the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–7396 Filed 3–25–99; 8:45 am]

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FEDERAL TRADE COMMISSION

[File No. 9810261]

North Lake Tahoe Medical Group, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 26, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Paul Nolan, FTC/H–3115, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2770 or Matthew Gold, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA 94103, (415) 356–5276.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 22, 1999), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.''. A paper copy can be obtained form the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

North Lake Tahoe Medical Group, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from North Lake Tahoe Medical Group, Inc. (''Tahoe IPA''). The agreement settles charges by the Federal Trade Commission Tahoe IPA has violated Section 5 of the Federal Trade Commission Act by: (1) Acting concertedly to delay the entry into the market of managed care; (2) engaging in collective negotiations over prices with payers; and (3) refusing to deal with Blue Shield of California (''Blue Shield'') when it did not comply with the Tahoe IPA's demands. The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement and proposed order.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by Tahoe IPA that the law has been violated as alleged in the complaint.

The Complaint

Under the terms of the agreement, a proposed complaint will be issued by the Commission along with the proposed consent order. The allegations in the Commission complaint are summarized below.

Tahoe IPA is a physician organization based in Truckee, California. All of the members of Tahoe IPA are physicians practicing in and around the Tahoe Basin, which includes the North Lake Tahoe and South Lake Tahoe areas. During the time period addressed by the allegations of the complaint, Tahoe members constituted at least 70% of all physicians practicing in the North and South Lake Tahoe areas.

Tahoe IPA was formed in 1994 as a vehicle for its members to deal concertedly with the impending entry into North and South Lake Tahoe of managed care. Beginning in 1994, and continuing until at least 1998, when Tahoe IPA first learned that it was under investigation by the staff of the Commission, Tahoe IPA conspired to fix the prices and other terms under which its members dealt with third-party payers. Tahoe IPA also conspired to prevent or delay the entry into the North Lake and South Lake Tahoe areas of managed care. Tahoe IPA refused to participate, either individually or collectively, in HMO plans offered by Blue Shield, Hometown Health Plan, Foundation Health Plan, St. Mary's Health Plan, and other third-party payers attempting to do business in the Tahoe Basin. Tahoe IPA engaged in collective negotiations to fix price terms and other competitively significant terms with all payers seeking to enter the North and South Lake Tahoe areas. Tahoe IPA maintained an exclusivity clause in its ''Provider Participation Agreement,'' and encouraged its members to deal with third-party payers only through Tahoe IPA. Tahoe IPA sought to coerce payers into accepting the IPA fee schedules and minimum reimbursement rates. Tahoe IPA leaders stated that payers must accept the IPA's price terms if they want to contract with IPA members.

In furtherance of its unlawful agreements, since 1996 Tahoe IPA attempted to coerce Blue Shield to raise its level of fee-for-service reimbursement to IPA physicians. Since November 1997, when it became clear the Blue Shield would not negotiate on the Tahoe IPA's terms, the IPA encouraged its physician members to departicipate from Blue Shield's preferred provider organization (''PPO''). In private and public statements, the Tahoe IPA reminded its members that it was acting as their agent with Blue Shield, and that the IPA would ultimately be successful in its negotiations with Blue Shield if the members continued to contract on a united front. Beginning as early as

January 1998, many of the physician members of Tahoe IPA submitted letters of termination to Blue Shield. Some of these members no longer contract with Blue Shield, and others have notified Blue Shield of their intent to terminate their contracts as of January 1, 1999.

Tahoe IPA's members have not integrated their medical practices in any economically significant way, nor have they created any efficiencies that might justify this conduct. Tahoe IPA's actions have harmed consumers in the North and South Lake Tahoe areas by restraining competition among physicians, by fixing or increasing the prices that are paid for physician services, and by depriving third-party payers, their subscribers, and patients of the benefits of competition among physicians.

The Proposed Consent Order

The proposed consent order is designed to prevent the illegal concerted action alleged in the complaint, while allowing Tahoe to engage in legitimate joint conduct. Section II of the proposed order contains the core operative provisions. Section II.A prohibits Tahoe IPA from: (1) Engaging in collective negotiations on behalf of its members; (2) orchestrating concerted refusals to deal; (3) fixing prices, or any other terms, on which its members deal, and (4) restricting the ability of any physicians to deal with any payer or provider individually or through any arrangement outside of Tahoe IPA.

Section II.B prohibits Tahoe IPA from exchanging or facilitating the exchange of information among physicians of information concerning the terms or conditions of reimbursement. Section II.C prohibits this Tahoe IPA from encouraging, advising or pressuring any person to engage in any action that would be prohibited if the person were subject to the order.

