IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

UNITED STATES OF AMERICA and STATE OF TEXAS,

Plaintiffs,

v.

UNITED REGIONAL HEALTH CARE SYSTEM,

Defendant.

Case No.: 7:11-cv-00030-O

FINAL JUDGMENT

WHEREAS, Plaintiffs, the United States of America and the State of Texas, filed their Complaint on February 25, 2011, alleging that Defendant, United Regional Health Care System, has unlawfully maintained its monopoly by entering into exclusionary agreements with commercial health insurers, harming competition and consumers in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2; and

WHEREAS, Plaintiffs and Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law; and

WHEREAS, Plaintiffs require Defendant to agree to undertake certain actions and refrain from certain conduct for the purpose of remedying the anticompetitive effects alleged in the Complaint;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, without this Final Judgment constituting any evidence against or admission by Defendant regarding any issue of fact or law, and upon consent of the parties to this action, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of this action and over Defendant. The Complaint states a claim upon which relief may be granted against Defendant under Section 2 of the Sherman Act, 15 U.S.C. § 2.

II. DEFINITIONS

As used in this Final Judgment:

A. "**Commercial Health Insurer**" (or "**Insurer**") means a Person providing commercial health insurance or access to health-care provider networks, including but not limited to managed-care organizations, rental networks (i.e., Persons that lease, rent, or otherwise provide direct or indirect access to a proprietary network of healthcare providers), and self-funded plans, regardless of whether that Person bears any risk or makes any payment relating to the provision of health care. The term "Commercial Health Insurer" (or "Insurer") includes Insurers that provide Medicare Advantage plans, but does not include Medicare, Medicaid, or TRICARE, or entities that otherwise contract on their behalf.

B. "**Conditional Volume Discount**" means a price, discount, or rebate that is offered to a Commercial Health Insurer *on condition* that the volume of that Insurer's Purchases from Defendant meets or exceeds a specified threshold.

C. "**Cost-to-Charge Ratio**" means the ratio of Defendant's total operating expenses to its total patient charges, for all service lines in aggregate, as reported to the Centers for Medicare & Medicaid Services pursuant to 42 U.S.C. § 1395g and 42 C.F.R. § 413.20(b).

D. "**Hospital Services**" include (1) acute-care diagnostic and therapeutic inpatient services and (2) acute-care diagnostic and therapeutic outpatient services, including but not limited to ambulatory surgery and radiology services.

E. "**Hospital-Services Provider**" means any provider of Hospital Services, including but not limited to facilities that provide Hospital Services solely on an outpatient basis.

F. "**Incremental Volume Discount**" means a Conditional Volume Discount that is offered to a Commercial Health Insurer for which the price, discount, or rebate applies only to Purchases *above* the specified threshold. For purposes of this Final Judgment, the term "Incremental Volume Discount" does not include any price, discount, or rebate that is offered on condition that the Insurer's Purchases of Hospital Services from Defendant meet or exceed a specified percentage threshold of that Insurer's Purchases of Hospital Services in a defined geographic area.

G. "**Person**" means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

H. "**Purchase**," when used in reference to a Commercial Health Insurer's purchase of Hospital Services, includes but is not limited to arrangements between Commercial Health Insurers and Hospital-Services Providers pursuant to which the parties agree to the prices, discounts, and other terms on which Hospital Services are to be provided to patients, insurers, and self-funded employers, regardless of whether the Commercial Health Insurer that is party to the arrangement directly receives or pays for the Hospital Service.

I. "**Service Line**" means (1) for inpatient services, each of the mutually-exclusive major diagnosis categories (MDCs) as defined by the Centers for Medicare & Medicaid Services, and (2) for outpatient services, the "admit service area" as used in the Defendant's course of business to identify outpatient service lines.

