriving third-party payers and consumers of the benefits of such competition;
- (b) increasing prices of nephrology services to Mi Salud; and
- (c) collectively withholding treatment from Mi Salud patients, resulting in significant and real consequences to patients.

IX. VIOLATION OF THE FTC ACT

28. The acts and practices described above constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as

amended, 15 U.S.C. § 45. Such 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 has caused this Complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this first day of May, 2013.

By the Commission.

Donald S. Clark
Secretary

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