Section II includes a proviso allowing Tahoe IPA to engage in conduct (including collectively determining reimbursement and other terms of contracts with payers) that is reasonably necessary to operate (a) any ''qualified risk-sharing joint arrangement,'' or (b) any ''qualified clinically integrated joint arrangement,'' provided Tahoe IPA complies with the order's prior notification requirements. For the purpose of the order, a ''qualified risk-sharing joint arrangement'' must satisfy three conditions. First, all physicians participating in the arrangement must share substantial financial risk from their participation in the arrangement. The order lists ways in which physicians might share financial risk, tracking the types of financial risk sharing set forth in the Statements of Antitrust Enforcement Policy in Health Care, issued jointly by the FTC and the Department of Justice. Statements of Antitrust Enforcement Policy in Health Care, issued August 28, 1996, 4 Trade Reg. Rep. (CCH) ¶ 13,153. Second, any agreement on prices or terms of reimbursement entered into by the arrangement must be reasonably necessary to obtain significant efficiencies through the joint arrangement. Third, the arrangement must be non-exclusive, i.e., it must not restrict the ability, or facilitate the refusal, or physicians participating in the arrangement to deal with payers individually or through any other arrangement.

A ''qualified clinically integrated joint arrangement'' includes arrangements in which the physicians undertake cooperative activities to achieve efficiencies in the delivery of clinical services, without necessarily sharing substantial financial risk. For purposes of the order, such arrangements are ones in which the participating physicians have a high degree of interdependence and cooperation through their use of programs to evaluate to evaluate and modify their clinical practice patterns, to control costs and assure the quality of physician services provided through the arrangement. As with risk-sharing arrangements, the definition of clinically integrated arrangements reflects the analysis contained in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care. In addition, as with risk-sharing arrangements, the arrangement must be non-exclusive in light of Tahoe IPA's large share of the market.

For a qualified clinically integrated joint arrangement to fall within the proviso, the Tahoe IPA must comply with the order's requirements for prior notification. The prior notification mechanism will allow the Commission to evaluate a specific proposed arrangement and assess its likely competitive impact. This requirement will help guard against the recurrence of acts and practices that have restrained competition and consumer choice.

Section II also contains a proviso that permits the Tahoe IPA to refuse to transmit information from payers or providers to less than all of its participating physicians. This proviso, however, does not permit the Tahoe IPA to require that payers or providers make offers to all participating physicians or to any particular physician.

Section III of the proposed order requires the Tahoe IPA to terminate the participation in the Tahoe IPA of physicians who have terminated their participation, or have given notice of their intent to terminate their participation, in Blue Shield's PPO. this provision requires the Tahoe IPA to provide to Blue Shield the names and addresses of all of its participating physicians, and to request from Blue Shield the names of all participating physicians who either have terminated participation in Blue Shield, or have given notice of intent to terminate future participation in any Blue Shield health plan between January 1, 1998, and the date the agreement was signed. Within twenty days after Tahoe IPA has received from Blue Shield the names and addresses of the boycotting physicians, the Tahoe IPA must terminate their participation unless the physician either: (1) Attempts in good faith to reestablish participation in a Blue Shield health plan for a period of at least six months thereafter; or (2) rescinds in writing his or her notice of intent to terminate future participation in a Blue Shield health plan and continues to participate in a Blue Shield health plan for a period of at least six months thereafter.

Section IV.A requires that Tahoe IPA notify its members and certain third parties, including certain third-party payers, about the order. Section IV.A also requires the IPA to revise its ''Provider Agreement,'' which contains a clause requiring members to contract exclusively through the Tahoe IPA, so that it complies with the order. Section IV.B requires the IPA to terminate any contracts with any payers that do not comply with Section II of the order, at the earlier of (1) the termination or renewal date of the contract; or (2) receipt of a written request from the payer to terminate the contract. Section IV.C requires that the IPA, for the next five years (1) distribute copies of the complaint and order to new members, and (2) publish annually to members a copy of the complaint and order.

Sections V, VI, and VII consist of standard Commission reporting and compliance procedures, with the exception that Section V specifies some of the information Tahoe IPA must include in its annual compliance reports, including: (1) Information identifying each health plan that has contacted Tahoe IPA for the purpose of contracting for physician services, the terms of any contract the health plan was seeking with Tahoe IPA, and Tahoe IPA's response to the health plan; (2) information sufficient to describe the manner in which Tahoe IPA's members share financial risk in each ''qualified non-exclusive risk-sharing arrangement'' in which the Tahoe IPA participates; and (3) copies of the

minutes of Tahoe IPA's annual meetings.

