

1. Respondent HAL is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its principal address located at 230 Calle Del Norte, Laredo, Texas 78041.
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. “Respondent HAL” means Health Care Alliance of Laredo, L.C., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- B. “Hospital” means a health care facility licensed by any state as a hospital.
- C. “Medical Group Practice” means a bona fide, integrated firm in which physicians practice together as partners, shareholders, owners, or employees, or in which only one physician practices.
- D. “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 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 services for itself or for any other person. Payor includes any person that develops, leases, or sells access to networks of physicians.
- F. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- G. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- H. “Preexisting contract” means a contract for the provision of physician 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

Respondent HAL, pursuant to Paragraph V.A.3 of this Order, of such payor's right to terminate such contract.

- I. "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.

- J. "Qualified clinically-integrated joint arrangement" means an arrangement to provide physician services in which:
 - 1. all physicians that 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 that 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 through the arrangement.

- K. "Qualified risk-sharing joint arrangement" means an arrangement to provide physician services in which:
 - 1. all physicians that participate in the arrangement share substantial financial risk through their participation in the arrangement and thereby create incentives for the physicians that 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 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 that 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, 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 price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the arrangement.

II.

IT IS FURTHER ORDERED that Respondent HAL, 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 HAL;
- B. Exchanging or facilitating in any manner the exchange or transfer of information between or among physicians concerning any physician’s willingness to deal with a payor, or the terms or conditions, including any price terms, on which the physician is willing to deal with a payor;
- 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, subject to the requirements of Paragraph IV of this Order, nothing in this Paragraph II shall prohibit any agreement involving, or any conduct that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement that 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, or that solely involves physicians in the same medical group practice.

III.

IT IS FURTHER ORDERED that, for three (3) years after the date this Order becomes final, Respondent HAL shall notify the Secretary of the Commission in writing (“Paragraph III Notification”) at least sixty (60) days prior to entering into any arrangement with any physicians or any medical group practices under which Respondent HAL would act as a messenger, or as an agent on behalf of those physicians or those medical group practices, with payors regarding contracts. The Paragraph III Notification shall include the identity of each proposed physician participant; the proposed geographic area in which the proposed arrangement will 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 arrangement; and a description of procedures to be implemented to limit possible anticompetitive effects, such as those prohibited by this Order. If, within fifteen (15) days from the Commission’s receipt of the Paragraph III Notification, a representative of the Commission makes a written request for additional information to Respondent HAL, then Respondent HAL shall not engage in any conduct described in Paragraph III of this Order prior to the expiration of sixty (60) days after substantially complying with such request for additional information.

Provided, however, that written confirmation reducing the applicable waiting period may be granted, upon request to the Bureau of Competition. 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 a violation of the law, or of this Order, may not have occurred.

Provided further that Paragraph III Notification is not required for Respondent HAL to inform any physicians that a payor has exercised its right, pursuant to the first proviso of Paragraph V.D of the Order, to extend the term of its contract, nor is Paragraph III Notification required for Respondent HAL’s subsequent acts as a messenger pursuant to an arrangement for which this Paragraph III Notification has been given.

Receipt by the Commission of any Paragraph III Notification is not to be construed as a determination by the Commission that any action described in such Paragraph III Notification does or does not violate this Order or any law enforced by the Commission.

IV.

IT IS FURTHER ORDERED that, for three (3) years from the date this Order becomes final, pursuant to each qualified clinically-integrated joint arrangement or qualified risk-sharing joint arrangement (“Arrangement”) in which Respondent HAL is a participant, Respondent HAL shall notify the Secretary of the Commission in writing (“Paragraph IV 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 or other terms or conditions of dealing with any payor; or
- B. Contacting a payor, pursuant to an Arrangement, to negotiate or enter into any agreement relating to price or other terms or conditions of dealing with any payor, on behalf of any physician in such Arrangement.

PROVIDED, HOWEVER, that Paragraph IV Notification shall not be required for an Arrangement whenever such Notification has been previously given for that Arrangement.

PROVIDED FURTHER:

- 1. that with respect to any Paragraph IV Notification, Respondent HAL shall include the following information:
 - a. the identity of each physician participant, the medical or other physician specialty, group practice, if applicable, and the name of each hospital where the physician has privileges;
 - b. a description of the Arrangement and its purpose, function, and geographic area of operation;
 - c. a description of the nature and extent of the integration and the efficiencies resulting from the Arrangement;
 - d. an explanation of how any agreement on prices, or on contract terms related to price, furthers the integration and achievement of the efficiencies resulting from the Arrangement;
 - e. a description of any procedures proposed to be implemented to limit possible anticompetitive effects resulting from the Arrangement or its activities; and
 - f. all studies, analyses, and reports that were prepared for the purpose of evaluating or analyzing competition for physician services in the Laredo, Texas area, including, but not limited to, the market share of physician services in such market; and
- 2. if, within sixty (60) days from the Commission's receipt of the Paragraph IV Notification, a representative of the Commission makes a written request for additional information to Respondent HAL, then Respondent HAL shall not engage in any conduct described in Paragraph IV.A or Paragraph IV.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. 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 a violation of the law, or of this Order, may not have occurred. Further, receipt by the Commission from Respondent HAL of any Paragraph IV Notification is not to be construed as a determination by the Commission that any such Arrangement does or does not violate this Order or any law enforced by the Commission.

