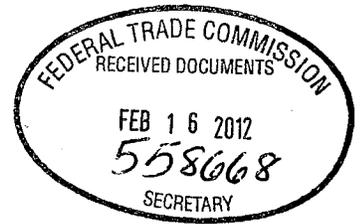


ORIGINAL



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
)
OSF Healthcare System,)
a corporation, and)
)
Rockford Health System,)
a corporation.)
)
)

Docket No. 9349
PUBLIC

**RESPONDENTS' MOTION TO COMPEL EMPLOYER HEALTH CARE ALLIANCE
COOPERATIVE TO PRODUCE DOCUMENTS REQUESTED BY SUBPOENA *DUCES
TECUM***

Respondents OSF Healthcare System and Rockford Health System ("Respondents") respectfully submit this Motion to Compel The Employer Health Care Alliance Cooperative ("Alliance") to Produce Documents Requested by Subpoena *Duces Tecum*, pursuant to Rule 3.38(a) of the Federal Trade Commission's Rules of Adjudicative Practice and Paragraphs 4 and 5 of the Scheduling Order.

Counsel for Respondents have attempted to confer in good faith with counsel for Alliance in an effort to obtain the requested documents without the Court's intervention. Respondents and Alliance have been unable to reach an agreement, therefore Respondents respectfully move the Court for an Order requiring the immediate production of documents for the reasons set forth in Respondents' accompanying Memorandum in support of this motion.

Date : February 16, 2012

Respectfully submitted,

OSF HEALTHCARE SYSTEM

By: /s/Kristin M. Kurczewski
One of Its Attorneys

Alan I. Greene
Matthew J. O'Hara
Kristin M. Kurczewski
Nabil G. Foster
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Michael F. Iasparro
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miasparro@hinshawlaw.com

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
OSF Healthcare System, a corporation, and)	Docket No. 9349
)	PUBLIC
Rockford Health System, a corporation.)	
)	
)	

**STATEMENT REGARDING MEET AND CONFER
PURSUANT TO 16 C.F.R. § 3.22(g)**

On February 14, 2012, Respondents' Counsel, Nabil Foster, conferred telephonically at approximately 9:50 a.m. with Andrew Clarkowski, counsel for the Employer Health Care Alliance Cooperative ("Alliance"), in a last and final attempt in good faith to resolve the outstanding issues raised by Respondents' Motion to Compel the Employer Health Care Alliance Cooperative to Produce Documents Requested by Subpoena *Duces Tecum*. Counsel were unable to reach an agreement on the outstanding items.

Respondents' Counsel and Counsel for Alliance previously discussed these issues in telephone calls and correspondence prior to February 14, 2012. Counsel communicated to resolve these issues on 1/9/12, 1/26/12, 1/31/12, 2/3/12, 2/7/12 and finally once more on 2/14/12.

During these calls, Nabil Foster or Matthew O'Hara was present on Respondents' behalf and Andrew Clarkowski was present on the Alliance's behalf. During the telephone call on February 14, 2012, Counsel for Alliance stated that his client would not agree to produce documents responsive to document request No. 17 of Respondents' outstanding subpoena requests. As a result of these communications it was concluded that Respondents and the Alliance were at an impasse regarding the issues raised in the foregoing Motion.

Date : February 16, 2012

Respectfully submitted,

OSF HEALTHCARE SYSTEM

By: /s/ Kristin M. Kurczewski
One of Its Attorneys

Alan I. Greene
Matthew J. O'Hara
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**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
OSF Healthcare System,)	
a corporation, and)	Docket No. 9349
)	PUBLIC
Rockford Health System,)	
a corporation.)	
)	

**MEMORANDUM IN SUPPORT OF RESPONDENTS' MOTION TO COMPEL
CONNECTICUT GENERAL LIFE INSURANCE COMPANY TO PRODUCE
DOCUMENTS REQUESTED BY SUBPOENA DUCES TECUM**

Respondents OSF Healthcare System and Rockford Health System ("Respondents") respectfully submit this Memorandum in Support of its Motion to Compel the Employer Health Care Alliance Cooperative ("Alliance") to Produce Documents Requested by Subpoena Duces Tecum, pursuant to Rule 3.38(a) of the Federal Trade Commission's Rules of Adjudicative Practice and Paragraphs 4 and 5 of the Scheduling Order.

FACTUAL BACKGROUND

Respondents served a subpoena *duces tecum* ("Subpoena") in the instant proceeding on Alliance on January 5, 2012. (See Ex.A). The Subpoena is one of several subpoenas *duces tecum* issued by the Commission on Respondents' behalf, pursuant to Rule 3.34(b) of the Commission's Rules of Adjudicative Practice. Respondents' Subpoenas were directed to health care organizations, including Alliance, doing business in the areas served by Respondents' hospitals, including Winnebago, Ogle, and Boone counties in Illinois. The Subpoena called for Alliance to produce certain documents from the period of January 1, 2005 to the present, to be produced for inspection on January 11, 2012.

Alliance's initially requested additional time to comply with the Subpoena and Respondents' counsel agreed to the extension of time. Counsel for Respondents communicated with counsel for the Alliance by phone on 1/9/12, 1/26/12, 1/31/12, 2/3/12, 2/7/12 and again on 2/14/12 to resolve the discovery disputes. Alliance's counsel expressed a reluctance to obey the Subpoena on the grounds that he could not understand why Respondents would want documents from the Alliance, and because his client did not want to be constrained by the terms of the Protective Order Governing Discovery Material Order in this proceeding. Specifically, counsel for the Alliance objected to having only a 5 day period to file a motion to request in camera treatment of a documents pursuant to paragraph 10 of this Court's protective order. The refusal to produce confidential documents on this basis was unreasonable; however, this issue was resolved by agreement of the parties to provide Alliance's counsel with more advance notice of any intention to use a confidential document in a public form. See Ex. B (Letter response to Subpoena, dated Feb. 8, 2012)

On February 8, 2012, after numerous communications to resolve Alliance's reservations about complying with the subpoena, the Alliance produced some documents and a letter to articulate the Alliance's objection to request no. 17. See Ex. B (Letter response to Subpoena, dated Feb. 8, 2012) Subpoena request no 17 asks for "*Documents relating to your negotiations with providers of the Relevant Services in the Relevant Area from January 1, 2005 to the present...*" See Ex. A (Subpoena). This request is relevant and Alliance has no justifiable reason for refusing to produce documents it claims contain "confidential information which is used in negotiations with OSF Healthcare System and Rockford Health System." See Ex. B, p.3 (Letter response to Subpoena). Alliance's counsel refuses to acknowledge that the Protective Order Governing Discovery Material Order in this proceeding is sufficient to protect the confidential information in Alliance's documents. See Ex. C (order of protection)

Alliance's position is unreasonable and contrary to previous rulings on similar objections to the production of "confidential" information in this proceeding. Indeed, this Court has already ruled in this proceeding on a strikingly similar motion against United Health Group to compel production of its contract negotiation documents. In that order, this Court granted the motion to compel and stated: "documents consisting of United's communications in its contract negotiations with hospitals in the Rockford area are relevant and a request for such documents is not overly broad." See Ex D, p. 3 (Court order, dated Feb. 14, 2012).

