

Alta Bates Medical Group, Inc. (“ALMG”)), a 600-physician independent practice association serving the Berkeley and Oakland, California, area, has agreed to settle Federal Trade Commission charges that it violated federal antitrust law by fixing prices charged to health care insurers. A proposed consent order would prohibit ALMG from collectively negotiating fee-for-service reimbursements and engaging in related anticompetitive conduct.

The FTC’s complaint focuses on ALMG’s contracts with health plans to provide fee-for-service medical care. Under these arrangements, the payor compensates physicians for services pursuant to agreed-upon fee schedules. According to the complaint, since at least 2001, ALMG has orchestrated collective negotiations for fee-for-service contracts. ALMG proposed, rejected, and countered offers to insurers without consulting with its individual physician members regarding the prices each independently would accept and transmitted the insurers’ offers to its individual physician members only after the group had approved the negotiated prices.

In addition to price-fixing of fee-for-service reimbursements, the FTC’s complaint alleges an unlawful concerted refusal to deal. The complaint alleges that this conduct constituted an attempt to limit Kaiser’s product offerings to consumers. Although ALMG’s refusal to deal was ultimately unsuccessful, the sole purpose of this action was to impede competition in the provision of physician services in and around Berkeley and Oakland.

The FTC’s complaint charges that ALMG did not engage in any activity that might justify collective agreements on the prices its members would accept for their services from insurers under fee-for-service arrangements. For example, the physicians in ALMG have not clinically or financially integrated their practices to create efficiencies sufficient to justify the complained of conduct. As a consequence, ALMG’s actions have restrained price and other forms of competition among physicians in the Berkeley and Oakland, California area and harmed consumers by increasing the prices for physician services, according to the FTC’s complaint.

The proposed FTC Order is designed to prevent the continuance or recurrence of the illegal conduct alleged in the complaint. The Order requires ALMG to 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 with respect to their provision of Physician services:
 1. To negotiate on behalf of any Physician with any Payor;
 2. To refuse to deal, or threaten to refuse to deal, with any Payor, in furtherance of any conduct or agreement that is prohibited by any other provision of Paragraph II of this Order;

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 other than through Respondent;

- 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 with a Payor;
- C. Attempting to engage in any action prohibited above; and
- D. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any Person to engage in any action that would be prohibited above.

As in previous FTC Orders addressing health care providers' collective bargaining with health care payors, the FTC Order permits ALMG to engage in legitimate joint conduct. The Order states that ALMG may engage in conduct that is reasonably necessary to form or participate in legitimate "qualified risk sharing" or "qualified clinically integrated" joint arrangements.

For further information regarding "qualified risk sharing" and "qualified clinical-integrated" joint arrangements, see the MSSNY Clinical Integration Task Force Report, available at the Office of General Counsel of MSSNY.