

described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues the following Order:

1. Respondent BSAPN is a for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its principal address at 600 South Tyler St., Amarillo, TX 79101.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and this proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Respondent” means Southwest Health Alliances, Inc., dba BSA Provider Network (“BSAPN”), its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- B. “Medical Group Practice” means a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, members, or employees, or in which only one Physician practices medicine.
- C. “Participate” in an entity means (1) to be a partner, shareholder, owner, member, or employee of such entity, or (2) to provide services, agree to provide services, or offer to provide services, to a Payer through such entity. This definition also applies to all tenses and forms of the word “participate,” including, but not limited to, “participating,” “participated,” and “participation.”
- D. “Payer” means any Person that pays, or arranges for the payment, for all or any part of any Physician services for itself or for any other Person, as well as any Person that develops, leases, or sells access to networks of Physicians.
- E. “Person” means both natural Persons and artificial Persons, including, but not limited to, corporations, unincorporated entities, and governments.
- F. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- G. “Preexisting Contract” means a contract for the provision of Physician services that was in effect on the date of the receipt by a Payer that is a party to such contract of notice sent

by Respondent BSAPN, pursuant to Paragraph VII.A.2 of this Order, of such Payer's right to terminate such contract.

H. "Qualified Clinically-Integrated Joint Arrangement" means an arrangement to provide Physician services in which:

1. all Physicians who Participate in the arrangement Participate in active and ongoing programs of the arrangement to evaluate and modify the practice patterns of, and create a high degree of interdependence and cooperation among, the Physicians who Participate in the arrangement, in order to control costs and ensure the quality of services provided through the arrangement; and
2. any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies that result from such integration through the arrangement.

I. "Qualified Risk-Sharing Joint Arrangement" means an arrangement to provide Physician services in which:

1. all Physicians who Participate in the arrangement share substantial financial risk through their Participation in the arrangement and thereby create incentives for the Physicians who Participate jointly to control costs and improve quality by managing the provision of Physician services such as risk-sharing involving:
 - a. the provision of Physician services at a capitated rate;
 - b. the provision of Physician services for a predetermined percentage of premium or revenue from Payers;
 - c. the use of significant financial incentives (e.g., substantial withholds) for Physicians who Participate to achieve, as a group, specified cost-containment goals; or
 - d. the provision of a complex or extended course of treatment that requires the substantial coordination of care by Physicians in different specialties offering a complementary mix of services, for a fixed, predetermined price, when the costs of that course of treatment for any individual patient can vary greatly due to the individual patient's condition, the choice, complexity, or length of treatment, or other factors; and
2. any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies that result from such integration through the arrangement.

- J. “Qualified Arrangement” means a Qualified Clinically-Integrated Joint Arrangement or a Qualified Risk-Sharing Joint Arrangement.

II.

IT IS FURTHER ORDERED that Respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of Physician services in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, cease and desist from:

- A. Entering into, adhering to, Participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any Physicians with respect to its provision of Physician services:
1. To negotiate on behalf of any Physician with any Payer, including Respondent when operating as a Payer;
 2. To negotiate with any Physician as a Payer;
 3. To refuse to deal, or threaten to refuse to deal, with any Payer, in furtherance of any conduct or agreement that is prohibited by any other provision of Paragraph II of this Order;
 4. Regarding any term, condition, or requirement upon which any Physician deals, or is willing to deal, with any Payer, including, but not limited to, price terms; or
 5. Not to deal individually with any Payer, or not to deal with any Payer other than through Respondent;
- B. Exchanging or facilitating in any manner the exchange or transfer of information among Physicians concerning any Physician’s willingness to deal with a Payer, or the terms or conditions, including price terms, on which the Physician is willing to deal with a Payer;
- C. Attempting to engage in any action prohibited by Paragraphs II.A or II.B above; and
- D. 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 above.

PROVIDED, HOWEVER, that nothing in this Paragraph II shall prohibit any agreement or conduct involving Respondent that, subject to the requirements of Paragraph V of this Order, is reasonably necessary to form, Participate in, or take any action in furtherance of, a Qualified Arrangement.

III.

IT IS FURTHER ORDERED that, for five (5) years from the date this Order becomes final, for any arrangement under which Respondent would act as an agent, or as a messenger, on behalf of any Physician or any Medical Group Practice with any Payer regarding contracts, except for those contracts under which Respondent is, or will be, paid on a capitated (per member per month) rate by the Payer, Respondent shall notify the Commission in writing (“Paragraph III Notification”) at least sixty (60) days prior to entering into the arrangement for which Paragraph III Notification is required. The Paragraph III Notification shall include the number of proposed Physician Participants in the proposed arrangement; the proposed geographic area in which the proposed arrangement would operate; a copy of any proposed Physician Participation agreement; a description of the proposed arrangement’s purpose and function; a description of any resulting efficiencies expected to be obtained through the proposed arrangement; and a description of procedures to be implemented to limit possible anticompetitive effects of the proposed arrangement, such as those prohibited by this Order.