The document request granted by this Court in that motion to compel against United Health Group was for the production of documents relating to its negotiations with hospitals. This Court modified that requests to the following:

18. Documents describing or reflecting your negotiations with providers of the Relevant Services in the Relevant Area from January 1, 2005 to the present, including but not limited to contract proposals, drafts, and communications between you and providers of Relevant Services in the Relevant Area; documents identifying key or "must-have" hospitals, outpatient facilities, or primary care physicians in the Relevant Area; documents analyzing the geographic coverage of providers; documents, information, and data relied upon during contract negotiations (such as quality measures, member utilization patterns, and employer or member feedback regarding your provider network or product offerings); documents relied upon to determine whether proposed reimbursement rates are comparable to those you pay to other providers of Relevant Services in the Relevant Area; documents reflecting whether to include or exclude any hospital or hospital system, or physician or physician organization in your provider network, communications regarding any provider's desire to exclude any other providers from a health plan; and copies of the final provider contracts, including any amendments or modifications, for Relevant Services in the Relevant Area.

See Ex Dp. 3 (Court order, dated Feb. 14, 2012).

This modified document request is substantially the same document request that Alliance refused to answer. Subpoena Request no. 17 to Alliance asked Alliance to produce:

17. Documents relating to your negotiations with providers of the Relevant Services in the Relevant Area from January 1, 2005 to the present, including

but not limited to documents relating to contract proposals, drafts, and communications between you and providers of Relevant Services in the Relevant Area; documents identifying key or "must-have" hospitals, outpatient facilities, or primary care physicians in the Relevant Area; documents analyzing the geographic coverage of providers; documents, information, and data relied upon during contract negotiations (such as quality measures, member utilization patterns, and employer or member feedback regarding your provider network or product offerings); documents relied upon to determine whether proposed reimbursement rates are comparable to those you pay to other providers of Relevant Services in the Relevant Area; documents reflecting whether to include or exclude any hospital or hospital system, or physician or physician organization in your provider network; communications regarding any provider's desire to exclude any other providers from a health plan; and copies of the final provider contracts, including any amendments or modifications, for Relevant Services in the Relevant Area.

See Ex. A (Subpoena)

On February 22, 2012, Respondents are scheduled by agreement to take the deposition of Kelly Davit, an Alliance employee who negotiates contracts with Rockford area health providers. On February 24, 2012, Respondents are also scheduled by agreement of the parties to take the deposition of Alliance's CEO, Ms. Cheryl DeMars. Timely receipt of these materials is necessary for Respondents to have adequate opportunity to review them in preparation for the depositions. Alliances' continued refusal to comply with the Subpoena, coupled with the impending close of discovery on February 17, 2012, leave Respondents with no recourse but to seek the Court's intervention at this time.

ARGUMENT

The Commission's Rules of Adjudicative Practice provide that Respondents have the right to "obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations in the complaint, to the proposed relief, or to the defenses of any respondent." 16 C.F.R. § 3.31(c)(I); *In re Polypore Int'l, Inc.*, 2009 FTC LEXIS 41, at *8 (Jan. 15, 2009). The Commission has held that the party requesting a subpoena is only required to

show that the information sought is "reasonably expected to be 'generally relevant to the issues raised by the pleadings. "' *In re Rambus, Inc.*, 2002 FTC LEXIS 90, at *9 (Nov. 18, 2002) (quoting *In re Kaiser Aluminum & Chem. Corp.*, 1976 FTC LEXIS 68, at *4 (Nov. 12, 1976)). Therefore, the relevancy of the information sought by a subpoena is determined by" laying the subpoena along side' the pleadings." *Rambus*, 2002 FTC LEXIS 90, at *9 (quoting *Kaiser*, 1976 FTC LEXIS 68, at *5).

Evaluating Respondents' Subpoena "along side the Complaint" demonstrates that the Subpoena seeks materials reasonably expected to yield information that is relevant, material, and critical to Respondents' defense. For example, to rebut the Commission's allegation that the Acquisition will "increase Respondents' ability and incentive to unilaterally demand higher reimbursement rates from commercial health plans" (Compl. 40), Respondents require information concerning Alliance's negotiations with Respondents and other health care provider entities in the region, as well as information concerning Alliances' pricing models that compare contract rates in the relevant area. (See Subpoena Request Nos. 17 (Ex. A)). This Court has already held that a substantially similar document request, seeking "documents describing or reflecting your negotiations with providers of the Relevant Services in the Relevant Area from January 1, 2005 to the present," is relevant and material to the allegations in this proceeding.

The Subpoena seeks documents that are reasonably expected to yield relevant information, as the requests are tailored to seek only documents that are relevant to the factual issues raised by the allegations in the Commission's Complaint. Therefore, Respondents seek the immediate production of Alliance's responsive documents as they are pertinent to Respondents' defense in this matter. Without the requested documents, Respondents will not have ample opportunity to "develop those facts which are essential" to their defense. *In re Gen. Foods.*, No. 9085, 1978 FTC LEXIS 412, at *6 (April 18, 1978).

Alliance's claim that the documents requested are "confidential" and "crucial to the ongoing business relationship between the parties." (see Ex. B) is insufficient to overcome Alliance's burden to produce responsive documents. *In re Flowers Indus., Inc.*, 1982 FTC LEXIS 96, at * 11 & *15 (March 19, 1982) (assertion that the information requested "involves sensitive, financial and trade data does not limit the power to obtain it." and "a recipient of a subpoena *duces tecum* issued in an FTC adjudicative proceeding who resists compliance therewith bears a heavy burden. That burden is no less because the subpoena is directed at a non-party."). Respondents' need for this material far outweighs Alliance's concern about the information's sensitive nature. Furthermore, the provisions of the Protective Order Governing Discovery Material Order in this proceeding protect Alliance's information against improper use and disclosure. Indeed, the Commission recognizes the need for information of a sensitive nature and has held that in antitrust cases, records of this nature "are not only not immune from inquiry, but are precisely the source of the most relevant evidence." *Id.* at *12. (emphasis added). In light of Respondents' efforts to resolve these disputes, and in consideration of the fast approaching discovery deadline, it is essential that Respondents immediately receive the requested materials to proceed with the noticed deposition and meet the current discovery deadline.