J. The terms "**and**" and "**or**" have both conjunctive and disjunctive meanings.

III. APPLICABILITY AND INTERPRETATION

A. This Final Judgment applies to the Defendant; its directors, officers, managers, agents, employees, successors, and assigns; its controlled subsidiaries, divisions, groups, affiliates, and partnerships; and all other Persons in active concert or participation with the Defendant who receive actual notice of this Final Judgment by personal service or otherwise. For purposes of this Final Judgment, an entity is controlled by Defendant if Defendant holds 50% or more of the entity's voting securities, has the right to 50% or more of the entity's profits, has the right to 50% or more of the entity's assets on dissolution, or has the contractual power to designate 50% or more of the directors or trustees of the entity.

B. The purpose of this Final Judgment is to prevent and remedy the use by Defendant of allegedly unlawful exclusionary agreements that limit competition for the sale of Hospital Services. This Final Judgment shall be interpreted to promote that purpose and not to limit it.

IV. PROHIBITED CONDUCT

A. Defendant shall not enter into, adopt, maintain, or enforce any term in any agreement that directly or indirectly:

(1) conditions any price or discount offered to or paid by any Commercial Health Insurer on that Insurer's not entering into an agreement for the Purchase of Hospital Services from, or including in a provider network, another Hospital-Services Provider; or

(2) prohibits any Commercial Health Insurer from entering into an agreement for the Purchase of Hospital Services from, or including in a provider network, another Hospital-Services Provider.

B. Defendant shall not take, or threaten to take, any actions to discriminate, retaliate, or punish any Commercial Health Insurer because that Insurer agrees, obtains, or seeks to agree or obtain Hospital Services from another Hospital-Services Provider, including but not limited to:

(1) terminating any agreement with the Commercial Health Insurer;

(2) offering less favorable terms and conditions to the Commercial Health Insurer; or

(3) refusing to enter into an agreement with the Commercial Health Insurer.

C. Defendant shall not offer or agree to sell Hospital Services to any Commercial Health Insurer at a Conditional Volume Discount, except as allowed by Section V.A(3).

D. Defendant shall not offer or agree to any term in an agreement with a Commercial Health Insurer that prohibits the Insurer from offering products that encourage members to use other in-network Hospital-Services Providers; nor shall Defendant take, or threaten to take, any actions to discriminate, retaliate, or punish any Commercial Health Insurer for offering such products, including but not limited to the retaliatory actions listed in Section IV.B(1)–(3).

V. PERMITTED CONDUCT

A. Nothing in this Final Judgment shall prohibit Defendant from offering or agreeing to sell Hospital Services to:

(1) any Commercial Health Insurer at any price or discount, provided that such prices or discounts do not violate the prohibitions in Section IV;

(2) different Commercial Health Insurers at different prices or discounts, provided that such prices or discounts do not violate the prohibitions in Section IV;

(3) any Commercial Health Insurer at an Incremental Volume Discount, provided that the discounted prices are above cost. For purposes of this decree, this above-cost requirement is satisfied if the discounted prices for each Service Line that apply to purchases above the specified threshold, expressed as a percentage of billed charges (the "discounted prices"), are greater than the Defendant's Cost-to-Charge

Ratio based on the most recent report submitted to the Centers for Medicare & Medicaid Services before the date on which the Insurer and Defendant executed the contract. Provided, however, that after three years from the date the contract is effective, and for every three-year period thereafter, the discounted prices must be greater than the Defendant's Cost-to-Charge Ratio based on the most recent report submitted to the Centers for Medicare & Medicaid Services before the beginning of the three-year period.

B. Nothing in this Final Judgment shall prohibit Defendant from considering a Commercial Health Insurer's previous or anticipated overall size or volume when negotiating a price or discount.

C. Nothing in this Final Judgment shall prohibit Defendant from participating in a Commercial Health Insurer's preferred provider network or other forms of limited-provider panels provided that such activity does not violate the prohibitions in Section IV.

D. Except as prohibited by Section IV.B, and subject to the requirement in Section VI.B, Defendant and any Commercial Health Insurer may renegotiate or terminate their agreements according to the notice and termination provisions in such agreements.

VI. REQUIRED CONDUCT

A. Within 15 days after entry of this Final Judgment, Defendant shall notify in writing each Commercial Health Insurer with which Defendant has an agreement that this Final Judgment has been entered, enclosing a copy of this Final Judgment.

