

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch

In the Matter of)
)
New Century Health Quality Alliance, Inc.,)
a corporation, and)
Prime Care of Northeast Kansas, L.L.C.,)
a limited liability company,)
)
and)
)
Elizabeth Gallup, M.D., J.D.,)
Steven Buie, M.D.,)
Thomas Allen, M.D., and)
G. Robert Powers, M.D.,)
individuals,)
)
and)
)
Associates in Family Medicine, P.A.,)
Briarcliff Medical Associates, P.C.,)
College Park Family Care Center, P.A.,)
Family Health Group, Chartered,)
Family Medical Group, P.A.,)
Hickman Mills Clinic, Inc.,)
Kanza Multispecialty Group, P.A.,)
Landmark Medical Center, Inc.)
Michael E. Monaco, M.D., d/b/a)
Select Healthcare, P.A.,)
Kenneth Norton, M.D., P.A.)
Overland Park Family Health Partners, P.A.,)
Quivera Internal Medicine, L.L.C.)
Seaport Family Practice, P.C.,)
Shawnee Family Care, P.A.)
Statland Clinic Ltd.,)
Sunflower Medical Group, P.A.,)
United Medical Group, L.L.C., and)
Kimberly M. Wirths, M.D., P.A.)

Docket No. _____

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that New Century Health Quality Alliance, Inc. (“New Century”), Prime Care of Northeast Kansas, L.L.C. (“Prime Care”), Elizabeth Gallup, M.D., J.D., Steven Buie, M.D., Thomas Allen, M.D., and G. Robert Powers, M.D., Associates in Family Medicine, P.A., Briarcliff Medical Associates, P.C., College Park Family Care Center, P.A., Family Health Group, Chartered, Family Medical Group, P.A., Hickman Mills Clinic, Inc., Kanza Multispecialty Group, P.A., Landmark Medical Center, Inc., Michael E. Monaco, M.D., d/b/a Select Healthcare, P.A., Kenneth Norton, M.D., P.A., Overland Park Family Health Partners, P.A., Quivera Internal Medicine, L.L.C., Seaport Family Practice, P.C., Shawnee Family Care, P.A., Statland Clinic Ltd., Sunflower Medical Group, P.A., United Medical Group, L.L.C., and Kimberly M. Wirths, M.D., P.A., hereinafter sometimes collectively referred to as “Respondents,” have violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

NATURE OF THE CASE

1. This matter concerns an agreement among competing physicians to refuse to deal, except on collectively determined terms, including price terms, with Humana Health Plan, Inc. (“Humana”), and with others offering coverage for health care services (“payors”) in the Kansas City area, which includes areas in both Missouri and Kansas. The physicians orchestrated this behavior with and through their respective independent practice associations (“IPAs”), New Century and Prime Care, and through activities undertaken jointly by New Century and Prime Care.

RESPONDENTS

2. New Century, a not-for-profit corporation established in 1998, is organized, existing, and doing business as an IPA under and by virtue of the laws of the State of Kansas, with its principal address at 5799 Broadmoor, Suite 104, Mission, Kansas 66202. New Century consists of 16 medical practices with a total of approximately 87 primary care physicians who treat patients in the Kansas City area.

3. Prime Care, a for-profit limited liability company established in 1996, is organized, existing, and doing business as an IPA under and by virtue of the laws of the State of Kansas, with its principal address at 5799 Broadmoor, Suite 104, Mission, Kansas 66202. Prime Care consists of nine medical practices with a total of approximately 40 primary care physicians who treat patients in the Kansas City area.

4. In 2002, New Century and Prime Care combined their Board meetings, offices, and administrative staff and operations. New Century and Prime Care voted to formally merge into a single entity, effective January 1, 2005. However, New Century and Prime Care did not complete a merger or formal restructuring that consolidated the two, legally distinct, organizations.

