

**ANALYSIS OF AGREEMENT CONTAINING
CONSENT ORDER TO AID PUBLIC COMMENT**

*In the Matter of Cooperativa de Médicos Oftalmólogos de Puerto Rico (OfitaCoop)
File No. 141-0194*

I. Overview

The Federal Trade Commission (Commission), has accepted, subject to final approval, an agreement containing a proposed consent order with the Cooperativa de Médicos Oftalmólogos de Puerto Rico (Respondent or OfitaCoop). The agreement settles charges that OfitaCoop violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by orchestrating a concerted refusal to deal by ophthalmologists in Puerto Rico to preclude a third-party payor and its network administrator from implementing a cost-savings program to manage ophthalmology services and reduce reimbursement rates.

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the comments received, and decide whether it should withdraw from the consent modify it, or make final the proposed consent order.

purpose of this analysis is to facilitate public comment on the proposed consent analysis is not intended to constitute an official interpretation of the proposed consent modify its terms in any way. Further, the proposed consent order has been entered element purposes only and does not constitute an admission by Respondent that it law or that the facts alleged in the Complaint (other than jurisdictional facts) are

Complaint

OfitaCoop is a healthcare cooperative with about 100 ophthalmologists organized under the Commonwealth of Puerto Rico. The proposed complaint charges that OfitaCoop an agreement among competing ophthalmologists to refuse to deal with MCS Inc. (MCS), a payor, and Eye Management of Puerto Rico (Eye Management), network administrator. The allegations of the proposed complaint are summarized below.

MCS provides healthcare coverage to enrollees of its Medicare Advantage plans pursuant to an agreement with Medicare. Medicare pays MCS a premium; in exchange, MCS arranges and provides healthcare services for its enrollees. To participate in the Medicare Advantage program, MCS must offer a provider network with a sufficient number of physicians to comply with the network adequacy requirement designed to ensure enrollees have adequate access to healthcare services. MCS sought to lower its costs after Medicare reduced the premiums it was paying for MCS.

MCS's offer and cancelled, or threatened to cancel, their existing contracts with MCS. The contract cancellations jeopardized MCS's ability to meet network adequacy requirements for its Medicare Advantage enrollees. It also threatened to imperil patient care: MCS received hundreds of phone calls from its enrollees complaining that ophthalmologists were not offering

Paragraphs IV, V, and VI impose various obligations on OftaCoop to report or provide access to information to the Commission to facilitate monitoring of compliance with the consent order.

Finally, paragraph VII provides that the consent order will expire in 20 years.

B. Impact of new Puerto Rico law on the proposed consent order and inclusion of a proviso

During the investigation, Puerto Rico passed a new law (Act 228 of December 15, 2015) permitting healthcare cooperatives such as OftaCoop to jointly negotiate contracts with payors. Under this new law, healthcare cooperatives must file their payor agreements with the Puerto Rico Public Corporation for the Supervision and Insurance of Cooperatives (COSSEC). A committee whose members are not competitors in the market will oversee the negotiations, and must approve or disapprove each agreement.

Puerto Rico has neither issued any regulations nor do we have any record to evaluate how Puerto Rico will supervise negotiations. Therefore, the Commission is unable to assess to whether Act 228 complies with state action requirements.¹ Although it is too early to assess Puerto Rico's implementation of the new law, the Commission believes the circumstances here make it appropriate to defer to Puerto Rico's expressed intention to actively supervise joint negotiations between healthcare cooperatives and payors. Puerto Rico officials have only been recently granted that authority, and it is appropriate to allow them an opportunity to utilize that authority. As a result, the proposed consent order does not bar collective price negotiations. This is consistent with the consent order in another matter involving healthcare providers where state officials had authority to actively supervise private conduct but had not exercised it.²

In light of Act 228, the order also includes a proviso designed to clarify the scope of the prohibitions in Paragraph II. First, it provides that the provisions of Paragraph II do not prohibit OftaCoop, in exercising its business judgment, from rejecting a contract on behalf of its members, so long as there is no agreement between OftaCoop and any of its members that the member will refuse to deal individually (or will deal only through OftaCoop). Second, the proposed consent order does not prevent OftaCoop from exchanging information when necessary to conduct joint payor contract negotiations on behalf of its members. Such information would not, however, ordinarily include whether an individual member is participating in a particular contract or the terms on which it is negotiating with a payor independently of OftaCoop.

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