

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 William E. Kovacic
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

_____)
In the Matter of)
)
Minnesota Rural Health Cooperative,) **DOCKET NO. C-4311**
a corporation.)
_____)

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the Minnesota Rural Health Cooperative (“MRHC”), hereinafter sometimes collectively referred to as “Respondent,” and Respondent having been furnished thereafter with a copy of the draft Complaint that counsel for the Commission proposed to present to the Commission for its consideration and which, if issued, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order to Cease and Desist (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from an interested person pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure described in Commission Rule 2.34, the Commission

hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Order:

1. The Minnesota Rural Health Cooperative is a for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota with its principal address at 190 E.4th Street N, PO Box 155, Cottonwood, Minnesota 56229-9902.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER

I.

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

- A. “MRHC” shall mean the Minnesota Rural Health Cooperative; 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. “Distribute” means to provide a copy of the specified documents by (1) personal delivery, with a signed receipt of confirmation; (2) first-class mail with delivery confirmation or return receipt requested; (3) facsimile with return confirmation; or (4) electronic mail with electronic return confirmation.
- C. “Hospital” means a health care facility licensed by the State of Minnesota as a Hospital.
- D. “Participate” in an entity or an arrangement means (1) to be a partner, shareholder, owner, member, or employee of such entity or arrangement, or (2) to provide services, agree to provide services, or offer to provide services to a Payor through such entity or arrangement. This definition applies to all tenses and forms of the word “Participate,” including, but not limited to, “Participating,” “Participated,” and “Participation.”
- E. “Payor” means any person that pays or arranges for payment, for all or any part of any Physician, Hospital, or Pharmacy services to itself or any other Person, as well as any Person that develops, leases, or sells access to networks of Physicians, Hospitals, or Pharmacies.
- F. “Person” means both natural persons and artificial persons, including, but not limited to corporations, unincorporated entities, and governments.
- G. “Pharmacy” means any Person licensed by the State of Minnesota to dispense pharmaceuticals.

- H. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- I. “Preexisting Contract” means a contract for the provision of Physician, Hospital, or Pharmacy services that was in effect on the date of the receipt by a Payor that is a party to such contract of notice sent by MRHC pursuant to Paragraph III.A.2 of this Order of such Payor’s right to terminate such contract.
- J. “Principal Address” means either (1) primary business address, if there is a business address, or (2) primary residential address, if there is no business address.

II.

IT IS FURTHER ORDERED that MRHC, directly or indirectly, or through any corporate or other device, in connection with the provision of Physician, Hospital, or Pharmacy 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, Hospitals, or Pharmacies with respect to the provision of Physician, Hospital, or Pharmacy services:
 - 1. to refuse to deal, or threaten to refuse to deal with any Payor regarding any term, condition, or requirement upon which any Physician, Hospital, or Pharmacy deals, or is willing to deal with any Payor, including, but not limited to, price terms; or
 - 2. not to deal individually with any Payor, or not to deal with any Payor other than through MRHC;
- B. Submitting to the Minnesota Department of Health for approval any agreement with any Payor if the MRHC or any of its officers, directors, members, or employees engaged in any acts of coercion, intimidation, or boycott of, or any concerted refusal to deal with, any Payor seeking to contract with the MRHC;
- C. Exchanging or facilitating in any manner the exchange or transfer of information to facilitate any action prohibited by Paragraphs II.A and II.B;
- D. Attempting to engage in any action prohibited by Paragraphs II.A through II.C above; and
- E. 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.D above.

PROVIDED, HOWEVER, that it shall not of itself constitute a violation of Paragraph II of this Order for MRHC, when negotiating with any Payor in compliance with Minnesota Annotated Code § 62R.01, *et seq.*, to:

- (1) reject any offer or counter-offer or refuse to contract; or
- (2) exchange such information as is reasonably necessary to contract pursuant to negotiating or contracting with any Payor.

III.

