

PUBLIC DOCUMENT

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



In the Matter of

**OSF Healthcare System
a corporation, and**

**Rockford Health System
a corporation**

Docket No. 9349

**NON-PARTY HEALTH ALLIANCE MEDICAL PLAN INC.'S MOTION FOR
IN CAMERA TREATMENT OF PROPOSED EVIDENCE**

Health Alliance Medical Plans, Inc. ("Health Alliance"), which is not a party to the above-captioned matter, respectfully requests that this court grant *in camera* treatment of a document that Complaint Counsel has designated for introduction into evidence in the administrative trial in this matter. By letter dated March 13, 2012, Complaint Counsel notified Health Alliance that it intends to introduce into evidence certain information produced by Health Alliance in response to a *subpoena duces tecum* dated December 21, 2011. The Health Alliance document designated for introduction into evidence by Complaint Counsel has been marked by Complaint Counsel as Exhibit No. PX 4252.

This document was designated by Health Alliance as confidential when it was produced. The information contained in this document is competitively sensitive and is held in strict confidence by Health Alliance. Public disclosure of this document is likely to cause direct, serious harm to Health Alliance's competitive position. Therefore, pursuant to 16 C.F.R. § 3.45(b), Health Alliance respectfully moves for indefinite *in camera* treatment of the confidential document described in the Declaration of Jeff Ingrum in support of this Motion, attached hereto as Exhibit A.

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I. HEALTH ALLIANCE'S CONFIDENTIAL DOCUMENTS QUALIFY FOR *IN CAMERA* TREATMENT UNDER THE FEDERAL TRADE COMMISSION'S RULES OF PRACTICE

The document that is described in this motion warrants *in camera* treatment as provided by 16 C.F.R. § 3.45(b). The code section provides for *in camera* treatment of certain business-related information. Relating to business issues, under 16 C.F.R. § 3.45(b), requests for *in camera* treatment will be granted where public disclosure of the document in question "will result in a clearly defined, serious injury to the...corporation requesting in camera treatment." *Id.* That showing can be made by establishing that the document in question is "sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury." *In re Dura Lube Corp.*, 1999 F.T.C. LEXIS 255, *6 (Dec. 23, 1999) (quoting *General Foods Corp.*, 95 FTC 352, 355 (1980)). In this context, "the courts have generally attempted to protect confidential business information from unnecessary airing." *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

Six factors will be weighed in determining whether the documents in question are sufficiently material and sufficiently secret that disclosure would result in serious competitive injury:

- (1) the extent to which the information is known outside of the applicant's business;
- (2) the extent to which the information is known by employees and others involved in the applicant's business;
- (3) the extent of measures taken by the applicant to guard the secrecy of the information;
- (4) the value of the information to the applicant and its competitors;
- (5) the amount of effort or money expended by the applicant in developing the information; and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Dura Lube, 1999 F.T.C. LEXIS 255 at *6-*7 (quoting *Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977)).

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II. PUBLIC DISCLOSURE OF BUSINESS DOCUMENT WOULD RESULT IN SERIOUS COMPETITIVE INJURY TO HEALTH ALLIANCE.

A. Health Alliance Has Preserved the Confidentiality of the Documents and Information in Question.

Health Alliance has taken substantial measures to guard the information contained in the Exhibit B by limiting dissemination of such information and taking every reasonable step to protect its confidentiality. (Decl. at 2). Such information is only disclosed to particular Health Alliance employees. *Id* The information is not known outside of Health Alliance except to the extent necessary to engage in rate development, and it would be extremely difficult for Health Alliance's competitors or other outside persons to access or duplicate the information contained in the documents at issue *Id*. These efforts demonstrate that Health Alliance has gone through great lengths to preserve the confidentiality of the information contained in Exhibit B.

B. Disclosure of the Information Contained in the Documents in Question Would Result in Serious Competitive Injury to Health Alliance.

