

ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT

In the Matter of Southwest Health Alliances, Inc., doing business as BSA Provider Network, File No. 091 0013

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed Consent Order with Southwest Health Alliances, Inc., dba BSA Provider Network (“BSA Provider Network” or “Respondent”). The agreement settles charges that BSA Provider Network violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by fixing prices charged to those offering coverage for health care services (“payors”) in the Amarillo, Texas, area. The proposed Consent Order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed Consent Order final.

The purpose of this analysis is to facilitate public comment on the proposed Consent Order. The analysis is not intended to constitute an official interpretation of the agreement and proposed Consent Order or to modify their terms in any way. Further, the proposed Consent Order has been entered into for settlement purposes only and does not constitute an admission by Respondent that it violated the law or that the facts alleged in the Complaint (other than jurisdictional facts) are true.

The Complaint’s Allegations

BSA Provider Network is a multi-specialty independent practice association consisting of multiple, independent medical practices with a total of approximately 900 physician members, of which approximately 300 are devoted to primary care, in the Amarillo, Texas, area.

Since at least 2000, BSA Provider Network has acted to restrain competition by facilitating, entering into, and implementing agreements to fix the prices and other terms at which it would contract with payers; and to engage in collective negotiations over terms and conditions of dealing with payers.

BSA Provider Network did not engage in any activity that might justify collective agreements on the prices its members would accept for their services. For example, the physicians in BSA Provider Network have not clinically or financially integrated their practices to create efficiencies sufficient to justify their acts and practices. The Respondent’s actions have restrained price and other forms of competition among physicians in the Amarillo, Texas, area and thereby harmed consumers (including health plans, employers, and individual consumers) by increasing the prices for physician services.

The Proposed Consent Order

The proposed Consent Order is designed to prevent the continuance and recurrence of the illegal conduct alleged in the complaint while it allows BSA Provider Network to engage in legitimate, joint conduct. The proposed Consent Order does not affect BSA Provider Network's activities in contracting with payers on a capitated basis.

Paragraph II.A prohibits Respondent from entering into or facilitating agreements between or among any health care providers: (1) to negotiate on behalf of any physician with payer; (2) to negotiate with any physician as a payer; (3) to deal, refuse to deal, or threaten to refuse to deal with any payer; (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 except through BSA Provider Network.

The other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits Respondent from facilitating exchanges of information between health care providers concerning whether, or on what terms, to contract with a payer. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B, and Paragraph II.D proscribes 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.

As in other Commission orders addressing health care providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations. Paragraph II does not preclude BSA Provider Network from engaging in conduct that is reasonably necessary to form or participate in legitimate "qualified risk-sharing" or "qualified clinically-integrated" joint arrangements, as defined in the proposed Consent Order. Also, Paragraph II would not bar agreements that only involve physicians who are part of the same medical group practice, defined in Paragraph I.B, because it is intended to reach agreements between and among independent competitors.

Paragraphs III-VI require BSA Provider Network to notify the Commission before it initiates certain contacts regarding contracts with payers. Paragraphs III and IV apply to arrangements under which BSA Provider Network would be acting as a messenger on behalf of its member physicians. Paragraphs V and VI apply to arrangements under which BSA Provider Network plans to achieve financial or clinical integration.

Paragraph VII.A requires BSA Provider Network to send a copy of the Complaint and Consent Order to its physician members, its management and staff, and any payers who communicated with BSA Provider Network, or with whom BSA Provider Network communicated, with regard to any interest in contracting for physician services.

Paragraph VII.B allows for contract termination if a payer voluntarily submits a request to BSA Provider Network to terminate its contract. Pursuant to such a request, Paragraph VII.B requires BSA Provider Network to terminate, without penalty, any payer contracts that they had

entered into since it began its alleged restraint of trade in 2000. This provision is intended to eliminate the effects of BSA Provider Network's joint price setting behavior. Paragraph VII.C requires that BSA Provider Network send a copy of any payer's request for termination to every physician who participates in each group.

Paragraph VII.D contains notification provisions relating to future contact with physicians, payers, management, and staff. These provisions require BSA Provider Network to distribute a copy of the Complaint and Consent Order to each physician who begins participating in each group; each payer who contacts each group regarding the provision of physician services; and each person who becomes an officer, director, manager, or employee for three years after the date on which the Consent Order becomes final. In addition, Paragraph VII.D requires BSA Provider Network to publish a copy of the Complaint and Consent Order, for three years, in any official publication that it sends to its participating physicians

Paragraphs VII.E and VIII-IX impose various obligations on BSA Provider Network to report or to provide access to information to the Commission to facilitate monitoring its compliance with the Consent Order.

Pursuant to Paragraph X, the proposed Consent Order will expire 20 years from the date it is issued.