

legitimate conduct that does not impair competition.

The proposed order's specific provisions are as follows:

The proposed order's core prohibitions are contained in Paragraphs II, III, and V. Paragraph II is intended to prevent the Respondents from participating in, or creating, future unlawful agreements for physician services. Paragraph II.A prohibits the Alliance and Mr. Diggins from entering into or facilitating any agreement between or among any physicians: (1) To negotiate with payors on any physician's behalf; (2) to deal, not to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or to deal with any payor only through the Alliance.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the respondents from facilitating exchanges of information among physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B. Paragraph II.D proscribes inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

Paragraph III is intended to prevent the Respondents from participating in, or creating, future unlawful agreements for hospital services. Paragraphs III.A through D are identical to Paragraphs II.A through D, except that they apply to the Alliance's or Mr. Diggins' actions regarding the provision of hospital, rather than physician, services. This matter is the Commission's first law enforcement action charging an organization with price-fixing and other anticompetitive collusive conduct in the market for hospital services, in violation of section 5 of the FTC Act. Thus, unlike previous orders involving collective bargaining with health plans, this order bars agreements relating to both physicians and hospitals.

As in other orders addressing providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations. Respondents would not be precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing physicians or competing hospitals, whether a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement."

As defined in the proposed order, a "qualified risk-sharing joint

arrangement" possesses two key characteristics. First, all physician or all hospital participants must share substantial financial risk through the arrangement, such that the arrangement creates incentives for the participants to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

A "qualified clinically-integrated joint arrangement," on the other hand, need not involve any sharing of financial risk. Instead, as defined in the proposed order, all physician participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns in order to control costs and ensure the quality of services provided, and the arrangement must create a high degree of interdependence and cooperation among physicians. As with qualified risk-sharing arrangements, any agreement concerning price or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement.

In the event that the Alliance forms a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement, Paragraph IV requires the Alliance to notify the Commission at least 60 days prior to negotiating or entering into agreements with payors, or discussing price or related terms among the participants of the arrangement. Notification is not required for negotiations or agreements with subsequent payors pursuant to any arrangement for which notice was given under Paragraph IV. Paragraph IV.B sets out the information necessary to make the notification complete. Paragraph IV.C establishes the Commission's right to obtain additional information regarding the arrangement.

Paragraph V prohibits Mr. Diggins, for three years, from negotiating with any payor on behalf of any Alliance physician or hospital member, and from advising any Alliance physician or hospital member to accept or reject any term, condition, or requirement of dealing with any payor. Mr. Diggins, however, is permitted to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement on behalf of the Alliance.

Paragraph VI.A requires the Alliance to distribute the complaint and order to all physicians and hospitals who have participated in the Alliance, and to

payors that contract with the Alliance. Paragraph VI.B requires the Alliance, at any payor's request and without penalty, to terminate its current contracts with respect to providing physician services. If a payor does request termination, Paragraph VI.B requires the Alliance to terminate the contract on its earliest termination or renewal date. Paragraph VI.B also provides that a contract may extend up to one year beyond the termination or renewal date if the payor affirms the contract in writing and the Alliance does not exercise its right to terminate the contract.

Paragraph VII.A requires Mr. Diggins to distribute the complaint and order to physician and hospital groups he represents in contracting with payors, and to payors with which he has dealt in contracting while representing any physician or hospital groups.

Paragraphs VII.B through IX of the proposed order impose various obligations on respondents to report or provide access to information to the Commission to facilitate monitoring respondents' compliance with the order.

The proposed order will expire in 20 years.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 03-18743 Filed 7-22-03; 8:45 am]

**BILLING CODE 6750-01-P**

## FEDERAL TRADE COMMISSION

[File No. 021 0188]

### Washington University Physician Network; 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 August 11, 2003.

**ADDRESSES:** Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to:

*consentagreement@ftc.gov*, as prescribed in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:**

Garry Gibbs, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-2767.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), 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 thirty (30) 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 July 11, 2003), on the World Wide Web, at <http://www.ftc.gov/os/2003/07/index.htm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box:

*consentagreement@ftc.gov*. Such comments 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 Agreement Containing Consent Order to Aid Public Comment**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with the Washington University Physician Network (WUPN). The agreement settles charges that

WUPN violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by orchestrating and implementing agreements among WUPN and its independent, community-based physician members ("community physicians"), and facilitating agreements among its community physicians and its Washington University School of Medicine full-time faculty physician members ("faculty physicians"), to fix prices and other terms on which they would deal with health plans, and to refuse to deal with such purchasers except on collectively-determined terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

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 their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by WUPN that it violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

*The Complaint Allegations*

WUPN consists of 900 faculty physicians and 600 community physicians who provide health care services in St. Louis, Missouri and four neighboring counties ("the greater St. Louis area"). WUPN was established in 1993 to facilitate, among competing physicians, collective bargaining with health plans in order to obtain more favorable reimbursement rates and other "very favorable terms when compared to contracts entered into on an individual basis or through another organization."

WUPN is a not-for-profit corporation, and its sole legal member is Washington University ("WU"), also a non-profit entity. Section 4 of the FTC excludes certain types of non-profit corporations from its definition of entities under its jurisdiction. However, the Commission has jurisdiction over WUPN because WUPN's community physicians, who operate for profit, are "members" of WUPN due to their significant role in governing the organization. Also, WUPN provides substantial economic benefits for its community physician members,

who make up a minority of the membership but are granted a substantial role in WUPN to enhance their incomes and bargaining power.

WUPN is managed and controlled by a Board of Directors made up of 16 community physicians and 13 faculty physicians. Contracts with health plans are negotiated by representatives of WUPN's Management Committee, and progress of its negotiations is reported to WUPN's Board. The Committee recommends to the Board whether to accept or reject a payor's fee schedule, or whether to terminate or extend a payor's existing contract. The Board votes on the recommendation, which requires majority approval.

