

Legal Alert

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Price Fixing

QUESTION: CAN'T WE ALL WORK TOGETHER TO GET PAID MORE?

ANSWER: INDEPENDENT COMPETITORS CANNOT JOINTLY FIX THE PRICES THEY WILL CHARGE FOR GOODS OR SERVICES.

You might sympathize with the 900 physicians in Amarillo, Texas, who jointly negotiated the prices they would charge insurance companies for the medical care they provided. After all, individual doctors are usually stuck with the “take it or leave it” reimbursements offered by the big insurance companies.

Nevertheless, the 900 physicians from Texas were ordered by the Federal Trade Commission to quit jointly negotiating payments from insurance companies. The doctors belong to Southwest Health Alliances, Inc., doing business as BSA Provider Network. Southwest Health Alliances is an independent practice association of medical practices. These 900 physicians in Southwest Health Alliances included 300 primary care doctors.

The FTC charged Southwest Health Alliances with violating federal laws since 2000 by fixing the prices charged by doctors to insurers. According to the FTC, this joint effort by the doctors led to higher prices for patients and businesses. The FTC said that the doctors in the network had restrained competition by agreeing to fix the prices and terms upon which they would contract with health plans. Once they jointly agreed on the rates, the doctors collectively negotiated the terms and conditions of payments with the health insurance companies.

The FTC acknowledged that collective price negotiation and agreements between independent practice associations and health care providers could sometimes be justified. If the independent practice association either clinically or financially integrated the practices of the doctors, it could create efficiencies that would justify joint price negotiations. The Southwest Health Alliance doctors' practices were not integrated, however. Moreover, the agreements did not create any efficiencies for patients or businesses.

So, the FTC order supposedly stops the doctors' anticompetitive behavior, but allows them to engage in legitimate joint conduct. Southwest Health Alliance cannot create agreements among the physicians to negotiate on behalf of any doctor with any insurer. Moreover, the doctors can't collectively deal, refuse to deal, or even threaten to refuse to deal with any insurance company. Of course, any individual doctor can do business with, or refuse to deal with, a health plan on his or her own. The Southwest Health Alliance also cannot be the exclusive conduit for doctors to deal with insurance companies.

To protect against such anticompetitive behavior in the future, the doctors of Southwest Health Alliance cannot use the independent practice association to exchange information concerning the terms upon which the doctors will contract with insurance companies. On the other hand, the FTC order allows Southwest Health Alliance to form or participate in legitimate "qualified risk-sharing" or "qualified clinically integrated" arrangements. The order does not prohibit agreements involving doctors who are part of the same medical practice, of course.

The FTC will monitor Southwest Health Alliance's compliance with the order and will allow insurance companies to cancel any contracts without penalty if they were entered into because of the alleged restraint of trade. The order expires in 20 years.

Don't conspire with your competitors to raise prices! Beware of engaging in activities with your competitors which would fix prices. Such anticompetitive behavior can get you and your colleagues in big trouble with the federal government, and can also get you sued for lots of money by injured parties.

If you have any questions about what you can or cannot do in cooperation with others in your industry, please call me.