

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of SOUTHWEST HEALTH ALLIANCES, INC., dba BSA PROVIDER NETWORK, a Texas corporation.))) DOCKET NO. C-))))))
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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 Respondent Southwest Health Alliances, Inc., dba BSA Provider Network ("BSAPN"), hereinafter 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 ("payers") in the Amarillo, Texas, area.

RESPONDENT

2. BSAPN, a physician hospital organization ("PHO"), 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 S. Tyler St., Amarillo, TX 79101. BSAPN consists of 25 hospitals; approximately 35 physicians employed by BSAPN's affiliated Health Network, of which approximately 20 are devoted to primary care; and multiple, independent medical practices with a total of approximately 900 physician members, of which approximately 300 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 payers 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, BSAPN's physician members have been, and are now, in competition with each other for the provision of physician services in the Amarillo, Texas, 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 PAYERS

7. Individual physicians and physician group practices contract with payers 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 payers' subscribers or covered employees and dependents.

8. Physicians and physician group practices sometimes form or participate in financially-integrated or clinically-integrated joint ventures to provide physician services under agreements with payers willingly seeking such arrangements. Under such arrangements, the physicians and physician group practices may share financial risks and rewards based on their collective success in achieving pre-established targets or goals regarding aggregate utilization and costs of the services provided to covered individuals or they may engage in other behavior to obtain efficiencies.

9. A PHO that employs physicians may, if it is financially-integrated or clinically-integrated, organize and operate its own HMO or PPO by contracting with its non-employed members, as well as with other hospitals and physician group practices, concerning the terms and conditions, including price terms, under which each provider will render services to the HMO's or PPO's covered lives and dependants.

10. Physicians and physician group practices entering into contracts with payers often agree to accept lower compensation from payers in order to obtain access to additional patients made available by the payers' relationship with the covered individuals. These contracts may reduce payers' costs and enable them to lower the price of insurance or of providing health benefits, thereby resulting in lower medical costs for covered individuals.

11. Competing physicians sometimes use a "messenger" to facilitate their contracting with payers, in ways that do not constitute an unlawful agreement on prices and other competitively significant terms. Messenger arrangements can reduce contracting costs between payers and physicians. For example, a payer may submit a contract offer to the messenger, with the understanding that the messenger will transmit that offer to a group of physicians and inform the payer how many physicians across specialties accept the offer or have a counteroffer.

Alternatively, the messenger may receive authority from the individual physicians to accept contract offers that meet certain criteria.

12. 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 payers to provide services to individuals covered by a payer's programs, and what prices they will accept as payment for their services pursuant to such contracts.

RESPONDENT'S OPERATION

13. Since its formation, BSAPN has purportedly administered contracts with payers for and on behalf of its respective physician members through a "messenger model," under which BSAPN received offers from payers and messengered those offers to its physician members who each made a unilateral, independent decision to accept or reject a payer's offer.

14. Since its formation, BSAPN also has purportedly administered contracts with payers for and on behalf of its respective physician members through a "reverse messenger model," under which BSAPN surveyed its respective member physicians on a unilateral, independent basis to determine at what price level each of them would agree to contract with payers. From the results of this survey, BSAPN constructed its own fee schedule which it offered to payers as a contract in which all its physician members would participate.

15. Since its formation, BSAPN has used its own fee schedule to offer a non-risk-bearing PPO to self-insured or independently-insured employers.

16. The member physicians' participation in BSAPN and their offering of services through BSAPN's administered contracts, was not, however, the member physicians' exclusive 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 BSAPN, to individual patients and through contracts individually and directly entered into with payers.

ANTICOMPETITIVE CONDUCT

17. Since at least 2000, BSAPN, acting as a combination of its physician members, and in conspiracy with its members, has acted to restrain competition 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 payers; and to engage in collective negotiations over terms and conditions of dealing with payers.

18. Since at least 2000, BSAPN has established its own fee schedule through direct negotiations with its physician members.

19. Since at least 2000, BSAPN has used the prices in its own fee schedule as a signaling device as to whether its members should accept or reject offers it messengered on behalf of some payers.

20. Since at least 2000, BSAPN, with some payers, has renegotiated contracts that were originally administered through a messenger model. In these renegotiations, price was increased based on a demand BSAPN made on behalf of its physician members. The physician members received a new, higher reimbursement rate and did not make a unilateral, independent decision to accept or reject a payer's offer.

21. Since at least 2000, BSAPN has periodically increased the rates of its own fee schedule in contracts administered through a reverse messenger model. In implementing these rate increases, BSAPN did not survey its physician members on a unilateral, independent basis to determine at what price level each of them would agree to contract with payers.

RESPONDENT'S CONDUCT IS NOT LEGALLY JUSTIFIED

22. Respondent's joint 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 BSAPN.

RESPONDENT'S ACTIONS HAVE HAD, OR COULD BE EXPECTED TO HAVE, SUBSTANTIAL ANTICOMPETITIVE EFFECTS

23. Respondent's actions described in Paragraphs 14 through 16 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 Amarillo, Texas, area in the following ways, among others:

- A. unreasonably restraining price and other forms of competition among physicians who are members of BSAPN;
- B. increasing prices for physician services;
- C. depriving payers, including insurers and employers, and individual consumers, of the benefits of competition among physicians; and
- D. depriving consumers of the benefits of competition among payers.

24. 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 _____ day of _____, 2011, issues its Complaint against Respondent BSAPN.

By the Commission.

Donald S. Clark
Secretary

SEAL