Exhibit B contains a letter from Health Alliance's consulting actuary, Milliman. (Decl. at 3). The letter contains information regarding the development of the Health Alliance 2011 rates through mid 2012 rates and underwriting information for Health Alliance groups. The letter discusses Milliman's key assumptions and methodology for the development of rates. The letter reveals confidential base medical and pharmacy costs, final rate adjustments for groups, trend assumptions and rates by service area. The letter addresses Milliman's explanation of their methodology in regard to the Health Alliance rate development and strategies Health Alliance should use with groups. It reveals Health Alliance's profit margins, per member per month (pmpm) costs and broker commissions.

The documents reveal highly confidential and commercially sensitive information regarding how Health Alliance develops rates and underwrites group. This is a core business function. *Id*. The disclosure would reveal valuable information regarding the way that Health Alliance develops rates, underwriting of groups and strategies regarding group rates, processes

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that Health Alliance has expended numerous hours and many years to develop. (Decl. at 4) at Health Alliance's negotiation efforts have allowed it to gain a competitive advantage in the marketplace and to better service its insureds. *Id.* Disclosure of this information could result in serious damage Health Alliance's competitive advantage in the marketplace.

Exhibit B contains various spreadsheets showing information regarding rates (Decl. at 4). This is highly confidential and commercially sensitive information regarding Health Alliance's rates. (Decl. at 5). These documents reveal sensitive information regarding the manner in which Health Alliance develops rates with groups. This is information that could be used by Health Alliance's competitors for their own advantage in targeting Health Alliance's groups determines its rates. *Id.* Disclosure of this information could result in serious damage Health Alliance's competitive advantage in the marketplace. *Id.*

C. The Public Interest in Disclosure of the Documents in Question is Outweighed by the Likelihood of Serious Competitive Harm to Health Alliance.

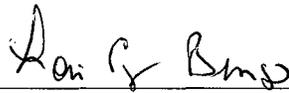
As a non-party to this matter, Health Alliance deserves "special solicitude" as a non-party requesting *in camera* treatment for its confidential business information. *In the Matter of Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500, 500 (1984) (order directing *in camera* treatment for five-year-old sales statistics of non-parties). *In camera* treatment of information, for reasonable time periods, encourages non-parties to cooperate with future discovery requests in adjudicative proceedings. *Id.* Health Alliance has cooperated with the discovery demands in this case. Conversely, "public understanding of this proceeding does not depend on access to" Health Alliance's highly confidential information. *Id.* The balance of interests clearly favors *in camera* protection for Exhibit B. *See Bristol*, 90 F.T.C. at 456 (describing six-factor test for determining secrecy and materiality).

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D. Protection for Exhibit B should be extended indefinitely.

The nature of the highly confidential information contained in Exhibit B warrants lasting protection. Information contained in the documents, including but not limited to information regarding how Health Alliance develops rates and underwrites groups, is vital to Health Alliance's competitive position and business strategy. Accordingly, Health Alliance respectfully requests that Exhibit B be afforded *in camera* protection indefinitely.

Respectfully submitted,



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Dated: April 3, 2012

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 3, 2012, the foregoing was served the following in the manner indicated:

VIA UPS — Original, one copy and electronic copy

Donald S. Clark
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, H-135
Washington, DC 20580
dclark@ftc.gov

VIA UPS — One copy and electronic copy

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW, H-
106 Washington, DC 20580
oalj@ftc.gov

The undersigned further certifies that a true and correct copy of the foregoing will be served on the following attorneys by electronic mail on April 3, 2012:

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/s/ Lori Cowdrey Benso
Lori Cowdrey Benso

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PROPOSED ORDER

On April 3, 2012, Non-Party Health Alliance Inc. ("Health Alliance") filed a motion for *in camera* treatment of confidential business information and sensitive information contained in various documents that have been identified by Claimant's counsel as potential exhibits.