CONCLUSION

For all of the foregoing reasons, Respondents respectfully request that the Court grant its Motion and issue an Order requiring Alliance's immediate production of documents.

Date : February 16, 2012

Respectfully submitted,

OSF HEALTHCARE SYSTEM

By: /s/ Kristin M. Kurczewski
One of Its Attorneys

Alan I. Greene
Matthew J. O'Hara
Kristin M. Kurczewski
Nabil G. Foster
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CERTIFICATE OF SERVICE

I, Kristin M. Kurczewski, hereby certify that I served a true and correct copy of the foregoing Motion to Compel The Employer Health Care Alliance Cooperative to Produce Documents Requested by Subpoena *Duces Tecum*, Memorandum in Support of Respondents' Motion to Compel and Proposed Order upon the following individuals by hand on February 16, 2012:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room 172
Washington, DC 20580

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

I, Kristin M. Kurczewski, hereby certify that I served a true and correct copy of the foregoing Motion to Compel The Employer Health Care Alliance Cooperative to Produce Documents Requested by Subpoena *Duces Tecum* and Proposed Order upon the following individuals by electronic mail on February 16, 2012:

Andrew J. Clarkowski
Axley Brynelson, LLP
2 E. Mifflin St., Suite 200
Madison, WI 53703
aclarkowski@axley.com
Counsel for The Employer Health Care Alliance Cooperative

Matthew J. Reilly
Jeffrey H. Perry
Kenneth W. Field
Jeremy P. Morrison
Katherine A. Ambrogi
Federal Trade Commission
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*Attorneys for Defendant Rockford Health
System*

/s/ Kristin M. Kurczewski
One of the Attorneys for
OSF Healthcare System

Exhibit A



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

1. TO

The Alliance
c/o Cheryl DeMars
P.O. Box 44365
Madison, WI 53744

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION

Hinshaw & Culbertson LLP
222 N. LaSalle Street, Ste. 300
Chicago, IL 60601

4. MATERIAL WILL BE PRODUCED TO

Kristin M. Kurczewski

5. DATE AND TIME OF PRODUCTION

January 11, 2012 @ 9:00 a.m.

6. SUBJECT OF PROCEEDING

In the Matter of OSF Healthcare System, et al., Docket No. 9349

7. MATERIAL TO BE PRODUCED

See Attached Rider

8. ADMINISTRATIVE LAW JUDGE

Honorable D. Michael Chappell
Chief Administrative Law Judge

Federal Trade Commission
Washington, D.C. 20580

9. COUNSEL AND PARTY ISSUING SUBPOENA

Kristin M. Kurczewski
Hinshaw & Culbertson LLP
222 N. LaSalle Street, Ste. 300
Chicago, IL 60601
312-704-3000

DATE SIGNED

1/5/12

SIGNATURE OF COUNSEL ISSUING SUBPOENA

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
OSF Healthcare System)	Docket No. 9349
a corporation, and)	
)	
Rockford Health System)	
a corporation,)	
)	
Respondents.)	

RIDER TO SUBPOENA DUCES TECUM

Subpoena to The Alliance

The Alliance
c/o Cheryl DeMars
P.O. Box 44365
Madison, Wisconsin 53744-4365

DEFINITIONS

1. "Communication" means any transmission or exchange of information of any kind between individuals or companies in any manner, whether verbal, written, electronic, or otherwise, whether direct or through an intermediary.
2. "Computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Thus, you should produce documents that exist in machine-readable form, including documents stored in personal computers, portable computers, work stations, minicomputers, mainframes, servers, archive disks and tapes, and other forms of offline storage, whether on or off company premises.
3. "Document" or "documents" shall mean all materials and electronically stored information, excluding invoices and bills of lading, that are subject to discovery under Subpart D

of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings, 16 C.F.R. §§ 3.31-3.39, all non-identical copies of those materials and electronically stored information, and identical copies of those materials and electronically stored information that were sent from, delivered to, or maintained by, different person(s).

4. "Health plan" means any health maintenance organization, preferred provider arrangement or organization, managed healthcare plan of any kind, self-insured health benefit plan, other employer or union health benefit plan, Medicare, Medicaid, TRICARE, or private or governmental healthcare plan or insurance of any kind.

5. "Hospital" means a facility that provides Relevant Services.

6. "Physician organization" means a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners or employers, or in which only one physician practices medicine, such as a physician group.

7. "RHS" shall refer to Rockford Health System, its subsidiaries, affiliates, partnerships and joint ventures.

8. "Relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, stating, evaluating, recommending, setting forth, or supporting.

9. "Relevant Area" means Winnebago, Ogle, and Boone Counties in Illinois.

10. "Relevant Hospitals" means all hospitals located in the Relevant Area.

11. "Relevant Services" means (1) general acute care inpatient hospital services (e.g., the provision of all inpatient hospital services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities, excluding the treatment of mental illness or substance abuse, or long-term services such as

skilled nursing care), and (2) primary care physician services (e.g., services provided by physicians practicing in internal medicine, family practice, and general practice, excluding services provided by pediatricians, obstetricians, and gynecologists).

12. "Relevant Transaction" means the transaction pursuant to which Rockford Health System will be integrated into the healthcare system of OSF Healthcare System ("OSF").

13. "OSF" shall refer to OSF Healthcare System and its subsidiaries, affiliates, partnerships, and joint ventures.

14. "SAMC" shall refer to Saint Anthony Medical Center and its subsidiaries, affiliates, partnerships and joint ventures.

15. "You" or "Your" shall refer to the party on whom this Subpoena is served or any other person acting under the party's direction or control and all persons acting or purporting to act on its behalf, including its officers, directors, employees, agents, and attorneys.

16. The use of the singular shall be deemed to include the plural and vice versa. The terms "and" and "or" have both conjunctive and disjunctive meanings. The terms "each," "any," and "all" mean "each and every." The past tense form shall be construed to include the present tense, and vice versa, whenever such a dual construction will serve to bring within the scope of any of these requests any documents or information that would otherwise not be within their scope.

INSTRUCTIONS

1. The document requests are intended to cover all documents in your possession, custody, or control, regardless of where they are located or who may actually have physical possession of them.

2. Documents and things shall be produced as they are kept in the ordinary course of business. Documents produced, regardless of format or form and regardless of whether submitted in hard copy or electronic format, shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in your files. Documents shall not be shuffled or rearranged. All documents shall identify the files from which they are being produced. All documents shall be produced in color, where necessary to interpret the document. All documents shall be marked on each page with corporate identification and consecutive document control numbers.

3. Documents shall be accompanied by an affidavit of an individual competent to testify that any copies are true, correct and complete copies of the original documents.