IV.

IT IS FURTHER ORDERED that:

- A. If, within sixty (60) days from the date of the Commission’s receipt of the Paragraph III Notification, a representative of the Commission makes a written request to the Respondent for additional information, then Respondent shall not participate in the proposed arrangement prior to the expiration of thirty (30) days after substantially complying with such request, or such shorter waiting period as may be granted in writing from the Bureau of Competition;
- B. The expiration of any waiting period described herein without a request for additional information, or without the initiation of an enforcement proceeding, shall not be construed as a determination by the Commission, or its staff, that the proposed arrangement does or does not violate this Order or any law enforced by the Commission;
- C. The absence of notice that the proposed arrangement has been rejected, regardless of a request for additional information, shall not be construed as a determination by the Commission, or its staff, that the proposed arrangement has been approved;
- D. Receipt by the Commission of any Paragraph III Notification is not to be construed as a determination by the Commission, or its staff, that the proposed arrangement does or does not violate this Order or any law enforced by the Commission; and
- E. Paragraph III Notification shall not be required prior to participating in any arrangement for which Paragraph III Notification has previously been given.

V.

IT IS FURTHER ORDERED that for five (5) years from the date this Order becomes final, pursuant to each Qualified Arrangement in which Respondent is a Participant, except for those contracts under which Respondent is, or will be, paid on a capitated (per member per month) rate by the Payer, (“Paragraph V Arrangement”), Respondent shall notify the Commission in writing (“Paragraph V Notification”) at least sixty (60) days prior to:

- A. Participating in, organizing, or facilitating any discussion or understanding with or among any Physicians or Medical Group Practices in such Arrangement relating to price terms or conditions of dealing with any Payer; or
- B. Contacting a payer, pursuant to an Arrangement to negotiate or enter into any agreement concerning price or other terms or conditions of dealing with any Payer, on behalf of any Physician or Medical Group Practice in such Arrangement.

VI.

IT IS FURTHER ORDERED that:

- A. Paragraph V Notification shall include the following information regarding the Qualified Arrangement pursuant to which the Respondent intends to engage in the above identified conduct:
 - 1. the total number of Physicians and the number of Physicians in each specialty participating in the Qualified Arrangement;
 - 2. a description of the Qualified Arrangement, including its purpose and geographic area of operation;
 - 3. a description of the nature and extent of the integration and the efficiencies resulting from the Qualified Arrangement;
 - 4. an explanation of the relationship of any agreement on prices, or contract terms related to price, to furthering the integration and achieving the efficiencies of the Qualified Arrangement;
 - 5. a description of any procedures proposed to be implemented to limit possible anticompetitive effects resulting from the Qualified Arrangement or its activities; and
 - 6. all studies, analyses, and reports that were prepared for the purpose of evaluating or analyzing competition for Physician services in any relevant market, including, but not limited to, the market share of Physician services in any relevant market.

- B. If, within sixty (60) days from the Commission's receipt of the Paragraph V Notification, a representative of the Commission makes a written request to Respondent for additional information, then Respondent shall not participate in any arrangement described in Paragraph V.A or Paragraph V.B of this Order prior to the expiration of thirty (30) days after substantially complying with such request for additional information, or such shorter waiting period as may be granted in writing from the Bureau of Competition;
- C. The expiration of any waiting period described herein without a request for additional information, or without the initiation of an enforcement proceeding, shall not be construed as a determination by the Commission, or its staff, that the proposed Qualified Arrangement does or does not violate this Order or any law enforced by the Commission;
- D. The absence of notice that the proposed Qualified Arrangement has been rejected, regardless of a request for additional information, shall not be construed as a determination by the Commission, or its staff, that the proposed Qualified Arrangement has been approved;
- E. Receipt by the Commission of any Paragraph V Notification regarding participation pursuant to a proposed Qualified Arrangement is not to be construed as a determination by the Commission that any such proposed Qualified Arrangement does or does not violate this Order or any law enforced by the Commission; and
- F. Paragraph V Notification shall not be required prior to participating in any Qualified Arrangement for which Paragraph V Notification has previously been given.

VII.

IT IS FURTHER ORDERED that Respondent shall:

- A. Within thirty (30) days from the date on which this Order becomes final:
 - 1. send by first-class mail with delivery confirmation or return receipt requested, or electronic mail with return confirmation, a copy of this Order and the Complaint to:
 - a. every Physician who Participates, or has Participated, in Respondent at any time since January 1, 2006; and
 - b. each current officer, director, manager, and employee of Respondent; and
 - 2. send by first-class mail, return receipt requested, a copy of this Order, the Complaint, and the letter attached as Appendix A to this Order to the chief executive officer of each Payer that has contracted with Respondent for the provision of Physician services at any time since January 1, 2006 regarding contracting for the provision of Physician services, except for those contracts

under which Respondent is, or will be, paid a capitated (per member per month) rate by the Payer;

- B. Terminate, without penalty or charge, and in compliance with any applicable laws, any Preexisting Contract with any Payer who is sent the letter required by Paragraph VII.A.2 of this Order, at the earlier of: (1) receipt by Respondent BSAPN of a written request to terminate such contract from any Payer that is a party to the contract, or (2) the earliest termination date, renewal date (including any automatic renewal date), or the anniversary date of such contract.

