FEDERAL TRADE COMMISSION

[File No. 051 0234]

American Renal Associates, Inc.; Analysis of Agreement Containing Consent Order 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 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 October 9, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''American Renal Associates, File No. 051 0234,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Martha Oppenheim (202) 326-2941, Bureau of Competition, Room NJ-7264, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission 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 September 7, 2007), on the World Wide Web, at *http://www.ftc.gov/os/2007/09/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 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. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') from American Renal Associates, Inc., and affiliates including, but not limited to, ARA-East Providence Dialysis LLC, ARA-Johnston Dialysis LLC, ARA-Fall River Dialysis LLC, and Dialysis Center of West Warwick LLC; and Fresenius Medical Care Holdings, Inc. and affiliates, including Renal Care Group, Inc. and Bio-Medical Applications of Rhode Island, Inc. Under the terms of the Consent Agreement, ARA and Fresenius are prohibited from agreeing with other dialysis clinic operators to close any clinics, or allocate any dialysis service markets. ARA is further required to notify the Commission of acquisitions of dialysis clinic assets in the Warwick/ Cranston, Rhode Island, area.

The Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement or make it final.

Pursuant to an Asset Purchase Agreement dated August 3, 2005, ARA proposed to acquire five Fresenius clinics in the Providence, Rhode Island/ Fall River, Massachusetts area, and pay Fresenius to close another three competing clinics, for approximately $4.4 million. ARA's agreement to pay Fresenius to close its clinics is a *per se* violation of the antitrust laws. In addition, the Commission's Complaint alleges, as summarized below, that the Asset Purchase Agreement, if consummated, would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, by reducing dialysis capacity; allocating dialysis customers, territories, or markets; and lessening competition in the market for the provision of outpatient dialysis services in the Warwick/Cranston area.

II. The Parties

American Renal Associates, Inc., which is headquartered in Danvers, Massachusetts, operates 65 dialysis centers in 15 states and the District of Columbia. ARA is the sixth-largest provider of outpatient dialysis services in the United States, serving 2,300 dialysis patients, with 2004 revenues exceeding $80 million. In 2005, ARA owned six clinics in Rhode Island, which were located in Cranston, East Providence, Johnston, Pawtucket, Providence, and Tiverton, and one in nearby Fall River, Massachusetts.

Fresenius Medical Care Holdings, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 95 Hayden Avenue, Lexington, Massachusetts 02420-9192. Fresenius is the parent of entities that are parties to the Consent Agreement, including Renal

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Care Group, Inc. and Bio-Medical Applications of Rhode Island, Inc.

III. The Asset Purchase Agreement

ARA and Fresenius entered into an Asset Purchase Agreement dated August 3, 2005, under which Fresenius agreed to sell five clinics located in Rhode Island—the Wakefield, Westerly, Woonsocket, Warwick, and West Warwick clinics—to ARA for $2,759,000. The agreement also required Fresenius to close its clinics in East Providence and North Providence, Rhode Island, and in Fall River, Massachusetts, in exchange for ARA's payment of $1,641,000. The parties terminated this agreement on March 13, 2006, after the FTC staff raised antitrust concerns.

IV. The Complaint

A. Agreement Between Competitors to Close Clinics

The Commission's complaint charges that first and foremost, the agreement between Fresenius and ARA—competitors in the provision of outpatient dialysis services—to close three Fresenius clinics was a horizontal agreement to eliminate competition and to reduce dialysis capacity in the three affected areas. Each of the Fresenius clinics to be closed was located close to a competing ARA outpatient dialysis clinic. The parties memorialized their agreement in a written contract, listing each Fresenius clinic to be closed and the specific amount of money to be paid by ARA for closing each clinic, and allocating each amount to the ARA clinic closest to the clinic to be closed. The parties further agreed that Fresenius would not reopen any outpatient dialysis clinics within 10 to 12 miles of the closed facilities for at least five years, and would attempt to enforce the non-compete provisions of its agreements with the medical directors of the closed facilities for ARA's benefit, preventing those physicians from serving as medical directors for any potential new entrant.

Agreements to pay a competitor to exit a market, such as the one negotiated by ARA and Fresenius, are per se unlawful. Indeed, the parties offered no competitive justification for their conduct, and it is unlikely that there is any plausible justification for such an agreement. Such a naked restraint, like a market division agreement or price fixing, is a per se violation of the antitrust laws.

B. Agreement to Eliminate Competition by Acquiring Clinics

The Commission also charges that ARA's proposed acquisition of Fresenius's two Warwick, Rhode Island, facilities would have substantially reduced competition for outpatient dialysis services by eliminating competition between these Warwick clinics and ARA's nearby Cranston, Rhode Island, clinic. Outpatient dialysis services is the relevant product market in which to assess the effects of the clinic acquisition portion of the asset purchase agreement. End stage renal disease (ESRD) is a chronic disease characterized by a near total loss of function of the kidneys, which in healthy people remove toxins and excess fluid from the blood. ESRD may be treated through dialysis, a process whereby a person's blood is filtered by machines that act as artificial kidneys. Most ESRD patients receive dialysis treatments in an outpatient dialysis clinic three times per week, in sessions lasting between three and five hours. The only alternative to outpatient dialysis treatments for ESRD patients is a kidney transplant. However, the wait-time for donor kidneys—during which ESRD patients must receive dialysis treatments—can exceed five years. Additionally, many ESRD patients are not viable transplant candidates. As a result, many ESRD patients have no alternative to ongoing dialysis treatments.