4. Documents shall be accompanied by an index that identifies: (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that person's documents, and if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that OSF or RHS representatives determine prior to submission that the machine-readable form is in a format that allows OSF or RHS to use the computer files).

5. These requests shall be deemed to be continuing and to require supplementation, pursuant to the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings, 16 C.F.R. §3.31(e).

6. Unless otherwise indicated, these requests cover the time period of January 1, 2007 to the present.

7. Identify the code definitions used in response to Request 25 (e.g., DRG or MS-DRG and version number), including the dates on which you implemented changes to those code definitions. If you use a proprietary procedure coding system, please provide a master list of those codes with a brief description of each and its associated weight value if used for billing.

8. To protect a patient's or individual's privacy, you shall mask any sensitive personally identifiable information, or sensitive health information, including but not limited to, an individual's social security number, medical records, or other individually identifiable health information.

9. Unless otherwise indicated, you are not required to produce documents that you already provided to the Federal Trade Commission in response to a Civil Investigative Demand or Subpoena *Duces Tecum* related to the Relevant Transaction or that you have already provided to the issuer of this subpoena in response to a subpoena issued in the related case before the Northern District of Illinois, *Federal Trade Commission v. OSF Healthcare System and Rockford Health System*, Case No. 3:11-cv-50344 (N.D. Illinois).

10. Documents stored in electronic or hard copy format shall be submitted in electronic format provided that such copies are true, correct, and complete copies of the original documents:

(a) Submit Microsoft Access, Excel, and PowerPoint in native format with extracted text and metadata;

(b) Submit all other documents in image format with extracted text and metadata; and

(c) Submit all hard copy documents in image format accompanied by OCR.

11. For each document, submitted in electronic format, include the following metadata fields and information:

(a) For loose documents stored in electronic format other than email: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, creation date and time, modification date and time, last accessed date and time, size, location or path file name, and MD5 or SHA Hash value;

(b) For emails: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, to, from, CC, BCC, subject, date and time sent, Outlook Message ID (if applicable), child records (the beginning Bates or document identification number of attachments delimited by a semicolon);

(c) For email attachments: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, creation date and time, modification date and time, last accessed date and time, size, location or path file name, parent record (beginning Bates or document identification number of parent email), and MD5 or SHA Hash value; and

(d) For hard copy documents: beginning Bates or document identification number, ending Bates or document identification number, page count, and custodian.

12. Submit electronic files and images as follows:

(a) For productions over 10 gigabytes, use IDE and EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in USB 2.0 external enclosures;

(b) For productions under 10 gigabytes, CD-R, CD-ROM and DVD-ROM for Windows-compatible personal computers, and USB 2.0 Flash Drives are also acceptable storage formats; and

(c) All documents produced in electronic format shall be scanned for and free of viruses.

13. If you withhold from production any document responsive to these requests based on a claim of privilege, identify: (1) the type of document (letter, memo, e-mail, etc.); (2) the document's authors or creators; (3) the document's addressees and recipients; (4) the document's general subject matter; (5) all persons to whom the document or any portion of it has already been revealed; (6) the source of the document; (7) the date of the document; and (8) the basis for withholding the document.

14. If you have reason to believe that documents responsive to a particular request once existed but no longer exist for reasons other than the ordinary course of business or the implementation of your document retention policy, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the request(s) to which they are responsive, and identify persons having knowledge of the content of such documents.

15. The official responsible for preparing the subpoena response shall appear with the documents on the return date. However, you may comply with this subpoena by producing all responsive documents specified in this subpoena to OSF counsel at the following address:
Kristin M. Kurczewski, Hinshaw & Culbertson LLP, 222 North LaSalle, Suite 300, Chicago, Illinois, 60601.

DOCUMENT REQUESTS

1. Documents relating to your communications with the Federal Trade Commission or the Illinois Attorney General's office regarding the Relevant Transaction, including but not limited to correspondence, interview notes, negotiations regarding the production of documents voluntarily or in response to any Civil Investigative Demand or Subpoena *Duces Tecum*, or factual proffers or declarations, including drafts.
2. Documents sufficient to show, for each year, your overall financial performance and your financial performance relating to your sale or administration of health plans in the Relevant Area, including but not limited to documents reporting overall revenues and profits, and documents showing revenues and profits derived from health plan premiums and fees for administrative services only ("ASO") agreements.
3. Separately for each year from January 1, 2001 to the present, your provider directories, or documents sufficient to identify each hospital, outpatient facility, and primary care physician in each of your networks available to your members residing in the Relevant Area.
4. Separately for each year from January 1, 2001 to the present, documents sufficient to identify each hospital, outpatient facility, and primary care physician in each of your networks available to your members residing in the following locations: (a) Bloomington-Normal, Illinois; (b) Champaign-Urbana, Illinois; (c) Springfield, Illinois; and (d) the Quad Cities in Bettendorf and Davenport, Iowa and Moline and Rock Island, Illinois.
5. Documents identifying each of your employer customers based or operating in the Relevant Area with memberships exceeding fifty (50) employees, and for each employer customer, the health plans offered, services provided, and the hospitals and primary care

physicians (e.g., physicians practicing in internal medicine, family practice, and general practice) included in those health plans' provider networks.

6. Documents sufficient to show the number of covered lives or members in each health plan product you offered in the Relevant Area from January 1, 2001 to the present.
7. Documents, including all member surveys, studies, or analyses of any type, that assess for the Relevant Area:
 - a. member preferences regarding health plan provider network composition, including preferences regarding single- or multiple-hospital networks and regarding hospitals located outside the Relevant Area;
 - b. member willingness to travel for care; and
 - c. member perceptions of the relative quality of care provided by hospitals.
8. Documents relating to your consideration of or plan to offer new or different health plan products in the Relevant Area that include the Relevant Services, including products comprised of different provider networks.
9. Documents sufficient to show how you choose which physicians to include in each of your networks to provide Relevant Services in the Relevant Area, including physicians not located in the Relevant Area.
10. Documents sufficient to show how you choose which hospitals to include in each of your networks to provide Relevant Services in the Relevant Area, including hospitals not located in the Relevant Area.
11. Documents relating to your evaluation of the marketability and competitiveness of your health plans' provider networks in the Relevant Area, including evaluations of the level and

type of services provided, quality of care, hospital accreditation and geographic location of your network providers.

12. Documents relating to any communications between individuals responsible for managing your hospital and physician networks and individuals in your sales group regarding your health plan networks in the Relevant Area, including but not limited to discussions regarding member or employer feedback, marketability or quality of the network, proposed or desired changes to the provider network, and product pricing.