PROVIDED, HOWEVER, a Preexisting Contract for Physician services may extend beyond any such termination or renewal date no later than one (1) year from the date that the Order becomes final if, prior to such termination or renewal date:

(a) the Payer submits to Respondent BSAPN a written request to extend such contract to a specific date no later than one (1) year from the date that this Order becomes final, and

(b) Respondent BSAPN has determined not to exercise any right to terminate.

PROVIDED FURTHER, that any Payer making such request to extend a contract retains the right, pursuant to Paragraph VII.B of this Order, to terminate the Preexisting Contract at any time.

- C. Within ten (10) days of receiving a written request to terminate from a Payer, pursuant to Paragraph VII.B of this Order, distribute, by first-class mail, return receipt requested, or electronic mail with return confirmation, a copy of that request to each Physician Participating in such contract as of the date that Respondent BSAPN receives such request to terminate.

- D. For five (5) years from the date this Order becomes final:

1. Distribute a copy of this Order and the Complaint to:

- a. each Physician who begins Participating in Respondent, and who did not previously receive a copy of this Order and the Complaint from Respondent, by first-class mail, return receipt requested, or electronic mail with return confirmation, within thirty (30) days of the time that such Participation begins;
- b. each payer who contracts with Respondent for the provision of Physician services, except for those Payers who contract with Respondent solely for Physician services that are, or will be, paid on a capitated (per member per month) rate by the Payer, and who did not previously receive a copy of this Order and the Complaint from Respondent, by first-class mail, return receipt requested,

within thirty (30) days of the time that such Payer enters into such contract; and

c. Each Person who becomes an officer, director, manager, or employee of Respondent, and who did not previously receive a copy of this Order and the Complaint from Respondent, by first-class mail, return receipt requested, or electronic mail with return confirmation, within thirty (30) days of the time that he or she assumes such position with Respondent; and

2. Annually publish in an official annual report or newsletter sent to all Physicians who Participate in Respondent, a copy of this Order and the Complaint with such prominence as is given to regularly featured articles.

E. File verified written reports within sixty (60) days from the date this Order becomes final, annually thereafter for five (5) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require. Each report shall include:

1. a detailed description of the manner and form in which the Respondent has complied and is complying with this Order;
2. the name, address, and telephone number of each Payer with which the Respondent has had any contact, during the one (1) year period preceding the date for filing such report, except for Payers whose sole contacts with Respondent relate to contracts under which Respondent is, or will be, paid a capitated (per member per month) rate by the Payer;
3. the identity of each Payer sent a copy of the letter attached as Appendix A, the response of each Payer to that letter, and the status of each contract to be terminated pursuant to that letter; and
4. copies of the delivery confirmations, signed return receipts, or electronic mail with return confirmations required by Paragraph VII.A.I, and copies of the signed return receipts required by Paragraphs VII.A.2, VII.C, and VII.D.

VIII.

IT IS FURTHER ORDERED that Respondent shall notify the Commission:

- A. of any change in its principal address within twenty (20) days of such change in address; and
- B. at least thirty (30) days prior to any proposed: (1) dissolution of Respondent; (2) acquisition, merger, or consolidation of Respondent; or (3) any other change in

Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

IX.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondent, and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession, or under the control, of Respondent relating to compliance with this Order, which copying services shall be provided by Respondent at its expense; and
- B. To interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

X.

IT IS FURTHER ORDERED that this Order shall terminate on July 8, 2031.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: July 8, 2011

Appendix A

[Respondent's letterhead]

[name of payer's CEO]

[address]

Dear _____:

Enclosed is a copy of a complaint and a consent order ("Order") issued by the Federal Trade Commission against BSAPN.

Pursuant to Paragraph VII.B of the Order, BSAPN must allow you to terminate, upon your written request without any penalty or charge, any contracts with BSAPN for the provision of physician services that were in effect prior to your receipt of this letter.

Paragraph VII.B of the Order also provides that, if you do not terminate your contract, the contract will terminate at the earlier of [date one year from the date the Order becomes final] or its earliest termination or renewal date (including any automatic renewal date). If the termination or renewal date occurs prior to [date one year from the date the Order becomes final], you may request BSAPN to extend that date to a date no later than [date one year from the date the Order becomes final]. If you choose to extend the term of the contract, you may nevertheless still terminate the contract at any time. At the end of any contract extensions you may, of course, elect to enter into a new contract with BSAPN in a manner consistent with the terms of the Order.

Sincerely,

[BSAPN to fill in information in brackets]