5. New Century and Prime Care took actions in furtherance of the agreements and actions hereinafter alleged to be unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, through the following officials (hereinafter referred to as “Respondent Officials”), among others:

- a. Elizabeth Gallup, M.D., J.D., is New Century’s President. In that capacity, she directly participated in the conduct regarding Humana and other payors that is described and challenged as unlawful in this Complaint. Her principal address is 236 Arapahoe Circle, East, Lake Quivera, Kansas 66217.
- b. Steven Buie, M.D., who was New Century’s Chairman of the Board from 1999 through 2004. During that time, and in that capacity, he directly participated in the conduct regarding Humana and other payors that is described and challenged as unlawful in this Complaint. His principal address is 11201 Colorado Avenue, Kansas City, Missouri 64137.
- c. Thomas Allen, M.D., who is, and has been, New Century’s Chairman of the Board since January 1, 2005. During that time, and in that capacity, he directly participated in the conduct regarding Humana and other payors that is described and challenged as unlawful in this Complaint. His principal address is 4601 West 109th Street, #212, Overland Park, Kansas 66211.
- d. G. Robert Powers, M.D., who is, and has been, Prime Care’s Chairman of the Board. In that capacity, he directly participated in the conduct regarding Humana that is described and challenged as unlawful in this Complaint. His principal address is 2040 Hutton, #102, Kansas City, Kansas 66109.

6. Each of the following is a for-profit medical practice that is in the business of providing professional medical services, including physician services, to patients for a fee (hereinafter referred to as “Physician Practice Respondents”):

- a. Associates in Family Medicine, P.A., whose principal address is 8940 State Avenue, Kansas City, Kansas 66112;
- b. Briarcliff Medical Associates, P.C., whose principal address is 5400 North Oak Trfwy., Suite 200, Kansas City, Missouri 64118;
- c. College Park Family Care Center, P.A., whose principal address is 11755 West 112th Street, Overland Park, Kansas 66210;
- d. Family Health Group, Chartered, whose principal address is 12330 Metcalf, Suite 500, Overland Park, Kansas 66213;
- e. Family Medical Group, P.A., whose principal address is 8101 Parallel Parkway, Suite 100, Kansas City, Kansas 66112;
- f. Hickman Mills Clinic, Inc., whose principal address is 11201 Colorado Avenue, Kansas City, Missouri 64137;

- g. Kanza Multispecialty Group, P.A., whose principal address is 1428 South 32nd, Kansas City, Kansas 66106;
- h. Landmark Medical Center, Inc., whose principal address is 8800 N.W. 112th Street, Kansas City, Missouri 64153;
- i. Michael E. Monaco, M.D., d/b/a Select Healthcare, P.A., whose principal address is 5701 West 119th Street, Suite 345, Overland Park, Kansas 66209;
- j. Kenneth Norton, M.D., P.A., whose principal address is 8901 W. 74th Street, Suite 333, Shawnee Mission, Kansas 66204;
- k. Overland Park Family Health Partners, P.A., whose principal address is 6740 West 121st Street, Overland Park, Kansas 66209;
- l. Quivera Internal Medicine, L.L.C., whose principal address is 10601 Quivera Road, Suite 210, Overland Park, Kansas 66215;
- m. Seaport Family Practice, P.C., whose principal address is 140 Westwoods Drive, Liberty, Missouri 64068;
- n. Shawnee Family Care, P.A., whose principal address is 5949 Nieman, Shawnee, Kansas 66203;
- o. Statland Clinic, Ltd., whose principal address is 5701 West 119th Street, Suite 240, Overland Park, Kansas 66209;
- p. Sunflower Medical Group, P.A., whose principal address is 5555 West 58th Street, Mission, Kansas 66202;
- q. United Medical Group, L.L.C., whose principal address is 5701 State Avenue, Suite 100, Kansas City, Kansas 66102; and
- r. Kimberly M. Wirths, M.D., P.A., whose principal address is 8675 College Boulevard, Suite 100, Overland Park, Kansas 66210.