The Commission's complaint also alleges that the relevant geographic market in which to assess the competitive effects of the clinic acquisition portion of the asset purchase agreement is the Cranston and Warwick area in Rhode Island. The relevant geographic market for the provision of outpatient dialysis services is defined by the distance ESRD patients are willing and able to travel to receive dialysis treatments, and is thus local in nature. Because ESRD patients often suffer from multiple health problems and may require assistance traveling to and from the dialysis clinic, and because of the high frequency of treatments, these patients are unwilling and unable to travel long distances for dialysis treatment. The time and distance a patient will travel in a particular location are significantly affected by local traffic patterns; whether an area is urban, suburban, or rural; local geography; and a patient's proximity to the nearest dialysis clinic. The size and dimensions of relevant geographic markets are also influenced by a variety of other factors including population density, roads, geographic features, and political boundaries.

With respect to the clinic acquisition portion of the asset purchase agreement, the Commission's complaint alleges that the market for outpatient dialysis services in the Warwick/Cranston area is highly concentrated. The market has only two dialysis providers, ARA and Fresenius, and the transaction as originally proposed would result in a monopoly in the Warwick/Cranston area. The evidence shows that health plans and other private payers who pay for dialysis services used by their members benefit from direct competition between ARA and Fresenius when negotiating the rates of the dialysis provider. As a result, the proposed combination likely would result in higher prices and reduced incentives to improve service or quality in the Warwick/Cranston outpatient dialysis services market defined in the complaint. Also, the complaint alleges that in this market, entry on a level sufficient to deter or counteract the likely anticompetitive effects of the proposed transaction is not likely to occur in a timely manner. The primary barrier to entry is the difficulty associated with locating nephrologists with established patient pools who are willing and able to serve as medical directors. Federal law requires each dialysis clinic to have a physician medical director. As a practical matter, having a nephrologist serve as medical director is essential to the success of a clinic because medial directors are the primary source of referrals.

V. The Consent Agreement

The proposed relief in this case is narrowly tailored to address both the agreement to close clinics and the attempted acquisition of clinics in the Warwick/Cranston area. The order would prohibit ARA and Fresenius for ten years from agreeing with any person to close a dialysis clinic, or allocate any dialysis customer, territory, or market. The consent order also would require ARA to give the Commission prior notice before acquiring any interest in a dialysis clinic in the Warwick/Cranston area because there is a risk that ARA remains interested in expanding in the area, but any such further acquisition likely would fall below Hart-Scott-Rodino Act premerger notification thresholds.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order, or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–18378 Filed 9–18–07: 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0937–0200; 30-day notice]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the OS OMB Desk Officer all comments must be faxed to OMB at (202) 395–6974.

Title of the Collection—HHS Payment Management System Forms -Extension-OMB No. 0937–0200—Assistant Secretary for Administration and Management (ASAM) -Program Support Center (PSC)—Division of Payment Management (DPM).

Abstract: The Division of Payment Management (DPM) is requesting a three year extension of the HHS Payment Management System Forms. Treasury regulations at 31 CFR part 205 and OMB Circulars A–102 and A–110 require advances of Federal funds to be scheduled as closely as possible to the grantee's disbursement needs and payment methods should allow for monthly, bi-weekly or more frequent payments in support of this requirement. The PSC–270 is used by grantees to obtain grant funds. The PSC–272 form is used to monitor federal cash advances to grantees and obtain Federal cash disbursement data. The forms are designed to provide essential cash management information, assist the grantee in meeting accountability requirements, and ensure compatibility between data in the Payment Management System (PMS) operated by DPM and the grantee organization's records.

The PSC–270 form is used monthly by approximately 210 HHS grantees to obtain grant funds and is used in lieu of the SF–270. The computerized PSC–272 form is utilized quarterly by approximately 22,240 grantees of grant awards from HHS and other Federal agencies that are paid through DPM. The forms are completed by State, local and tribal governments, profit and nonprofit businesses and institutions receiving grants from HHS and other Federal agencies serviced by the Division of Payment Management.

ESTIMATED ANNUALIZED BURDEN HOURS

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response (in hours)	Total burden hours
PSC–272	Quarterly	22,240	4	3	266,880
PSC–270	Monthly	210	12	15/60	630
Total					267,510

Dated: 09/10/2007.

Alice Bettencourt,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E7–18401 Filed 9–18–07; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Task Force on Community Preventive Services

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Task Force on Community Preventive Services.

Times and Dates: 8 a.m.–6 p.m. EDT, October 17, 2007. 8 a.m.–1 p.m. EDT, October 18, 2007.

Place: Centers for Disease Control and Prevention, Roybal Building 19, 1600 Clifton Road, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The mission of the Task Force is to develop and publish the *Guide to Community Preventive Services (Community Guide)*, which consists of systematic reviews of the best available scientific evidence and associated recommendations regarding and what works in the delivery of essential public health services.

Topics include: reducing excessive alcohol consumption; improving adolescent health; reducing risky adolescent sexual behavior; worksite health promotion—influenza vaccination; controlling obesity; and updating the *Community Guide's* vaccine-preventable diseases review. Agenda items are subject to change as priorities dictate.

Persons interested in reserving a space for this meeting should call Tony Pearson-Clarke at 404.498.0972 by close of business on October 5, 2007.

FOR FURTHER INFORMATION CONTACT: Tony Pearson-Clarke, Community Guide Branch, Coordinating Center for Health Information and Service, National Center for Health Marking, Division of Health Communication and Marketing, 1600 Clifton Road, M/S E–69, Atlanta, GA 30333, telephone: 404.498.0972.