V.

IT IS FURTHER ORDERED that Respondent HAL shall:

- A. Within thirty (30) days after the date on which this Order becomes final, send a copy of this Order and the Complaint by:
1. first-class mail, with return receipt requested or delivery confirmation, or electronic mail, with return confirmation, to each physician that participates in Respondent HAL;
 2. first-class mail, with return receipt requested or delivery confirmation, or electronic mail, with return confirmation, to each present officer, director, manager, and employee of Respondent HAL; and
 3. first-class mail, return receipt requested, and with the letter attached as Appendix A to this Order, to the chief executive officer of each payor with whom Respondent HAL has a record of being in contact since January 1, 2001, regarding contracting for the provision of physician services; *provided, however*, that a copy of Exhibit A need not be included in the mailings to those payors with whom Respondent HAL has not entered into or renewed (including any automatic renewal of) a contract since January 1, 2001.
- B. For a period of three (3) years after the date this Order becomes final:
1. Distribute a copy of this Order and the Complaint by:
 - a. first-class mail, with return receipt requested or delivery confirmation, or electronic mail, with return confirmation, to each physician that begins participating in Respondent HAL, and that did not previously receive a copy of this Order and the Complaint from Respondent HAL, within thirty (30) days of the day that such participation begins;

- b. first-class mail, return receipt requested, to each payor that contracts with Respondent HAL for the provision of physician services, and that did not previously receive a copy of this Order and the Complaint from Respondent HAL, within thirty (30) days of the day that such payor enters into such contract;
 - c. first-class mail, with return receipt requested or delivery confirmation, or electronic mail, with return confirmation, to each person who becomes an officer, director, manager, or employee of Respondent HAL, and who did not previously receive a copy of this Order and the Complaint from Respondent HAL, within thirty (30) days of the day that he or she assumes such responsibility with Respondent HAL; and
 2. Annually publish a copy of this Order and the Complaint in an official annual report or newsletter sent to all physicians who participate in Respondent HAL, with such prominence as is given to regularly featured articles.
- C. File a verified written report within sixty (60) days after the date on which 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. Each such report shall include:
 1. A detailed description of the manner and form in which Respondent HAL has complied and is complying with this Order;
 2. The name, address, and telephone number of each payor with which Respondent HAL has had any contact; and
 3. Copies of the delivery confirmations or electronic mail confirmations required by Paragraphs V.A.1, V.A.2, V.B.1.a and V.B.1.c of this Order, and copies of the signed return receipts required by Paragraphs V.A.3, V.B.1.b, and V.E of this Order.
- D. Terminate, without penalty or charge, and in compliance with any applicable laws, any preexisting contract with any payor for the provision of physician services, at the earliest of:
 1. the termination date specified in a written request from a payor to Respondent HAL to terminate such contract;
 2. the earliest termination or renewal date (including any automatic renewal date) of such contract; or

3. one year from the date this Order becomes final.

PROVIDED, HOWEVER, a preexisting contract 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 payor submits to Respondent HAL 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 HAL 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 part (1) of Paragraph V.D of this Order, to terminate the contract at any time.

E. Within ten (10) days of receiving a written request from a payor, pursuant to Paragraph V.D (1) of this Order, distribute, by first-class mail, return receipt requested, a copy of that request to each physician participating in Respondent HAL as of the date Respondent HAL receives such request.

VI.

IT IS FURTHER ORDERED that Respondent HAL shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of Respondent HAL, (2) acquisition, merger or consolidation of Respondent HAL, or (3) other change in Respondent HAL that may affect compliance obligations arising out of this Order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in Respondent HAL.

VII.

IT IS FURTHER ORDERED that Respondent HAL 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, Respondent HAL 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 its possession, or under its control, relating to any matter contained in this Order; and

- B. Upon five (5) days' notice, and in the presence of counsel, and without restraint or interference from it, to interview officers, directors, or employees of the Respondent.

IX.

IT IS FURTHER ORDERED that this Order shall terminate twenty (20) years from the date it is issued.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:

Appendix A

[letterhead of Respondent HAL]

[date]

[name and address of payor's CEO]

Dear [CEO]:

Enclosed is a copy of a complaint and a decision and order (“Order”) issued by the Federal Trade Commission against Health Care Alliance of Laredo, L.C. (“HAL”).

Pursuant to Paragraph V.D of the Order, HAL must allow you to terminate, upon your written request, without any penalty or charge, any contracts with HAL for the provision of physician services 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 V.D further provides that the contract will terminate on the earlier of:

1. [date], the contract's termination or renewal date; or
2. [date], one year from the date the Order becomes final.

You may, however, ask HAL to extend the contract beyond [date], the termination or renewal 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,

[signatory]

[HAL to fill in applicable dates]