B. Defendant shall provide Hospital Services to each Commercial Health Insurer at the discount previously conditioned on exclusivity, even if any such Insurer enters into agreements with other Hospital-Services Providers, unless and until such discount is renegotiated according to Section V.D; provided, however, that Defendant is not required to provide such discount for greater than 270 days after Defendant notifies Insurer of its intent to renegotiate the contract.

VII. COMPLIANCE AND ACCESS

A. Defendant shall appoint an Antitrust Compliance Officer within seven days of entry of this Final Judgment, and a successor within thirty days of a predecessor's vacating the appointment, with responsibility for implementing an antitrust compliance program to ensure Defendant's compliance with this Final Judgment.

B. Each Antitrust Compliance Officer appointed pursuant to Section VII.A shall:

(1) within 15 days after this Final Judgment takes effect, provide a copy of this Final Judgment to each of Defendant's directors and officers, and to each employee whose job responsibilities relate in any substantive way to negotiating or reviewing agreements with Commercial Health Insurers for the Purchase of Hospital Services;

(2) distribute in a timely manner a copy of this Final Judgment to any Person who succeeds to, or subsequently holds, a position of director or officer or an employee whose job responsibilities relate in any substantive way to negotiating or reviewing agreements with Commercial Health Insurers for the Purchase of Hospital Services; and

(3) within 60 days after this Final Judgment takes effect, develop and implement the procedures necessary to ensure Defendant's compliance with this Final Judgment. Such procedures shall ensure that questions from any of Defendant's directors, officers, or employees about this Final Judgment can be answered by counsel as the need arises.

C. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally-recognized privilege, from time to time authorized representatives of the U.S. Department of Justice or the Office of the Texas Attorney General (including their consultants and other retained persons) shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division or the Office of the Texas Attorney General and on reasonable notice to Defendant, be permitted:

(1) access during Defendant's office hours to inspect and copy, or, at the option of the United States or the State of Texas, to require Defendant to provide hard copy or electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or

control of Defendant, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendant's officers, employees, or agents, who may have their counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee without restraint or interference by Defendant.

D. Within 270 days after the entry of this Final Judgment, Defendant shall submit to the United States and the State of Texas a written report setting forth its actions in compliance with this Final Judgment, specifically describing (1) the status and results of all negotiations with Commercial Health Insurers, and (2) the compliance procedures adopted pursuant Section VII.B(3) of this Final Judgment. For any new or revised agreement with any Commercial Health Insurer that is executed within one year of the entry of this Final Judgment, Defendant shall submit to the United States and the State of Texas a copy of such agreement within fourteen days from the date the agreement is executed.

E. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division or the Office of the Texas Attorney General, Defendant shall submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment. Written reports authorized under this paragraph may, at the sole discretion of the United States, require Defendant to conduct, at its cost, an independent audit or analysis relating to any of the matters contained in this Final Judgment.

F. No information or documents obtained by the means provided in this section shall be divulged by the United States or the State of Texas to any Person other than an authorized representative of (1) the executive branch of the United States or (2) the Office of the Texas Attorney General, except in the course of legal proceedings to which the United States or the Office of the Texas Attorney General is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

G. If at the time information or documents are furnished by Defendant to the United States or the State of Texas, Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States and the State of Texas shall give Defendant fourteen days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding), except as otherwise required by law or court order.

VIII. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX. EXPIRATION OF FINAL JUDGMENT

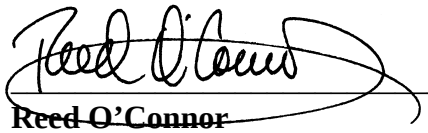
Unless this Court grants an extension, this Final Judgment shall expire seven years from the date of its entry.

X. PUBLIC-INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, any comments thereon, and the United States' response to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

SO ORDERED this 29th day of September, 2011.

Court approval subject to procedures set forth in the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.



Reed O'Connor
UNITED STATES DISTRICT JUDGE