Finally, Section VIII of the proposed order contains a twenty year ''sunset'' provision under which the terms of the order terminate twenty years after the date of issuance.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Chairman Robert Pitofsky and Commissioners Sheila F. Anthony and Mozelle W. Thompson

[North Lake Tahoe Medical Group, Inc., File No. 981–0261]

The Commission has published a proposed complaint alleging that North Lake Tahoe Medical Group (''Tahoe IPA'') violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by orchestrating an illegal group boycott among its member physicians who refused to deal with Blue Shield of California (''Blue Shield''). Because the actions of Tahoe IPA went beyond a mere refusal to contract and were, instead, part of a larger agreement to impede the growth of managed care health plans, we believe that the proposed order, including the remedial provisions contained in Section III, prescribes appropriate relief to restore competition and remedy the harm caused by Tahoe IPA's illegal activities.

Having reached an impasse in its efforts to raise the reimbursement rate paid by Blue Shield to its members, Tahoe IPA requested that its members withdraw from Blue Shield's health plan. Twenty-four doctors either withdrew, or announced their intention to withdraw, following Tahoe IPA's request. By engaging in an illegal group boycott directed at Blue Shield, Tahoe IPA and its members attempted to impair the growth and effectiveness of health insurance plans in the relevant market.

The proposed order is designed to restore competition lost as a result of the boycott. Section II.A of the order would prohibit Tahoe IPA from negotiating on behalf of its members with any payer or provider for physician services. Section II.A also would prohibit Tahoe IPA from orchestrating refusals to deal among its members with payers, fixing prices or any other terms on which its members deal with physicians, and preventing physicians from dealing with any payer or provider individually or through arrangements outside of Tahoe IPA. Section III of the proposed order further requires that Tahoe IPA terminate member physicians for a period of six months who refused to deal with Blue Shield as part of the illegal boycott led by Tahoe IPA. Section III permits Tahoe IPA to retain these members if they either (1) attempt in good faith to re-join Blue Shield's network for six months, or (2) rescind their refusals to deal and participate in the Blue Shield plan for at least six months.

The Commission is unanimous in its belief that the relief set forth in Section II is necessary to restore competition in the relevant market. However, Commissioner Swindle dissents from Section III of the order and contends that Tahoe IPA's members will have sufficient independent incentives to negotiate or contract with Blue Shield without Section III of the proposed order. The facts tell a different story.

Since the proposed order was reached with Tahoe IPA, 20 of its member physicians have agreed to re-join the Blue Shield provider network or to enter negotiations over terms under which they might re-join. Only four members of Tahoe IPA have refused to enter negotiations with Blue Shield. There is every reason to believe that the doctors have re-joined the Blue Shield network in part because of the pending order, and may have been more reluctant to do so in the absence of Section III.

Accordingly, given the conduct alleged in the complaint and its anticompetitive effects, we respectfully disagree with Commissioner Swindle. Section III of the proposed order is a modest, but appropriate, step to reverse the harm caused by Tahoe's illegal conduct. With a large percentage of area doctors withdrawing from its plan through an illegal boycott, Blue Shield no longer offered adequate services to its members. Provisions of the cease and desist order other than Section III prohibit further action to effectuate an agreement to boycott. But where the action has already succeeded, as it did here, something more is needed to restore competition that was eliminated through the anticompetitive conduct alleged in the complaint. Insufficient relief in this case could increase the likelihood of similar conduct arising in other markets. Moreover, the relief in Section III is limited to a six-month time period, and is narrowly tailored to meet the direct purpose of the proposed order by covering only the period when negotiations were occurring for the 1999 coverage year. Tahoe IPA is primarily responsible for the boycott, and it is therefore appropriate that Tahoe IPA take steps to make clear to its own membership that they must make a unilateral decision whether to continue to deal with Blue Shield.

In cases where illegal conduct has caused serious harm, the remedy should aim to undo the damage when reasonably possible. The objective of the proposed order in this case is to restore competition that has been lost through the illegal activities of Tahoe IPA and its members. Section III of the proposed order is an appropriate limited measure designed to accomplish this traditional antitrust remedial objective. It ensures that Tahoe IAP will allow its members to act in a manner consistent with their independent incentives, not in a fashion that allows the effects of an antitrust violation to persist.