IT IS HEREBY ORDERED that Health Alliance's Motion is GRANTED. The information set forth in Health Alliance's exhibit numbered as followed will be subject to *in camera* treatment under 16 C.F.R. § 3.45 and will be kept confidential and not placed on the public record of this proceeding indefinitely.

- Exhibit B: PX4252-001 – 028

IT IS FURTHER ORDERED that only authorized Federal Trade Commission personnel and court personnel concerned with judicial review may have access to the above-referenced information, provided that I, the commission, and reviewing courts may disclose such *in camera* information to the extent necessary for the proper disposition of the proceeding.

ORDERED this _____ day of April, 2012.

D. Michael Chappell
Administrative Law Judge

EXHIBIT A

PUBLIC DOCUMENT

**UNITED STATES OF AMERICA
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**DECLARATION OF JEFF INGRUM IN SUPPORT OF
NON-PARTY HEALTH ALLIANCE'S MOTION FOR
IN CAMERA TREATMENT OF PROPOSED EVIDENCE**

I, Jeff Ingrum, declare as follows:

1. I am currently the CEO and President for Health Alliance Inc. ("Health Alliance") in Illinois. In my position, I am responsible for all strategic initiatives for Health Alliance including the development all rates and underwriting of groups. I have been in this position for fifteen years.

2. Health Alliance has taken substantial measures to guard the information contained in Exhibit B by limiting dissemination of such information and taking every reasonable step to protect its confidentiality. Such information is disclosed only to particular Health Alliance employees, and is not known outside of Health Alliance except to the extent necessary to develop rates and underwrite groups. Information contained in Exhibit B would be extremely detrimental to our business if our competitors were able to obtain this information.

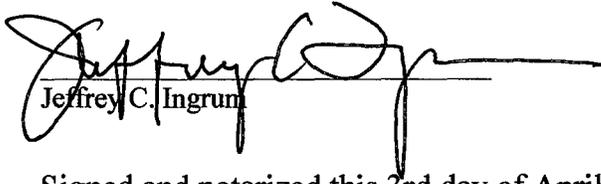
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3. Exhibit B contains a letter from Health Alliance consulting actuary, Milliman. The document reveals highly confidential and commercially sensitive information regarding the development of the Health Alliance 2011 rates through mid-2012 rates and underwriting information for Health Alliance groups. The letter discusses Milliman's key assumptions and methodology for the development of rates. The letter reveals confidential base medical and pharmacy costs, final rate adjustments for groups, trend assumptions and rates by service area. The letter also addresses Milliman's explanation of their methodology in regard to Health Alliance's rate development and rate strategies that Health Alliance should use with groups. It reveals Health Alliance's profit margins and per member, per month costs and broker commissions. The letter was intended to be used by Health Alliance only.

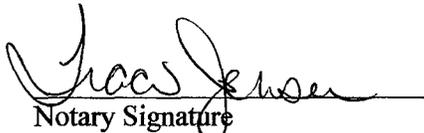
4. Exhibit B disclosure would reveal valuable information regarding the way that Health Alliance rates groups and how rates are determined, processes that Health Alliance has expended numerous hours and many years to develop. Health Alliance's efforts have allowed it to gain a competitive advantage in the marketplace and to better service its insureds. Disclosure of this information could result in serious damage to Health Alliance's competitive advantage in the marketplace and potential irreparable harm.

5. This is information that could be used by Health Alliance's competitors for their own advantage in targeting Health Alliance's groups and analyzing the manner in which Health Alliance determines its rates. Disclosure of this information could result in serious damage to Health Alliance's competitive advantage in the marketplace.

I declare under penalty of perjury that the foregoing is true and correct.


Jeffrey C. Ingram

Signed and notarized this 3rd day of April 2012.


Notary Signature

4/3/12
Date

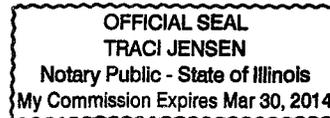


EXHIBIT B

(Redacted from Public Version)