THE FTC HAS JURISDICTION OVER RESPONDENTS

7. At all times relevant to this Complaint, New Century and Prime Care, acting separately or in concert, and acting through Respondent Officials, among others, have been engaged in the business of negotiating or attempting to negotiate contracts with payors for the provision of physician services on behalf, and for the pecuniary benefit, of their members, including the Physician Practice Respondents.

8. Except to the extent that competition has been restrained as alleged herein: (a) the Physician Practice Respondents that are members of New Century, are now, and have been, in competition with each other and with other members of New Century for the provision of physician services in the Kansas City area; (b) the Physician Practice Respondents that are

members of Prime Care, are now, and have been, in competition with each other and with other members of Prime Care for the provision of physician services in the Kansas City area; and (c) the Physician Practice Respondents that are members of Respondent New Century and the Physician Practice Respondents that are members of Respondent Prime Care, are now, and have been, in competition with each other and with other members of New Century or Prime Care for the provision of physician services in the Kansas City area.

9. All Respondents are “persons, partnerships, or corporations” within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

10. The general business practices of all Respondents, including the acts and practices alleged herein, are in or affect “commerce” as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

OVERVIEW OF PHYSICIAN CONTRACTING WITH PAYORS

11. Individual physicians and physician group practices contract with payors of health care services and benefits, including insurance companies, Blue Cross and Blue Shield plans, health maintenance organizations (HMOs), preferred provider organizations (PPOs), self-insured employers, and others, to establish the terms and conditions, including price terms, under which the physicians will render their professional medical services to the payors’ subscribers or covered employees and dependents. Physicians and physician group practices entering into such contracts often agree to accept lower compensation from payors in order to obtain access to additional patients made available by the payors’ relationship with the covered individuals. These contracts may reduce payors’ costs and enable them to lower the price of insurance or of providing health benefits, thereby resulting in lower medical costs for covered individuals.

12. Physicians and physician group practices sometimes form or participate in financially integrated joint ventures to provide physician services under agreements with payors willingly seeking such arrangements. Under such arrangements, the physicians and physician group practices may share financial risks and rewards based on their collective success in achieving pre-established targets or goals regarding aggregate utilization and costs of the services provided to covered individuals.

13. Other than through their participation in integrated joint ventures, and absent anticompetitive agreements among them, otherwise competing physicians and physician group practices unilaterally decide whether to enter into contracts with payors to provide services to individuals covered by a payor’s programs, and what prices they will accept as payment for their services pursuant to such contracts.

NEW CENTURY’S AND PRIME CARE’S OPERATION

14. Since their formation, New Century and Prime Care each have entered into contracts with payors for and on behalf of their respective member medical practices, under which New Century and Prime Care received capitation payments from the payors in exchange for the medical practices’ agreement to provide their professional medical services to persons covered by the contracting payors. The capitation contracts provided to payors, in addition to the physicians’ services, an insurance guarantee component that all covered physician services

needed by persons covered under a payor's program would be provided by the contracting IPA's members for the predetermined capitation charge, regardless of the actual quantity or type of covered services needed and provided.

15. The member medical practices' participation in New Century and Prime Care, and their offering of their services through the IPAs' capitation contracts, was not, however, the physicians' exclusive or even primary method of selling their professional medical services. Rather, the medical practices also continued to sell their medical services individually, on a fee-for-service basis, outside of New Century and Prime Care, to individual patients and through contracts individually entered into between the medical practice and payors.

ANTICOMPETITIVE CONDUCT

16. At various times from 1999 to 2005, certain payors decided that they no longer wished to purchase both physician services and the insurance guarantee component jointly provided by the IPAs' member medical practices through New Century's and Prime Care's capitation contracts. Those payors sought to contract solely for the professional medical services of the individual members of New Century and Prime Care on a fee-for-service basis. During that time (and presently) New Century's and Prime Care's physician members offered and sold their professional medical services on a fee-for-service basis to payors and individual patients who did not deal with them through New Century or Prime Care.

