

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

)
In the Matter of)
) Docket No. C-4055
)
AURORA ASSOCIATED)
PRIMARY CARE)
PHYSICIANS, L.L.C.,) DECISION AND ORDER
and)
)
)
RICHARD A. PATT, M.D.,)
GARY L. GAEDE, M.D., and)
MARCIA L. BRAUCHLER,)
individually.)
_____)

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondents named in the caption hereof (“Respondents”), and Respondents having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order to Cease and Desist (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents 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 Respondents have violated the 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, and having duly considered the comments filed thereafter by interested persons pursuant to § 2.34 of its Rules, now in further conformity with the procedure 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 Aurora Associated Primary Care Physicians, L.L.C. (“AAPCP”), is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at P. O. Box 5183, Englewood, CO 80155.
2. Respondent Marcia L. Brauchler is a consultant to AAPCP. Her office and principal place of business is located at P.O. Box 260661, Littleton, CO 80163-0171.
3. Respondent Richard A. Patt, M.D., is a physician licensed under the laws of the State of Colorado, with his office and principal place of business located at 1421 S. Potomac Street, Suite 320, Aurora, CO 80012.
4. Respondent Gary L. Gaede, M.D., is a physician licensed under the laws of the State of Colorado, with his office and principal place of business located at 14991 E. Hampden Avenue, Suite 210, Aurora, CO 80014.
5. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

I.

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

- A. “Respondent AAPCP” means Aurora Associated Primary Care Physicians, L.L.C., its officers, directors, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by Aurora Associated Primary Care Physicians, L.L.C., and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.
- B. “Respondent Brauchler” means Marcia L. Brauchler.
- C. “Physician Respondents” means Respondent Richard A. Patt, M.D. and Respondent Gary L. Gaede, M.D.

- D. “Respondents” means Respondent AAPCP, Respondent Brauchler, and the Physician Respondents.
- E. “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.
- F. “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 payor 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.”)
- G. “Payor” means any person that pays, or arranges for payment, for all or any part of any physician services for itself or for any other person.
- H. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- I. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- J. “Preexisting Contract” means a contract that was in effect prior to the receipt, by all payors that are parties to such contract, of notice sent by Respondent AAPCP pursuant to Paragraph IV.B. of this Order, of each such payor’s right to terminate such contract.
- K. “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.
- L. “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 reimbursement or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the joint arrangement.

- M. “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 to jointly control costs and improve quality by managing the provision of physician services, such as risk-sharing involving:
 - a. the provision of physician services to payors at a capitated rate,
 - b. the provision of physician services for a predetermined percentage of premium or revenue from payors,
 - 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 payment, where 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 reimbursement or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the joint arrangement.

II.

IT IS FURTHER ORDERED that Respondents, 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:
 1. To negotiate on behalf of any physician with any payor,

2. To deal, refuse to deal, or threaten to refuse to deal with any payor,
 3. Regarding any term, condition, or requirement upon which any physician deals, or is willing to deal, with any payor, including, but not limited to, price terms, or
 4. Not to deal individually with any payor, or not to deal with any payor through any arrangement other than Respondent AAPCP;
- B. Exchanging or facilitating in any manner the exchange or transfer of information among physicians concerning any physician's willingness to deal with a payor, or the terms or conditions, including price terms, on which the physician is willing to deal;
- C. Attempting to engage in any action prohibited by Paragraph 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 involving or conduct by:

- (i) Respondent Brauchler that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement, or that solely involves physicians in the same medical group practice;
- (ii) any Physician Respondent that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement through which he provides physician services, or that solely involves physicians in such Physician Respondent's own medical group practice; or
- (iii) Respondent AAPCP that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement, so long as the arrangement does not restrict the ability, or facilitate the refusal, of physicians who participate in it to deal with payors on an individual basis or through any other arrangement.

III.

IT IS FURTHER ORDERED that Respondent Brauchler, for a period of three (3) years from the date that this order is issued, 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. Negotiating with any payor on behalf of any physician who participates, or has participated, in Respondent AAPCP, notwithstanding whether such conduct also violates Paragraph II. of this Order; and
- B. Advising any physician who participates, or has participated, in Respondent AAPCP to accept or reject any term, condition, or requirement of dealing with any payor, notwithstanding whether such conduct also violates Paragraph II. of this Order.

IV.

IT IS FURTHER ORDERED that Respondent AAPCP shall:

- A. Within thirty (30) days after the date on which this Order is issued, send by first-class mail a copy of this Order and the Complaint to:
 - 1. each physician who participates, or has participated, in Respondent AAPCP, and
 - 2. each officer, director, manager, and employee of Respondent AAPCP;
- B. Within thirty (30) days after the date on which this Order is issued, send copies of this Order, the Complaint, and the notice specified in Appendix B to this Order, by first class mail return receipt requested, to the chief executive officer of each payor that is listed in Appendix A or that contracts with Respondent AAPCP for the provision of physician services;
- C. Terminate, without penalty or charge, any Preexisting Contract with any payor for the provision of physician services, upon receipt by Respondent AAPCP of a written request to terminate such contract from any payor that is a party to the contract or that pays for physician services provided through the contract;
- D. For a period of three (3) years after the date this Order is issued:
 - 1. Distribute by first-class mail a copy of this Order and the Complaint to:
 - a. each physician who begins participating in Respondent AAPCP, and who did not previously receive a copy of this Order and the Complaint from Respondent AAPCP, within thirty (30) days of the time that such participation begins,