WUPN has successfully coerced a number of health plans to increase the fees they pay to WUPN members, and thereby raised the cost of medical care in the greater St. Louis area. As a result of the challenged actions of WUPN, consumers in the greater St. Louis area are deprived of the benefits of competition among physicians. By facilitating agreements among WUPN members to deal only on collectively-determined terms, and actual or threatened refusals to deal with health plans that would not meet those terms, WUPN has violated Section 5 of the FTC Act.

WUPN's collective negotiations with payors are not justified by any efficiency-enhancing integration among the community physicians, or among the community physicians and the faculty physicians.

*The Proposed Consent Order*

The proposed order is designed to prevent recurrence of the illegal conduct charged in the complaint, while allowing WUPN to engage in legitimate conduct that does not impair competition. It is similar to recent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements to raise the fees they receive from health plans.

The proposed order's specific provisions are as follows:

Paragraph II.A prohibits WUPN from entering into or facilitating any agreement between or among any physicians: (1) To negotiate with payors on any physician's behalf; (2) to deal, refuse to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or not to deal with any payor through an arrangement other than WUPN.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits WUPN from facilitating exchanges of information among

physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B. Paragraph II.D proscribes inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

As in other orders addressing providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations.

First, WUPN would not be precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing physicians, whether a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement." Second, WUPN would be permitted to enter into any agreement or engage in any conduct that only involves WU faculty members with respect to services provided by WU physicians.

As defined in the proposed order, a "qualified risk-sharing joint arrangement" possesses two key characteristics. First, all physician participants must share substantial financial risk through the arrangement, such that the arrangement creates incentives for the participants to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

A "qualified clinically-integrated joint arrangement," on the other hand, need not involve any sharing of financial risk. Instead, as defined in the proposed order, physician participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns in order to control costs and ensure the quality of services provided, and the arrangement must create a high degree of interdependence and cooperation among physicians. As with qualified risk-sharing arrangements, any agreement concerning price or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement.

Paragraphs III.A and III.B require WUPN to send notice of the order and complaint to all WUPN participating physicians, WUPN employees and principals, and all payors WUPN has contacted since January 1, 1998, concerning the provision of physician services. Paragraph III.C. requires WUPN to terminate, without penalty,

any preexisting contract with a payor upon receipt of a payor's written request to terminate the contract. This provision is intended to eliminate the effects of WUPN's anticompetitive actions.

Paragraph III.D of the proposed order requires WUPN to distribute the order and complaint prospectively to new members, newly contracted payors, and new employees for a period of three years, and Paragraphs IV through VI set out WUPN's requirements to report or provide access to information to the Commission to facilitate monitoring of WUPN's compliance with the order.

The proposed order will expire in 20 years.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

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## GENERAL SERVICES ADMINISTRATION

### National Travel Forum 2004: Traveling on the Frontier of Change (NTF 2004)

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Notice.

**SUMMARY:** The General Services Administration (GSA) is announcing that it will hold its third national travel forum. The National Travel Forum 2004: Traveling on the Frontier of Change (NTF 2004) will take place June 28-July 1, 2004 at the Wyndham Anatole in Dallas, Texas. Nearly 1,500 travel, relocation, financial and other professionals within Federal, State, and local governments, as well as the private sector will attend. Much of the focus will be on the governmentwide eTravel Service (eTS), the Federal Premier Lodging Program (FPLP), and revised relocation regulations. Best practices in Government travel and relocation services, as well as many other topics will be discussed. To attend, exhibit, or hold an agency-wide meeting, visit the NTF 2004 Web site at <http://www.nationaltravelforum.org>.

**FOR FURTHER INFORMATION CONTACT:** Rick Freda, Office of Governmentwide Policy, at (202) 219-3500, or by e-mail to [Rick.Freda@gsa.gov](mailto:Rick.Freda@gsa.gov).

Dated: July 18, 2003.

**Peggy DeProspero,**

*Director, Travel Management Policy.*

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## GENERAL SERVICES ADMINISTRATION

[2003-N04]

### Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

**AGENCIES:** Office of Civil Rights, General Services Administration (GSA).

**ACTION:** Notice of interim final policy guidance document.

**SUMMARY:** The General Services Administration (GSA) is publishing for public comment interim final policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient (LEP) persons. This guidance will become final after a 30-day comment period unless GSA determines that the comments require further modification to the guidance. Once final, this policy guidance will supplant the policy guidance published on January 17, 2001.

**DATES:** Submit comments on or before August 22, 2003. GSA will review all comments and will determine what modifications, if any, to this policy guidance are necessary. Because this guidance must adhere to the Federal-wide compliance standards and framework detailed in the model U.S. Department of Justice's LEP guidance, GSA specifically solicits comments on the nature, scope, and appropriateness of the GSA-specific examples set out in this guidance explaining and/or highlighting how those consistent Federal-wide compliance standards are applicable to recipients of Federal financial assistance through GSA.

**ADDRESSES:** Interested persons should submit written comments to Ms. Regina Budd, Deputy Associate Administrator, Office of Civil Rights, General Services Administration, 1800 F Street, NW., Suite 5127, Washington, DC 20405. Comments may also be submitted by facsimile at (202) 219-3369 or at e-mail [OCR@gsa.gov](mailto:OCR@gsa.gov).

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208-7312, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Evelyn Britton at the Office of Civil Rights, General Services Administration, 1800 F Street, NW., Washington, DC 20405. Telephone (202) 501-0767; 1-800-662-6376; TDD 1-888-267-7660.