

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

<p style="text-align: center;">In the Matter of</p> <p style="text-align: center;">INDEPENDENT PHYSICIAN ASSOCIATES</p> <p style="text-align: center;">MEDICAL GROUP, INC., dba ALLCARE IPA,</p> <p style="text-align: center;">a California corporation.</p>	<p>)</p> <p>)</p> <p>) DOCKET NO. C-4245</p> <p>)</p> <p>)</p> <p>)</p>
---	--

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.* (“FTC Act”), and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that Independent Physician Associates Medical Group, Inc., dba AllCare IPA (“AllCare”), herein sometimes referred to as “Respondent,” has violated Section 5 of the FTC Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

NATURE OF THE CASE

1. This matter concerns horizontal agreements among competing physicians, acting through Respondent, to fix prices charged to those offering coverage for health care services (“payors”) in the Modesto, California, area and to refuse to deal with payors.

RESPONDENT

2. AllCare, an independent practice association (“IPA”), is a for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal place of business located at 3340 Tully Rd., Suite B-4, Modesto, CA 95350. AllCare consists of multiple, independent medical practices with a total of approximately 500 physician members, of which approximately 200 are devoted to primary care.

THE FTC HAS JURISDICTION OVER RESPONDENT

3. At all times relevant to this Complaint, Respondent has been engaged in the business of negotiating or attempting to negotiate contracts with payors for the provision of physician services on behalf, and for the pecuniary benefit, of its members.

4. Except to the extent that competition has been restrained as alleged herein, AllCare’s physician members have been, and are now, in competition with each other for the provision of physician services in the Modesto area.

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 may also participate in clinically integrated joint ventures implementing an active and ongoing program to evaluate and modify practice patterns by the network’s physician participants and create a high degree of interdependence and cooperation among the physicians to control costs and ensure quality.

9. Other than through their participation in integrated joint ventures, and absent anticompetitive agreements among them, otherwise competing physicians and physician group practices unilaterally decide whether to enter into contracts with payors to provide services to individuals covered by a payor’s programs, and what prices they will accept as payment for their services pursuant to such contracts.

RESPONDENT’S OPERATION

10. Since its formation, AllCare has entered into contracts with payors for and on behalf of its respective physician members, under which AllCare received capitated payments from the payors in exchange for the medical practices’ agreement to provide their professional medical services to patients covered by the contracting payors. The capitated contracts provided to payors, in addition to the physician services, an insurance guarantee component that all

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

SEAL