13. Documents relating to how reimbursement rate changes for Relevant Services impact the healthcare costs, rates or premiums of employers, including self-insured employers.

14. Documents relating to any studies, discussions, or analyses of the marketability, commercial appeal, viability of, or your ability to offer, a provider network in the Relevant Area for the Relevant Services that only includes one hospital system located in the Relevant Area, including but not limited to analyses of desired hospital charge discounts for single-hospital networks, projected employer premium rates, and the relative strengths of the different Rockford hospitals as the provider in a single-hospital network.

15. Documents, including any studies or analyses, relating to competition between health plans in the Relevant Area for employers or health plan members from January 1, 2001 to the present, including but not limited to documents assessing the impact of offering a single-hospital network, documents relating to refusals by potential customers to switch to your network, and documents relating to efforts to expand your health plans' provider network during this time period.

16. Documents sufficient to identify who negotiates or is involved in the negotiation of provider contracts with hospitals and primary care physicians for your health plans offered in the Relevant Area from January 1, 2005 to the present.

17. Documents relating to your negotiations with providers of the Relevant Services in the Relevant Area from January 1, 2005 to the present, including but not limited to documents relating to contract proposals, drafts, and communications between you and providers of Relevant Services in the Relevant Area; documents identifying key or "must-have" hospitals, outpatient facilities, or primary care physicians in the Relevant Area; documents analyzing the geographic coverage of providers; documents, information, and data relied upon during contract negotiations (such as quality measures, member utilization patterns, and employer or member feedback regarding your provider network or product offerings); documents relied upon to determine whether proposed reimbursement rates are comparable to those you pay to other providers of Relevant Services in the Relevant Area; documents reflecting whether to include or exclude any hospital or hospital system, or physician or physician organization in your provider network; communications regarding any provider's desire to exclude any other providers from a health plan; and copies of the final provider contracts, including any amendments or modifications, for Relevant Services in the Relevant Area.

18. Documents relating to pricing models that compare the rates or contract terms of the Relevant Hospitals for Relevant Services and outpatient services to: (a) any other hospital or provider in the Relevant Area, (b) any other OSF hospital or provider outside the Relevant Area, or (c) any other hospital or provider in Illinois, including documents that you use to determine how actual or proposed contracts with the Relevant Hospitals compare to each other and how those contracts compare to contracts the providers have with other insurance carriers.

19. Documents relating to the cost-to-charge ratio for Relevant Services for: (a) the Relevant Hospitals, (b) any other hospital or provider in the Relevant Area, (c) any other OSF hospital or provider outside the Relevant Area, or (d) any other hospital or provider in Illinois.

20. Documents relating to the inclusion of risk sharing payment models such as pay for performance programs, Patient Centered Medical Home ("PCMH") programs, shared savings and shared risk programs, and capitated or full provider risk programs in provider contracts and the negotiations of such risk sharing payment models in conjunction with negotiations of reimbursement rates or other contract terms for the provision of Relevant Services for: (a) the Relevant Hospitals, (b) any other hospital or provider in the Relevant Area, (c) any other OSF hospital or provider outside the Relevant Area, or (d) any other hospital or provider in Illinois.

21. Documents relating to financial incentives made available to your health plan members to seek Relevant Services at lower cost providers within the State of Illinois, including any plans or programs encouraging health plan members' physicians to use lower cost hospitals, and any other programs that you use as incentives for consumers or members to seek Relevant Services at lower cost providers.

22. Documents relating to the Relevant Transaction, including, but not limited to, any studies, discussions, or analyses of the Relevant Transaction's impact on your health plan business, on your health plan rates for the Relevant Services, or on your continuation of business operations in the Relevant Area.

23. Documents relating to any studies, discussions, or analyses of the Relevant Transaction's impact or potential impact on your members in the Relevant Area, including but not limited to the Relevant Transaction's impact or potential impact on premiums, administrative service fees, or health care costs.

24. Documents relating to any rules or procedures you apply to providers in the Relevant Area to determine whether a patient receiving Relevant Services may be classified as an inpatient or outpatient patient for reimbursement purposes.

25. Submit (in electronic, machine readable format), for each year from January 1, 2007 to the present, for any inpatient admission for any patient residing in the State of Illinois:

- a. the identity of the hospital, healthcare facility, or physician practice at which the patient was treated, including the owner of the hospital, healthcare facility, or physician practice, the address of the hospital, healthcare facility, or physician practice, including 5-digit ZIP code, and any hospital, healthcare facility, or physician practice identification number used for reimbursement purposes;
- b. a unique patient identifier, different from that for other patients and the same as that for different admissions, discharges, or other treatment episodes for the same patient (to protect patient privacy, you shall mask personal identifying information, such as the patient's name or Social Security number, by substituting a unique patient identifier); if you are providing data in multiple records for the inpatient admission, a unique identifier for the admission or visit shall also be included in each record associated with the admission or visit
- c. the patient's residence 5-digit ZIP code;
- d. the patient's age (in years), gender, and race;
- e. whether the treatment episode was inpatient; if inpatient, the date of admission and date of discharge;
- f. the primary associated DRG, MDC, and primary and secondary and ICD9 diagnosis and procedure codes;

- g. whether the treatment provided was for an emergency;
- h. the source of the patient referral (such as by referral from another hospital, or by a physician who does not admit the patient);
- i. the specific name of the entity and type of health plan (such as HMO, POS, PPO, etc.) that was the principal source of payment and including identifiers for the customer group (e.g., small group, large group), customer name, and whether the customer group was self-insured;
- j. for each product listed in Request 25(i), identify whether this product is offered through a managed care contract with Medicare, Medicaid, or other public health insurance program;
- k. whether the hospital, healthcare facility, or physician practice identified in response to Request 25(a) was a participating provider under the patient's health plan and, if the patient's health plan had different tiers of participating providers, which tier the hospital, healthcare facility, or physician practice was in;
- l. whether there was a capitation arrangement with a health plan covering the patient and, if so, identify the arrangement;
- m. the billed charges of the hospital, healthcare facility, or physician practice, allowed charges under the patient's health plan, the amount of charges actually paid by the health plan, whether the amount of charges actually paid by the health plan includes any adjustments under any stop-loss provisions, and any additional amounts paid by the patient;
- n. any breakdown of the hospital's, healthcare facility's, or physician practice's charges by any categories of hospital services rendered to the patient (such as

medical/surgical, obstetrics, pediatrics, or ICU) for which you provide reimbursement to the hospital, healthcare facility, or physician practice at different per diem or other rates;

o. the identity of the patient's admitting physician and, if different, the identify of the treating physician;

p. the amount of any reimbursement by you to any physicians, separately from any reimbursement to the hospital, healthcare facility, or physician practice for any physician services associated with admission or treatment, or for any services associated with covered treatments or diagnoses identified in Request 25(m); and

q. the patient's status (e.g., normal discharge, deceased, transferred to another hospital, etc.) upon discharge.