Statement of Commissioner Orson Swindle Concurring in Part and Dissenting in Part

[Tahoe Health System, Inc., File No. 981–0261]

The Commission has accepted a consent agreement in this matter that includes a novel remedy I do not support. North Lake Tahoe Medical Group, Inc. (''Tahoe IPA''), the respondent, engaged in negotiations on behalf of its member physicians to obtain from third-party payers prices that were discounted no more than 10 percent below their usual fees. Blue Shield, a third-party payer, refused to accede to Tahoe IPA's demands, leading Tahoe IPA to successfully encourage many of its members no longer to participate as physicians for Blue Shield. Other third-party payers that were considering offering HMO products in the Lake Tahoe area responded to Tahoe IPA's demands by deciding not to enter.

I agree that there is reason to believe that Tahoe IPA's conduct violated Section 5 of the FTC Act. To remedy these violations, Paragraph II of the proposed consent order contains typical provisions that would prohibit Tahoe IPA from entering into any agreement to (1) negotiate on behalf of physicians with any payer or provider for physician services, or (2) refuse to deal with any payer or provider. I support the relief in Paragraph II because it is necessary to prevent Tahoe IPA from engaging in unlawful conduct that is identical or similar to that alleged in the proposed complaint. Both the Commission's complaint and the relief prescribed by Paragraph II make it clear to Tahoe IPA's members that they must make unilateral decisions as to whether to deal with Blue Shield.

The proposed consent order, however, also contains a novel—and questionable—remedy, Paragraph III requires that Tahoe IPA terminate the membership of all physicians who refused to deal (or who gave notice of their intent to refuse to deal) with Blue Shield as a result of Tahoe IPA's encouragement. Tahoe IPA, however,

would not have to terminate: (1) physicians who refused to deal but attempt in good faith to reparticipate in Blue Shield for six months, and (2) physicians who rescind their notices of refusal to deal and continue to participate in Blue Shield for at least six months.

I do not believe that Paragraph III is needed. Prior to the refusal to deal with Blue Shield alleged in the complaint, the Tahoe IPA physicians who participated in Blue Shield had their own sufficient market incentives to participate. With the cessation of the refusal to deal and the prohibition in Paragraph II on future refusals to deal, these market incentives should revive. With the return of these incentives, the Tahoe IPA physicians who refused to deal presumably would choose once again to participate in Blue Shield even without the burdens imposed by Paragraph III.[1]

The majority believes that government action beyond these market incentives is needed to make this market work better in the future. I disagree. Because Tahoe IPA physicians on their own have sufficient to return to Blue Shield, there is no reason to add a layer of government intervention intended to achieve the same result.

I dissent as to Paragraph III of the proposed consent order.

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[1] Twenty physicians have agreed to reparticipate in Blue Shield, while four have not. All this demonstrates is that physicians have reparticipated in Blue Shield while Paragraph III is in effect. It does not establish that Paragraph III was a cause of this reparticipation, or that market incentives would not have caused the physicians to reparticipate in the absence of Paragraph III.

FEDERAL TRADE COMMISSION

[File No. 9923007]

Wal-Mart Stores, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 26, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Carol Jennings, FTC/S–4302, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–3010.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 16, 1999), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from respondent Wal-Mart Stores. Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate actions or make final the agreement's proposed order.

This matter concerns practices related to the sale of textile and wool products by means of an on-line Internet catalog. The Commission's compliant charges that respondent violated the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, the Textile Fiber Products Identification Act, 15 U.S.C. 70 *et seq.*, and the Wool Products Labeling Act, 15 U.S.C. 68 *et seq.*, by failing to disclose on its on-line catalog whether products offered for sale were made in the U.S.A. imported, or both.

Part I of the proposed consent order prohibits respondent from advertising any textile or wool product in any mail order catalog or mail order promotional material, including those disseminated on the Internet, without disclosing clearly and conspicuously that the product was made in the U.S.A., imported, or both.

Part II of the proposed order requires the respondent, for five years after the date of issuance of the Order, to maintain records demonstrating compliance with the Order, including: (a) copies of mail order catalogs and mail order promotional materials, as defined in 16 CFR 303.1(u) and 300.1(h), that offer textile and/or wool products for direct sale to consumers; and (b) complaints and other communications with consumers, government agencies, or consumer protection organizations, pertaining to country-of-origin disclosures for textile and/or wool products.

Part III of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part IV of the proposed order requires the respondent to notify the Commission of any changes in the corporation that may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an officials interpretation of the agreement and proposed order or to modify in any way there terms.

By direction of the Commission.