- b. each payor that contracts with Respondent AAPCP for the provision of physician services, and that did not previously receive a copy of this Order and the Complaint from Respondent AAPCP, within thirty (30) days of the time that such payor enters into such contract, and
 - c. each person who becomes an officer, director, manager, or employee of Respondent AAPCP, and who did not previously receive a copy of this Order and the Complaint from Respondent AAPCP, within thirty (30) days of the time that he or she assumes such responsibility with Respondent AAPCP; and
2. Annually publish in an official annual report or newsletter sent to all physicians who participate in Respondent AAPCP, a copy of this Order and the Complaint with such prominence as is given to regularly featured articles;
- E. Notify the Commission at least thirty (30) days prior to any proposed change in Respondent AAPCP, such as dissolution, assignment, sale resulting in the emergence of a successor company or corporation, the creation or dissolution of subsidiaries, or any other change in Respondent AAPCP that may affect compliance obligations arising out of this Order; and
- F. File verified written reports within sixty (60) days after the date this Order is issued, annually thereafter for three (3) years on the anniversary of the date this Order is issued, and at such other times as the Commission may by written notice require, setting forth:
1. in detail, the manner and form in which Respondent AAPCP has complied and is complying with this Order, including, but not limited to, (a) information sufficient to describe, for each qualified risk-sharing arrangement established or operated by Respondent AAPCP, the manner in which the physicians who participate in such arrangement share financial risk, and (b) information sufficient to describe, for each qualified clinically-integrated joint arrangement established or operated by Respondent AAPCP, the manner in which the physicians who participate in such arrangement have integrated their practices, and
 2. the name, address, and telephone number of each payor with which Respondent AAPCP has had any contact.

V.

IT IS FURTHER ORDERED that Respondent Brauchler shall:

- A. For a period of three (3) years after the date this Order is issued, distribute by first-class mail a copy of this Order and the Complaint to:
1. all physician groups, other than any medical group practice, that Respondent Brauchler represents for the purpose of contracting, or seeking to contract, with payors for the provision of physician services, or that Respondent Brauchler advises with regard to their dealings with payors in connection with the provision of physician services, within (30) days of the time that Respondent Brauchler begins providing such representation or advice, unless such physician group previously received a copy of this Order and the Complaint from Respondent AAPCP or Respondent Brauchler, and
 2. each payor with which Respondent Brauchler deals, or has dealt, for the purpose of contracting, or seeking to contract, while representing any physician or any group of physicians, or while advising any physician or group of physicians with regard to their dealings regarding contracting with such payor for the provision of physician services, within thirty (30) days of such dealing, unless such payor previously received a copy of this Order and the Complaint from Respondent AAPCP or Respondent Brauchler; and
- B. File verified written reports within sixty (60) days after the date this Order is issued, annually thereafter for three (3) years on the anniversary of the date this Order is issued, and at such other times as the Commission may by written notice require, setting forth:
1. in detail, the manner and form in which Respondent Brauchler has complied and is complying with this Order,
 2. the name, address, and telephone number of each physician or group of physicians that Respondent Brauchler has represented or advised with respect to their dealings with any payor in connection with the provision of physician services, and
 3. the name, address, and telephone number of each payor with which Respondent Brauchler has dealt while representing any physician or any group of physicians in connection with the provision of physician services.

VI.

IT IS FURTHER ORDERED that each Physician Respondent shall file verified written reports within sixty (60) days after the date this Order is issued, annually thereafter for three (3) years on the anniversary of the date this Order is issued, and at such other times as the Commission may by written notice require, setting forth:

- A. in detail, the manner and form in which the Physician Respondent has complied and is complying with this Order, including, but not limited to, any information necessary to demonstrate such compliance;
- B. the name, address, and telephone number of each physician group, including any medical group practice, in which the Physician Respondent has participated;
- C. the name, address, and telephone number of each person, who is not a member or employee of the Physician Respondent's medical group practice, that has represented or advised the Physician Respondent with respect to contracting with any payor for the provision of physician services;
- D. the name, address, and telephone number of each payor, other than individual patients, that has communicated with the Physician Respondent for the purpose of contracting, or seeking to contract, for physician services; and
- E. the name, address, and telephone number of each payor, other than individual patients, with which the Physician Respondent has entered into a written agreement for the provision of physician services, and the nature of such agreement.

VII.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission of any change in its Principal Address within twenty (20) days of such change in address.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and documents in their possession, or under their control, relating to any matter contained in this Order;
- B. Upon five (5) days' notice to Respondent AAPCP, and in the presence of counsel, and without restraint or interference from it, to interview officers, directors, or employees of Respondent AAPCP; and

- C. Upon five (5) days' notice to Respondent Brauchler or to any Physician Respondent, and in the presence of counsel, and without restraint or interference from such Respondent, to interview such Respondent or the employees of such Respondent.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on July 16, 2022.

By the Commission.

Donald S. Clark
Secretary

ISSUED: July 16, 2002

Appendix A

Aetna US Healthcare of Colorado
Anthem Blue Cross Blue Shield
CIGNA HealthCare of Colorado
Humana Health Plan
Mountain Medical Affiliates, Inc.
OneHealth Plan
PacifiCare of Colorado
Patient Choice Healthcare of Colorado
United Health Care of Colorado

Appendix B

[letterhead of Aurora Associated Primary Care Physicians, L.L.C.]

[name of payor's CEO]

[address]

Dear _____:

Enclosed is a copy of a complaint and a consent order issued by the Federal Trade Commission against Aurora Associated Primary Care Physicians, L.L.C. ("AAPCP"). I call to your attention Paragraph IV.C of the order, which gives you the right to terminate, without penalty or charge, any contracts with AAPCP that were in effect prior to your receipt of this letter.

Sincerely,