Exhibit B



AXLEY BRYNELSON, LLP

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ANDREW J. CLARKOWSKI
(608) 283-6791
aclarkowski@axley.com

February 8, 2012

Via Federal Express

Matthew J. O'Hara
Hinshaw & Culbertson LLP
222 North LaSalle Street, Ste 300
Chicago, IL 60601

RE: *Federal Trade Commission vs. OSF Healthcare System, et al.*
Civil Action No.: 3:11-cv-50344
Our File No.: 17263.67735

Dear Atty. O'Hara:

As per my prior discussions with you and Attorney Foster, enclosed with this letter are responsive materials provided by The Alliance to the administrative subpoena duces tecum you delivered to The Alliance. Also enclosed is a certification of business records; if you require a different form, please advise. In the remainder of this letter, I will both summarize the responsive documents for your convenience, and note those requests for which The Alliance did not provide responsive documents, whether due to the fact that such documents are not available or on the basis of an objection. I will address the requests in the order presented in the subpoena. Before doing so, however, I will briefly note that this response is subject to the following General Objections:

General Objections

By providing discovery responses, The Alliance and its affiliates, members, employees, and agents (collectively, "The Alliance") do not waive any objections that they may have regarding other party's use of information or documents, or of the truth or accuracy of any term, phrase or characterization contained in these responses. The Alliance expressly reserves all objections regarding the competency, privilege, relevance, materiality, probative value and admissibility of all information provided, documents produced and the contents thereof, or to vagueness or ambiguity.

Privileged information and/or documents responsive to a particular request, if any such information and/or documents exist, are not being provided and will be identified in a mutually agreeable manner. Moreover, if any information or document which is properly the subject of any attorney-client, joint defense or work-product privilege is provided or produced, such production is not to be construed as a waiver of the attorney-client, attorney work-product or any other privilege and the production of responsive documents and/or information is made based on the condition that if any privileged materials are or have been inadvertently produced or provided, all such materials and copies of all such materials will be returned to The Alliance or

Matthew J. O'Hara
February 8, 2012
Page 2

its attorneys immediately upon The Alliance's or its attorney's written request.

The Alliance reserves its rights to challenge the competency, relevance, materiality and admissibility of, or to object on any grounds to, the use of the information set forth herein in any subsequent proceeding or trial of this or any other action. The Alliance objects to each and every document request which purports to seek information beyond information discoverable under applicable law.

In addition, you and counsel for the FTC have agreed, in good faith, to tell me within five days of Ms. Davit's or Ms. DeMars' deposition, whichever is later, if you reasonably believe that you will use any of The Alliance's documents as exhibits at the hearing in this matter. I understand that, of course, there may be a need for rebuttal exhibits or the like, and I still may not get notice of what you will actually use until shortly before the hearing. Nonetheless, extending me this courtesy will assist me in timely seeking an appropriate protective order preventing disclosure of The Alliance's confidential materials at any proceedings.

Turning to specific requests:

Request No. 1: The Alliance has no documents that are responsive to this request; The Alliance was contacted by the FTC's counsel but there were no documents produced.

Request No. 2: The Alliance does not track financial performance by county, and it is a not-for-profit so it does not calculate profits as such. In addition, The Alliance does not sell or administer health plans, but rather maintains a provider network on behalf of its employer owners. The Alliance did not contract with providers in the defined Relevant Area until 2011. Subject to the foregoing, documents AL1 through AL12 are responsive to this request; they are the Alliance's financial statements for fiscal years ending May 2010 and 2011. These documents are designated as confidential subject to the protective orders in your litigation and the above terms.

Requests Nos. 3 and 4: Documents AL13 through AL170 are responsive to these requests, and constitute The Alliance's provider directory. The Alliance does not maintain a provider directory showing individual primary care physicians, or which relate only to the geographic areas set forth in Request No. 4.

Requests Nos. 5-6: Documents AL171 through AL177 are responsive to these requests. The Alliance does not have information as to specific health plans offered because such plans are determined and offered by particular employer customers of The Alliance, not by The Alliance itself. These documents are designated as confidential subject to the protective orders in your

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Matthew J. O'Hara
February 8, 2012
Page 3

litigation and the above terms. The documents responsive to Request No. 3 also provide information as to hospitals and providers to the extent sought in this request.

Request No. 7: The Alliance only has documents responsive to subpart C of this request. Such documents are attached as AL 178 and AL 179. These documents are designated as confidential subject to the protective orders in your litigation and the above terms.

Requests Nos. 8-11: The Alliance has no documents responsive to these requests. Note that with respect to Requests 9 and 10, The Alliance does not perform such an analysis because its practice is to include all physicians in the applicable area.

Request No. 12: Documents AL180 through AL187 are responsive to these requests. These documents were an attempt by personnel of The Alliance to draft a rough priority list of providers and categories of providers in the subject area that was used for our internal purposes. These documents are designated as confidential subject to the protective orders in your litigation and the above terms.

Requests Nos. 13-15: The Alliance has no documents responsive to these requests.

Request No. 16: Document AL 188 is responsive to this request.

Request No. 17: The Alliance objects to this request because it seeks confidential information which is used in negotiations with OSF Healthcare System and Rockford Health System. This information is crucial to the ongoing business relationship between the parties and will not be produced. Subject to and without waiving these objections, The Alliance would be willing to produce the contracts it has with providers in the Relevant Area, minus the confidential fee schedules; however, OSF Healthcare System and Rockford Health System should already have copies of the contracts relating to their respective organizations, and the contracts relating to other providers in the area (i.e., Swedish-American and Rochelle) are subject to confidentiality requirements. The Alliance will produce the Swedish-American and Rochelle contracts, minus the confidential fee schedules, if the requesting party can obtain Swedish-American's and Rochelle's consent to disclosure of their respective contracts, and such contracts will only be provided on an attorney's-eyes only basis.

Requests Nos. 18-24: The Alliance has no documents that are responsive to these requests. In general terms, the documents appear to be directed to entities such as insurers which would have access to the detailed information requested. Because The Alliance does not manage the health plans of its members, it does not have this information.

