

I. NATURE OF THE CASE

1. This matter concerns an agreement among eight independent nephrologists in southwestern Puerto Rico to fix the prices and conditions under which they would participate in Mi Salud, the Commonwealth of Puerto Rico's Medicaid program for providing healthcare services to indigent residents. In furtherance of their conspiracy, Respondents collectively terminated their participation in the Mi Salud program in southwestern Puerto Rico after the program's regional administrator, Humana Health Plans of Puerto Rico, Inc. ("Humana") refused to accede to Respondents' demands to restore a cut in reimbursements for certain patients eligible for benefits under both Medicare and Mi Salud ("dual eligibles"). After Respondents terminated their service agreements with Humana, they refused to treat any of Humana's Mi Salud patients. As a result, Respondents have unreasonably restrained competition and engaged in unfair methods of competition in violation of the Federal Trade Commission Act.

II. RESPONDENTS

2. Respondents are individuals licensed to practice medicine in the Commonwealth of Puerto Rico and engaged in the business of providing nephrology services to patients for a fee. They represent all of the nephrologists in the southwest region who participate in the Humana Mi Salud program and almost 90 percent of all nephrologists in the region. Their respective names and business addresses are:

- (1) Praxedes E. Alvarez Santiago, M.D., 2916 Avenue Emilio Fagot, Suite 1, Ponce, PR 00716-3611.
- (2) Daniel Pérez Brisebois, M.D., 3011 Avenue Emilio Fagot, Ponce, PR 00716.
- (3) Jorge Grillasca Palou, M.D., 302 Torre San Cristobal, Coto Laurel, PR 00780.
- (4) Rafael Garcia Nieves, M.D.

III. JURISDICTION

eight regions in Puerto Rico. Humana administers and insures the program in three regions: the east, the southeast, and the southwest. Triple-S administers the program in the other five regions.

10. In October 2010, the Mi Salud reimbursement program was modified for persons eligible for both Medicare and Medicaid (“dual eligibles”). Under the previous program, called La Reforma, providers received 100 percent of the Medicare established rate for dual eligibles. As the primary payer, Medicare paid 80 percent, and payers administering the Mi Salud program paid the remaining 20 percent coordination of benefits amount (“20 percent COB”). Under the Mi Salud program, providers no longer received a coordination of benefits amount for dual eligibles, except in rare circumstances. Thus, Respondents’ reimbursements were lower under

14. Respondents began pressing their case for the reinstatement of the higher reimbursement in an October 28, 2011 email to Humana. In that email, Respondent Jorge Grillasca Palou, MD, wrote:

Under the present conditions, I can anticipate that I will not continue offering services to Humana patients if these [policies for payment for services to dual eligibles] are not modified. Please remember that the renal population requires our services to stay alive and in good health. I am legitimately concerned that service may be affected for patients that can **only** [emphasis in original] be attended by a nephrologist. Loosing [sic] nephrology services for your population may create a complicated and dangerous situation, especially for critical care patients in a hospital.

He requested that Humana “hold an urgent meeting with me and other colleag

explanation, Respondents continued to jointly seek a rate increase. At the end of the meeting Respondents prese

to another hospital in Ponce with a renal illness. The patient was pregnant, had a history of bronchial asthma, and needed nephrology services. According to the notes of the nurses and the unit coordinator, calls were made to all eight of the Respondents, but all said they did not accept Mi Salud patients. Hospital staff recommended transferring the patient to another hospital 67 miles away, but the family objected because of the distance.

24. Respondents eventually began treating patients again only after being ordered to do so by the Office of the Health Advocate, who determined that Respondents' immediate terminations violated the notice provision in their contracts and the continuation of services requirement in the Puerto Rico Patient's Bill of Rights and Responsibilities.

C. Resulting Increase in Reimbursement

25. Respondents' refusal to treat Humana's Mi Salud patients forced ASES to ultimately accede to Respondents' demands for reinstatement of the policy requiring payment of the 20 percent COB. On June 13, 2012, ASES issued Circular Letter No. 12-0613, stating that retroactive to March 16, 2012, it would require insurers to pay the 20 percent COB to all healthcare providers, essentially abandoning the new reimbursement formula and adopting the reimbursement policy under La Reforma. ASES reinstated the 20 percent COB because it was concerned about lack of access to nephrology services for its Mi Salud members, and believed that it had no other choice but to accede to adopting the 20 percent COB reimbursement policy. ASES believes that reinstating this reimbursement will increase the annual costs of the Mi Salud program by between \$4 and \$6 million.

VII. NO LEGITIMATE JUSTIFICATION FOR THE CONDUCT

26. Respondents' conduct is not reasonably related to achieving any efficiency-enhancing integration. Respondents have undertaken no activities to integrate their delivery of nephrology services and thus cannot justify the conduct described in the foregoing paragraphs. They neither shared financial risk in providing nephrology services nor clinically integrated their delivery of care to patients.

VIII. ANTICOMPETITIVE EFFECTS

27. Respondents' actions have the purpose and had the effect of unreasonably restraining trade and hindering competition in the provision of nephrology services in the southwest region of Puerto Rico by:

- (a) depriving third-party payers and consumers of the benefits of such competition;
- (b) increasing prices of nephrology services to Mi Salud; and

- (c) collectively withholding treatment from Mi Salud patients, resulting in significant and real consequences to patients.

IX. VIOLATION OF THE FTC ACT

28. The acts and practices described above constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such 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 has caused this Complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this _____ day of _____, 2013.

By the Commission.

Donald S. Clark
Secretary

SEAL