IT IS FURTHER ORDERED that MRHC shall:

- A. Within thirty (30) days from the date this Order becomes final:
 1. Distribute this Order and the Complaint to each current officer, director, member, or employee of MRHC; and
 2. Send by first-class mail, with return receipt requested, with the letter attached as the Appendix, to the chief executive officer of each Payor with which MRHC has contracted at any time since January 1, 2005.
- B. Terminate, without penalty or charge, and in compliance with any applicable laws, any Preexisting Contract with any Payor, at the earlier of: (1) receipt by MRHC of a written request from a Payor to terminate such contract, or (2) the earliest termination or renewal date (including any automatic renewal date) of such contract.

PROVIDED, HOWEVER, a Preexisting Contract for Physician services or Hospital 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:

- (1) the Payor submits to MRHC 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
- (2) MRHC has determined not to exercise any right to terminate.

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

- C. Within ten (10) days of receiving notification from a Payor to terminate, pursuant to Paragraph III.B of the Order, notify in writing, by first class mail with return receipt requested, each Physician, Hospital, or Pharmacy that provides services through that contract to be terminated.

D. For three (3) years after the date on which this Order becomes final:

1. Distribute this Order and the Complaint to each person who becomes an officer, director, member, or employee of MRHC, and who did not previously receive a copy of this Order and the Complaint, within thirty (30) days of the time that he or she becomes an officer, director, member, or employee;
2. send by first class mail, return receipt requested, a copy of this Order and the Complaint to each Payor who contracts with MRHC for the provision of Physician services or Hospital services and who did not previously receive a copy of this Order and the Complaint, within thirty (30) days of the time that such Payor enters into such contract; and
3. annually publish in the MRHC Newsletter, or any successor publication sent to all Physician and Hospital members of MRHC, this Order and the Complaint with such prominence as is given to regularly featured articles.

IV.

IT IS FURTHER ORDERED that MRHC shall file a verified written report within sixty (60) days a from the date this Order becomes final, annually thereafter for three (3) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require.

A. Each report shall include, among other information that may be necessary:

1. a detailed description of the manner and form in which MRHC has complied and is complying with this Order;
2. the name, address, and telephone number of each Payor with which each MRHC has had any contact during the one (1) year period preceding the date for filing such report; and
3. the status of each contract required to be terminated.

B. The sixty day report shall also include, in addition to the information required by Paragraph IV.A:

1. the identity of each Payor sent a copy of the letter in the Appendix to the Order and the response of each Payor to that letter;
2. a copy of each verification of Distribution required by Paragraph III.A.1; and
3. a copy of each return receipt required by Paragraph III.A.2 and Paragraph III.C

C. Each annual report shall also include, in addition to the information required by Paragraph IV.A:

1. a copy of each verification of Distribution required by Paragraph III.D.1;
2. a copy of each return receipt required by Paragraph III.D.2; and
3. evidence that the copy of the Order and Complaint has been published, as required by Paragraph III.D.3.

V.

IT IS FURTHER ORDERED that MRHC 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: (1) any proposed dissolution of MRHC; (2) any proposed acquisition, merger, or consolidation of MRHC; or (3) any other change in MRCH 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.

VI.

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 MRHC, that MRHC shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during office hours of MRHC 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 MRHC relating to compliance with this Order, which copying services shall be provided by MRHC at its expense; and
- B. To interview officers, directors, or employees of MRHC, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on December 28, 2030.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: December 28, 2010

APPENDIX

[letterhead of MRHC]

[name of Payor's CEO]
[address]

Dear _____:

Enclosed is a copy of a complaint and a consent order (“Order”) issued by the Federal Trade Commission against Minnesota Rural Health Cooperative (“MRHC”).

Pursuant to Paragraph III.B. of the Order, MRHC must allow you to terminate, upon your written request, without any penalty or charge, any contracts with MRHC that are in effect as of the date you receive this letter.

If you do not make a written request to terminate the contract, Paragraph III.B. further provides that the contract will terminate on the earlier of the contract’s termination date, renewal date (including any automatic renewal date), or anniversary date, which is [date].

You may, however, ask MRHC to extend the contract beyond [date], the termination, renewal, or anniversary date, to any date no later than [date], one (1) year after the date the Order becomes final.

If you choose to extend the term of the contract, you may later terminate the contract at any time.

Any request either to terminate or to extend the contract should be made in writing, and sent to me at the following address: [address].

Sincerely,

[MRHC to fill in information in brackets]