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Matthew J. O'Hara

February 8, 2012

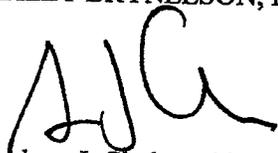
Page 4

Request No. 25: Provided with these responses is a text data file and Excel spreadsheet (which duplicates the text file) containing data from The Alliances' computer system which is responsive to this request. Additional text files are also being provided which provide an explanation for the codes used in the master data file. Please note that The Alliance has information in its database for subparts (h), (j), (l), (n), (o) and (p). For subpart (i), the Alliance supplied TPA name and employer name information but does not have specific plan information. For subpart (k), The Alliance has indicated whether or not the provider was part of The Alliance network during the specified time frame, however this is not synonymous with being "out of network" for the patient as their employer may have access to another network besides The Alliance. The Alliance also does not know whether the employer's plan included different provider tiers. For subpart (m), The Alliance can provide only billed charges; The Alliance does not have the other data elements requested. All documents provided in response to Request No. 25 are designated as confidential subject to the protective orders in your litigation and the above terms.

In closing, I also note that our response to Request No. 25 demonstrates that The Alliance had approximately 280 out of over 200,000 total patient admissions in the relevant geographic area during the requested time period. Given The Alliance's extremely limited market participation, I believe we have been more than accommodating to your discovery requests. If you have questions regarding the foregoing, please feel free to contact me.

Sincerely,

AXLEY BRYNELSON, LLP



Andrew J. Clarkowski

AJC:tmd

Enclosures

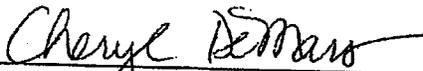
cc: Atty. Richard Cunningham (w/enc.)

CERTIFICATION OF BUSINESS RECORDS

Before me, the undersigned authority, personally appeared Cheryl DeMars, who, being by me duly sworn, deposed as follows:

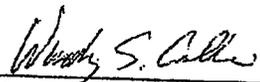
My name is Cheryl DeMars. I am the President and CEO of The Alliance, and am authorized to make this certification. The statements contained herein are true and correct and within my personal knowledge. I hereby certify that the documents attached to this certificate constitute an accurate, legible, and complete copy of the business records of The Alliance which are responsive to the administrative subpoena duces tecum served upon The Alliance in this matter.

The original records, from which this copy was made, were kept by The Alliance in the regular course of its business; it was the regular course of business of The Alliance for an employee or representative of The Alliance, with knowledge of the act, event, condition, or opinion recorded to make the records or to transmit information to be included in such records, and the records were made at or near that time or reasonably soon thereafter. The records attached hereto are true and correct copies of the originals in the possession of The Alliance. I am aware of nothing about the source of these records which would indicate a lack of trustworthiness.



Cheryl DeMars

Subscribed and sworn to before me
this 30th day of January, 2012.



Notary Public, State of Wisconsin
My Commission Expires: 8/18/13

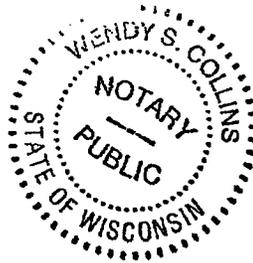


Exhibit C

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

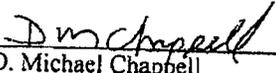
In the Matter of)
OSF Healthcare System)
a corporation, and)
Rockford Health System)
a corporation,)
Respondents.)

DOCKET NO. 9349

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:


D. Michael Chappell
Chief Administrative Law Judge

Date: November 18, 2011

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL-FTC Docket No. 9349" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL-FTC Docket No. 9349 or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

Exhibit D

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)

OSF Healthcare System,)
a corporation, and)

Rockford Health System,)
a corporation,)
Respondents.)

DOCKET NO. 9349

**ORDER ON RESPONDENTS' MOTION TO COMPEL DOCUMENTS
REQUESTED FROM UNITEDHEALTH GROUP AND
TO ENFORCE SUBPOENA *AD TESTIFICANDUM***

I.

Respondents OSF Healthcare System and Rockford Health Systems ("Respondents") filed a Motion to Compel UnitedHealth Group to Produce Documents Requested by Subpoena *Duces Tecum* and to Enforce Subpoena *Ad Testificandum* ("Motion") on February 6, 2012. Third party UnitedHealth Group, Inc. ("United") submitted an Opposition on February 13, 2012. For the reasons set forth below, Respondents' Motion to Compel is DENIED IN PART and GRANTED IN PART.

II.

Respondents state that they served a subpoena on United requesting certain documents for the period from January 1, 2007 to present, to be produced for inspection on January 10, 2012. Respondents assert that the following five Subpoena requests are at issue: (1) Subpoena Request No. 7, which seeks member surveys, studies, or analyses; (2) Subpoena Request No. 12, which seeks communications between physician network personnel and sales personnel regarding health plan management; (3) Subpoena Request No. 15, which seeks documents relating to competition between health plans; (4) Subpoena Request No. 18, which seeks documents relating to United's negotiations with providers of general acute care inpatient hospital services in the Rockford area; and (5) Subpoena Request No. 19, which seeks documents relating to pricing models that compare rates for hospitals services.

In addition, Respondents state that they served a subpoena *ad testificandum* for the deposition of United's Vice Regional President for Network Management, Ms.

Michelle Lobe, on January 23, 2012. Respondents further recite the negotiations it engaged in with United and attached a Certificate of Conference, as required by Commission Rule 3.22(g).

United argues that the requests are overly broad and that United has already expended significant time and resources locating, gathering, and producing responsive documents. United further argues that Ms. Lobe has already been deposed twice and provided live testimony during a preliminary injunction hearing and thus should not be compelled to provide additional deposition testimony.

III.

With respect to Request Numbers 7 and 15, United asserts that United has conducted a reasonable search and has not located any documents responsive to these requests. Respondents' Motion does not provide a basis for not accepting United's representation with respect to Request Numbers 7 and 15. Therefore, Respondents' Motion is DENIED as to Request Numbers 7 and 15.

With respect to Request Number 12, United asserts that the request is overly broad and that Respondents have not advanced a specific argument showing why the requested documents are relevant. United states, as an example, that the request for communications relating to "proposed or desired changes to the provider network" will likely encompass communications that have nothing to do with the issues raised in this action and that communications relating to member or employer feedback would more than likely require United to search for customer complaints about issues relating to the timeliness of processing health claims.

In agency actions, "[s]ome burden on subpoenaed parties is to be expected and is necessary in furtherance of the agency's legitimate inquiry and the public interest." *In re Polypore*, 2009 FTC LEXIS 41, at *10 (Jan. 15, 2009); *Federal Trade Commission v. Dresser Indus.*, 1977 U.S. Dist. LEXIS 16178, at *13 (D.D.C. 1977). "The burden of showing that the request is unreasonable is on the subpoenaed party." *In re Polypore*, 2009 FTC LEXIS 41, at *10 (Jan. 15, 2009); *FTC v. Dresser Indus.*, 1977 U.S. Dist. LEXIS 16178, at *13 (D.D.C. 1977). "Further, that burden is not easily met where, as here, the agency inquiry is pursuant to a lawful purpose and the requested documents are relevant to that purpose." *Id.* (enforcing subpoena served on non-party by the respondent). See *In re Kaiser Alum. & Chem. Corp.*, 1976 FTC LEXIS 68, at *19-20 (Nov. 12, 1976) ("Even where a subpoenaed third party adequately demonstrates that compliance with a subpoena will impose a substantial degree of burden, inconvenience, and cost, that will not excuse producing information that appears generally relevant to the issues in the proceeding.").

