

**Statement of Boulder Valley Individual Practice Association
in response to the announcement of a proposed enforcement action
by the Federal Trade Commission**

December 24, 2008

For over a decade the Federal Trade Commission has brought multiple enforcement actions against physicians around the country, which accuse the physicians of bargaining jointly in an attempt to increase the reimbursement rates paid by health insurance companies. Most of these cases have been settled by consent decrees.

Today, in the latest of these cases, the FTC simultaneously announced its complaint against the Boulder Valley Individual Practice Association and a consent order that would bar the IPA physicians from contracting jointly with the insurance companies. The proposed order will still allow individual physicians or practice groups to contract directly with the health plans, and the order *is not going to have any significant impact on the ability of IPA physicians to treat patients in Boulder County.*

It is important to understand that Boulder Valley's acceptance of the consent order is not an admission that the charges made by the FTC are true. In fact, they are not, as will be demonstrated in detail below. Nonetheless, because it cannot afford to fight the federal government, the Boulder Valley IPA has decided to settle rather than litigate.

The Boulder Valley IPA is a group of over 350 primary care and specialty physicians located in Boulder, Colorado. It has contracts with 17 health plans that have significant membership in Boulder County. These health plans include billion-dollar insurance companies such as United Healthcare, Aetna, and CIGNA. By contracting with the health plans, the Boulder Valley IPA provides a readily accessible network of primary care and specialty physicians that are available to patients insured by the plans.

In past years, the Boulder Valley IPA has offered health plans three contracting options. The first option is that *at the request of the insurance company*, a health plan may negotiate a single agreement with the IPA that provides access to the entire IPA network of physicians through one contract. Large billion-dollar insurance companies such as Cigna, Aetna and many others have used this option, presumably because they have found it to be an efficient way to obtain access to an extensive panel of physicians in Boulder county at minimal contracting expense.

The second option is that the Boulder Valley IPA will act as a messenger on behalf of the insurance company by sending out contracts to the membership. United Healthcare is an example of this type of contracting model.

The third option is that the Boulder Valley IPA has facilitated the negotiation of contracts directly between the health plans and individual physician or small group practices. Anthem is

an example of an insurance company that has contracted with members of the Boulder Valley IPA in this fashion.

The proposed complaint alleges that the members of the Boulder Valley IPA have refused to negotiate with the insurance companies individually or through their small group practices, but instead have forced the health insurance companies to negotiate with the group as a whole. It is difficult to understand how a group of doctors in Boulder County could “force” billion-dollar insurance companies to do anything. These charges – and others like them – are not only false, they are affirmatively disproved by unmitigated facts.

For example, the proposed complaint states “the only method that Boulder Valley IPA ever used was the single-signature contract.” This simply is not true. In fact, Boulder Valley IPA members can and do contract individually with third-party payers. Anthem and First Health, and United Healthcare, are the only insurance companies that have expressed an interest in direct contracting with members of the Boulder Valley IPA. Each of these companies has successfully done so.

- Over 90% of Boulder Valley IPA members – including all of its officers – contract individually with Anthem.
- A large primary care group, comprised of 25 primary care physicians (the largest group in the Boulder Valley IPA), has individual contracts with Anthem, United Healthcare, and First Health.
- A Longmont-based primary care group has individual contracts with Anthem and First Health.
- Hospital-based specialty groups have individual contracts with United Healthcare, First Health and Anthem.
- Most of the large single specialty groups have individual contracts with Anthem and First Health.

The allegation that the Boulder Valley IPA “never developed or used a messenger model in any negotiations with any payers” is equally false. The Boulder Valley IPA has contracted with United Healthcare with this particular contracting method since 2004.

The Federal Trade Commission’s complaint ignores these facts. The Boulder Valley IPA provides health plans the opportunity to contract with a large number of physicians through a single agreement. If the health plans don’t want that service, they are free to contract individually with the same doctors, either with the assistance of the Boulder Valley IPA or without.

In short, this case boils down to a simple dispute. The Boulder Valley IPA believes that that joint negotiations *conducted at the request of the insurance company or health plan* are legal, save money in the contracting process, allow greater access to a broad physician network,

and can improve the quality of care. The FTC apparently believes that even when undertaken at the specific request of a payer, joint negotiations are illegal.

Regrettably, however, the cost of a fight with the FTC in this case is more than the IPA can afford, and would interfere with the ability of the members to meet their primary task – providing superior and cost-effective health care services to the residents of Boulder County. Fortunately, the present action by the FTC will not divert the IPA and its members from this task. The Boulder Valley IPA and its member physicians will comply and contract individually with the health plans. The accessibility of these physicians to patients in Boulder County will not diminish in any way.

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