17. New Century and Prime Care, each acted in conspiracy with their respective member medical practices, including the Physician Practice Respondents, both as combinations of their respective members and together as a combination of the two organizations' collective members. The purpose of the conspiracies was to prevent payors who previously had capitation contracts with one or both of the IPAs from terminating those contracts and dealing directly with the IPAs' individual medical practices to purchase or contract for their professional medical services. Through their joint agreements and actions, New Century and Prime Care, and New Century's and Prime Care's members, including the Physician Practice Respondents, and often acting through Respondent Officials, restrained competition by, among other things, having their members agree to refrain, and in fact refrain, from dealing individually or contracting with payors, other than on a capitation basis through New Century and Prime Care, and by engaging in collective negotiations over terms, including price terms, and conditions of dealing with payors regarding the individual member medical practices' professional medical services.

18. Respondents conducted their anticompetitive activities on two levels. First, the member medical practices of New Century and Prime Care, including the Physician Practice Respondents, agreed to refuse to deal, and refused to deal, with payors regarding payors' offers of fee-for-service contracts with each individual physician practice. Rather, the physicians agreed to deal, and only would deal, with the payors through New Century and Prime Care, and only on terms, including price terms, that were collectively agreed upon through New Century and Prime Care. Second, New Century and Prime Care joined together to increase the bargaining power of the two IPAs with payors, and to attempt to force Humana and other payors to accept the terms of dealing jointly agreed upon through New Century and Prime Care on behalf of their combined membership.

19. The Physician Practice Respondents acted affirmatively to further the anticompetitive actions undertaken on their behalf by New Century and Prime Care, by engaging in one or more of the following actions: (a) participating in the adoption or implementation of anticompetitive policies or actions by New Century or Prime Care through their representatives' participation in meetings and decisions of the New Century or Prime Care Boards; (b) participating in closing their medical practices to new Humana patients, as orchestrated by New Century and Prime Care, in order to coerce Humana into contracting through New Century and Prime Care on the physicians' collectively determined terms; (c) sending or distributing notices to their Humana patients, or otherwise informing them, of the patients' impending loss of their primary care physicians due to termination of the physicians' contracts with Humana, as orchestrated by New Century and Prime Care, in order to encourage patients to pressure Humana to contract with New Century and Prime Care on the physicians' collectively determined terms; and (d) refusing to deal individually with Humana, and informing Humana that they only would deal with Humana collectively through New Century or Prime Care.

EARLY CONTRACT NEGOTIATIONS WITH PAYORS

20. New Century and Prime Care began operations as two separate legal entities, and thereafter entered into separate risk-sharing contracts with payors, including Humana, Cigna, and Mid America Health Care Plans, Inc. ("Mid America").

21. Beginning as early as 2000, New Century physicians attempted to prevent Mid America from changing from a risk-sharing contract to a non-risk-sharing, fee-for-service, contract with New Century physicians, by refusing to deal with Mid America except through New Century, and by threatening to terminate Mid America if it did not agree to a risk-sharing contract with the physicians through New Century. These tactics succeeded, and Mid America agreed to the risk-sharing contract that the physicians, acting through New Century, demanded.

22. After succeeding in their efforts to prevent Mid America from obtaining a fee-for-service arrangement, the New Century physicians employed similar tactics in their 2001 negotiations with Cigna. Cigna also sought to change its contractual relationship with the physicians in New Century from a risk-sharing contract to a fee-for-service reimbursement plan. The New Century physicians were concerned that a fee-for-service reimbursement plan would result in their experiencing a significant drop in their payments from Cigna. To prevent Cigna from making this contractual change, the New Century physicians agreed to refuse, and did refuse, to contract with Cigna except through a group contract with New Century, and threatened to terminate the then-existing contract with Cigna if it continued its efforts to switch to fee-for-service reimbursement for the physicians' services. However, as of mid-2005, New Century did not have any contract with Cigna.