However, subpoena requests that seek documents "concerning" or "relating to" have been found to lack the reasonable particularity required by Commission Rule 3.34(b) (a subpoena *duces tecum* "shall specify with reasonable particularity the material to be produced"). *E.g., In re North Texas Specialty Physicians*, 2004 FTC LEXIS 19,

*12 (Feb. 4, 2004) (limiting request seeking “[a]ll internal and external correspondence, memoranda, and messages concerning or relating to” the respondent). Consumer complaints about the timeliness of processing health claims are not relevant to the issues in this case.

Accordingly, Respondents’ motion to compel documents responsive to Request Number 12 is GRANTED IN PART. Request Number 12 is hereby narrowed as follows:

12. Documents describing or reflecting any communications between individuals responsible for managing your hospital and physician networks and individuals in your sales group regarding your health plan networks in the Relevant Area, including but not limited to discussions of employer feedback, marketability or quality of the network, proposed or desired changes to the provider network, and product pricing, but excluding communications, not otherwise responsive to this Subpoena, that describe or reflect consumer complaints about the timeliness of processing health claims.

With respect to Request Number 18, United asserts that the request is overly broad and imposes a substantial burden. In addition, United asserts that to comply with Request Number 18, as written, would require United to search and produce documents that Respondents already have in their possession. United further asserts that it has already produced its contracts with Respondents and that Respondents have failed to show why United should be required to search for and produce communications relating to its contract negotiations with hospitals in the Rockford area.

Discovery shall be limited if Administrative Law Judge determines that the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive. 16 C.F.R. § 3.31(c)(2)(i). To the extent that Request Number 18 seeks documents that Respondents already possess, the Motion is DENIED. However, documents consisting of United’s communications in its contract negotiations with hospitals in the Rockford area are relevant and a request for such documents is not overly broad.

Accordingly, Respondents’ motion to compel documents responsive to Request Number 18 is GRANTED IN PART. Request Number 18 is hereby narrowed as follows:

18. Documents describing or reflecting your negotiations with providers of the Relevant Services in the Relevant Area from January 1, 2005 to the present, including but not limited to contract proposals, drafts, and communications between you and providers of Relevant Services in the Relevant Area; documents identifying key or “must-have” hospitals, outpatient facilities, or primary care physicians in the Relevant Area; documents analyzing the geographic coverage of providers; documents, information, and data relied upon during contract negotiations (such as quality measures, member utilization patterns, and employer or member feedback regarding your provider network or product offerings); documents relied upon to determine whether proposed reimbursement rates are

comparable to those you pay to other providers of Relevant Services in the Relevant Area; documents reflecting whether to include or exclude any hospital or hospital system, or physician or physician organization in your provider network, communications regarding any provider's desire to exclude any other providers from a health plan; and copies of the final provider contracts, including any amendments or modifications, for Relevant Services in the Relevant Area.

With respect to Request Number 19, United asserts that the request seeks documents beyond the Relevant Area and is not limited to a specific time period. United further asserts that because it has produced its contracts and Respondents know the terms of its contracts with other insurance companies and payors, Respondents have the information they seek in this request.

Absent a showing of the relevance of information pertaining to the geographic area alleged in the Complaint or asserted in the Answer, a document request served on a third party will be limited to the relevant geographic area. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 19, *13 (Feb. 4, 2004). Unless a more limited time has already been agreed to by Respondents, the specific time period shall be limited to the period requested in Subpoena Instruction Number 6, January 1, 2007 to present.

Documents generated by United in their ordinary course of business in which United compares the rates that United is charged by Respondents to the rates United is charged by SwedishAmerica are highly relevant to this proceeding and may be more dispositive than a document generated by Respondents' counsel or experts creating such comparisons from the documents received in litigation.

Accordingly, Respondents' motion to compel documents responsive to Request Number 19 is GRANTED IN PART. Request Number 19 is hereby narrowed as follows:

19. Documents describing or reflecting pricing models that compare the rates of the Relevant Hospitals for Relevant Services and outpatient services to any hospital or provider in the Relevant Area, including documents that you use to determine how actual or proposed contracts with the Relevant Hospitals compare to each other and how those contracts compare to contracts they have with other insurance carriers.

IV.

Respondents also seek to enforce the subpoena *ad testificandum* for the deposition of United's Vice Regional President for Network Management, Ms. Michelle Lobe. Respondents state that Ms. Lobe testified on January 10, 2012 in response to a subpoena to testify in the Northern District of Illinois proceeding, *Federal Trade Commission v. OSF Healthcare System and Rockford Health System* (Case No 11-cv-50344) ("related federal proceeding") ("January 10, 2012 deposition"). Respondents further state that since Ms. Lobe's testimony, United has produced additional documents responsive to Respondents' subpoena requests on January 19, 2012, January 20, 2012, and February 3,

2012. Respondents then assert that they intend to depose Ms. Lobe on documents produced after the January 10, 2012 testimony.

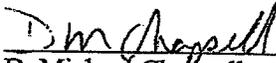
United asserts that Ms. Lobe has already provided testimony on the following three instances: (1) on September 27, 2011, in an investigational hearing conducted by Complaint Counsel in connection with the FTC's investigation into the proposed merger; (2) at the January 10, 2012 deposition; and (3) on February 1, 2012, by providing testimony at the preliminary injunction. United asserts that Respondents made the choice to depose Ms. Lobe on January 10, 2012, and should not be entitled to another deposition.

Although Respondents deposed Ms. Lobe on January 10, 2012 in the related federal proceeding, in advance of her testimony at the preliminary injunction in that matter, Respondents have since received additional documents in this proceeding on which they wish to question Ms. Lobe. Thus, Respondents have provided a sufficient reason to take a deposition of Ms. Lobe in this matter. However, such deposition is allowed only on the limited basis of questioning Ms. Lobe about documents produced after January 10, 2012. Accordingly, in this respect, Respondents' Motion is GRANTED.

V.

The close of discovery in this case is February 17, 2012. That deadline is hereby extended to February 23, 2012 for the limited purpose of allowing United to produce documents and to February 27, 2012 for the limited purpose of allowing United to take the deposition of Ms. Lobe as required by this order.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: February 14, 2012