23. In 2002, New Century and Prime Care joined forces to bargain with payors. When New Century again found itself in a contract dispute with Mid America, Prime Care agreed to help New Century by negotiating together with New Century. New Century and Prime Care united because they realized that acting together would give them more leverage in their negotiations with payors. Together, New Century and Prime Care represented approximately 125 primary care physicians in the Kansas City area.

NEGOTIATIONS WITH HUMANA

24. Humana, a health maintenance organization (HMO), is a payor that does business in the Kansas City area, which includes Wyandotte County, Kansas, Johnson County, Kansas, and other counties and areas. Humana offers the only Medicare HMO program in Wyandotte County and has approximately 5,000 enrollees in its program there. Prime Care physicians represent approximately 95% of Humana's primary care physician network in Wyandotte County. Humana also offers one of the two Medicare HMO programs in Johnson County. New Century physicians represent approximately 50% of Humana's primary care physician network in Johnson County. New Century and Prime Care were aware that without at least a substantial portion of the Prime Care and New Century physicians in its networks, Humana would have an insufficient number of primary care physicians to be able to offer its Medicare HMO programs in either Wyandotte or Johnson counties. New Century and Prime Care used this information to attempt to coerce Humana into accepting their contract demands. New Century and Prime Care physicians also represented a substantial portion of Humana's primary care physician network for its commercial lines of business in the Kansas City area.

25. Humana had been providing coverage to enrollees in the Kansas City area under its various programs, including its Medicare HMO program, in part through separate full capitation risk contracts with New Century and Prime Care. In 2004, however, Humana decided to eliminate all risk contracting in the Kansas City area, and to contract with individual physicians and physician group practices on a fee-for-service basis. Humana first informally notified New Century and Prime Care of its intention to eliminate its risk contracts with them. Subsequently, by letters dated September 1, 2004, and sent to New Century and Prime Care, Humana provided the formal notification, required by its contracts with each, to exercise its option to terminate each of those contracts without cause, effective December 31, 2004. However, those contracts required the New Century and Prime Care member medical practices to continue treating Humana patients for 180 days after a contract termination, or, based on the date notification was given, until June 30, 2005. The contract provided that the physicians would be paid on a fee-for-service basis for services rendered during this period.

26. The physicians in New Century and Prime Care wanted to continue contracting with Humana only through New Century and Prime Care, and on the terms of their previous capitation contracts with Humana. They did not want to contract directly with Humana on a fee-for-service basis, because they believed that Humana would offer lower payments than those the physicians previously had received under the capitation contracts.

27. On September 2, 2004, New Century and Prime Care sent a joint letter to Humana, signed by Drs. Buie and Powers in their capacities as chairmen of the two organizations. The letter informed Humana that New Century's and Prime Care's physicians would not negotiate with Humana on an individual basis, and would continue to contract with it only on a joint basis through New Century and Prime Care. In this letter, New Century and Prime Care also threatened that, unless Humana agreed to a contract by October 1, 2004, they would begin notifying patients covered by Humana, and the Medicare HMO program, who used New Century and Prime Care physicians that those physicians would withdraw from Humana's provider network. New Century and Prime Care sent copies of this letter to various executives at Humana, as well as to their member medical practices.

28. New Century and Prime Care previously had used similar tactics in their 2001-2002 contract negotiations with Humana. At that time, those tactics succeeded in preventing Humana from eliminating its risk contracts and implementing individual, non-risk contracts with physicians or medical practices. New Century and Prime Care used their prior success to encourage the physicians in their member medical practices to remain resolute, and to stick together through New Century and Prime Care, in their ongoing 2004 and 2005 dealings with Humana.

29. Almost immediately after sending Humana the September 2, 2004, letter, New Century and Prime Care embarked on a multifaceted public relations campaign, which included media advertisements geared toward employers and patients covered by Humana, flyers and letters to patients, meetings with employers, and communications with insurance brokers. This campaign was designed to pressure Humana to contract with New Century's and Prime Care's physicians through the IPAs, and on their desired terms. To prevent Humana from contracting individually with their member medical practices, including the Physician Practice Respondents, New Century and Prime Care together repeatedly urged their member medical practices not to meet individually with Humana representatives, and to refer all calls from Humana to the designated New Century and Prime Care representatives.

30. In early 2005, as part of the campaign to put pressure on Humana to accede to their contracting demands, New Century and Prime Care prepared draft letters for their member medical practices to send to their patients to warn them of an impending likely loss of their primary care physicians under their Humana coverage, and blaming Humana for the impending disruption in their care. New Century and Prime Care recommended that the letters be put on each medical practice's letterhead, and then have the practice either send copies to its Humana patients, or distribute it to patients at the practice's offices. At least seven of New Century's and Prime Care's approximately 25 member medical practices sent such letters to their Humana patients, and other member medical practices may have distributed the letters to patients or posted the letters in their offices. The following Physician Practice Respondents sent letters based on the drafts prepared by New Century and Prime Care to at least some of their Humana patients:

College Park Family Care Center, P.A.;
Kanza Multispecialty Group, P.A.;
Landmark Medical Center, Inc.;
Seaport Family Practice, P.C.;
Statland Clinic Ltd.;
Sunflower Medical Group, P.A.; and
United Medical Group, L.L.C.

31. In early December of 2004, New Century and Prime Care presented Humana with a proposed letter of agreement for a new contract, which included, in addition to continued payment by capitation for Humana's Medicare HMO business, a 30% increase in the reimbursement to physicians under the commercial capitation part of the contract. By letter of December 10, 2004, Humana rejected this proposal, and reiterated its desire only to contract individually and directly with the physicians and medical practices in New Century and Prime Care.

32. New Century and Prime Care were aware of Humana's need to have their physicians in its provider network in order for Humana to be able to offer its products for sale in the Kansas City area, and were aware of the disruption that would occur to patients covered under Humana programs if the New Century and Prime Care physicians did not contract with Humana. New Century and Prime Care expressed such awareness both to their members in Board meetings and memoranda, and to Humana in letters.

33. On February 18, 2005, the Boards of Directors of New Century and Prime Care jointly decided to encourage their member medical practices to contact Humana and inform it that they were closing their practices to new Humana patients. This was done, at least in part, to eliminate Humana's ability to market its products, thereby putting pressure on Humana to contract with New Century and Prime Care on the physicians' collectively determined desired terms. In February and March, 2005, New Century and Prime Care sent draft letters to all their member medical practices for use in notifying Humana that they were closing their practices to new Humana patients. New Century and Prime Care encouraged the physician practices to send the letters to Humana. The following Physician Practice Respondents, accounting for more than 100 of New Century's and Prime Care's approximately 125 total physicians, sent such letters to Humana closing their practices to new Humana patients:

- Associates in Family Medicine, P.A.;
- Briarcliff Medical Associates, P.C.;
- College Park Family Care Center, P.A.;
- Family Health Group, Chartered;
- Hickman Mills Clinic, Inc.;
- Kanza Multispecialty Group, P.A.;
- Landmark Medical Center, Inc.;
- Michael E. Monaco, M.D., d/b/a Select Healthcare, P.A.;
- Overland Park Family Health Partners, P.A.;
- Quivera Internal Medicine, L.L.C.;
- Seaport Family Practice, P.C.;
- Statland Clinic Ltd.;
- Sunflower Medical Group, P.A.;
- United Medical Group, L.L.C.; and
- Kimberly M. Wirths, M.D., P.A.

34. Throughout late 2004 and early 2005, Humana repeatedly attempted to contract directly with the individual New Century and Prime Care member medical practices. These efforts were unsuccessful. New Century and Prime Care Board meeting minutes reported on Humana's failure to obtain such individual contracts or arrange for physician alternatives, and noted Humana's increasing frustration at the situation. New Century and Prime Care attributed Humana's lack of success in obtaining individual contracts to "the leverage the physicians have as a unified group." The following Physician Practice Respondents, when contacted by Humana, refused to deal individually with Humana, and referred the Humana representatives to New Century and Prime Care for contract discussions:

- Briarcliff Medical Associates, P.C.;
- Family Health Group, Chartered;
- Family Medical Group, P.A.;

Landmark Medical Center, Inc.;
Michael E. Monaco, M.D., d/b/a Select Healthcare, P.A.;
Kenneth Norton, M.D., P.A.;
Overland Park Family Health Partners, P.A.;
Quivera Internal Medicine, L.L.C.;
Seaport Family Practice, P.C.; and
Sunflower Medical Group, P.A.

35. Humana was able to sign an individual contract with one New Century member medical practice consisting of three physicians. However, this group, Shawnee Family Care, P.A., immediately rescinded its agreement with Humana after discussions with New Century and Prime Care officials.

36. On April 1, 2005, New Century and Prime Care together filed a lawsuit against Humana in Kansas state court for breach of contract regarding Humana's termination of its capitation contracts with New Century and Prime Care, and seeking a preliminary injunction against that termination. Humana removed the case to federal district court for the Western District of Missouri and, on May 7, 2005, filed a counterclaim alleging federal and state antitrust law violations by New Century and Prime Care, acting as representatives of their member medical practices. After Humana had filed its antitrust counterclaim, and the Federal Trade Commission commenced an investigation of the actions of New Century and Prime Care, New Century's and Prime Care's member medical practices began to cease their concerted refusal to deal with Humana, and began to deal individually with Humana regarding its contract offers to them.

RESPONDENTS' CONDUCT IS NOT LEGALLY JUSTIFIED

37. Respondents' joint refusal to deal and negotiation of fees and other competitively significant terms, and the agreements, acts, and practices described above, have not been, and are not, reasonably related to any efficiency-enhancing integration among the physician members of New Century and Prime Care, or between New Century and Prime Care and their respective members, including the Physician Practice Respondents.

RESPONDENTS' ACTIONS HAVE HAD, OR COULD BE EXPECTED TO HAVE, SUBSTANTIAL ANTICOMPETITIVE EFFECTS

38. Respondents' actions described in paragraphs 15 to 35 of this Complaint have had, have tended to have, or if successful would have had, the effect of restraining trade unreasonably and hindering competition in the provision of physician services in the Kansas City area in the following ways, among others:

- a. unreasonably restraining price and other forms of competition among physicians whose medical practices are members of New Century, among physicians whose medical practices are members of Prime Care, and between New Century and Prime Care, and their respective medical practice members;
- b. increasing prices for physician services;

- c. depriving payors, including insurers and employers, and individual consumers, of the benefits of competition among physicians; and
- d. depriving consumers of the benefits of competition among payors.

39. The combination, conspiracy, acts, and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such combination, conspiracy, 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 on this ____ day of _____, 2006, issues its Complaint against Respondents New Century Health Quality Alliance, Inc., Prime Care of Northeast Kansas, L.L.C., Elizabeth Gallup, M.D., J.D., Steven Buie, M.D., Thomas Allen, M.D., G. Robert Powers, M.D., Associates in Family Medicine, P.A., Briarcliff Medical Associates, P.C., College Park Family Care Center, P.A., Family Health Group, Chartered, Family Medical Group, P.A., Hickman Mills Clinic, Inc., Kanza Multispecialty Group, P.A., Landmark Medical Center, Inc., Michael E. Monaco, M.D., d/b/a Select Healthcare, P.A., Kenneth Norton, M.D., P.A., Overland Park Family Health Partners, P.A., Quivera Internal Medicine, L.L.C., Seaport Family Practice, P.C., Shawnee Family Care, P.A., Statland Clinic Ltd., Sunflower Medical Group, P.A., United Medical Group, L.L.C., and Kimberly M. Wirths, M.D., P.A.

By the Commission.

Donald S. Clark
Secretary

SEAL