

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

COMMISSIONERS: **Joseph J. Simons, Chairman**
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter
 Christine S. Wilson

File No. P181200

ORDER TO FILE SPECIAL REPORT

Pursuant to a resolution of the Federal Trade Commission (“FTC” or “Commission”) dated October 11, 2019, entitled “Resolution Directing Use of Compulsory Process to Collect Information Regarding Certificates of Public Advantage” a copy of which is enclosed, [COMPANY NAME], hereinafter referred to as “the Company,” is ordered to file a Special Report with the Commission no later than January 21, 2020, containing the information and documents specified herein.

The information provided in the Special Report will assist the Commission in compiling a study of certificates of public advantage.

The information requests to which you must respond are set forth in the attached Specifications. The Special Report must restate each item of this Order with which the corresponding answer is identified. Your Special Report is required to be subscribed and sworn by an official of the Company who has prepared or supervised the preparation of the Special Report from books, records, documents, correspondence, and other data and material in the Company’s possession. If the Company cannot answer any question fully, give the information that is available and explain in what respects and why the answer is incomplete.

Confidential or privileged commercial or financial information will be reported by the Commission on an aggregate or anonymous basis, consistent with sections 6(f) and 21(d) of the FTC Act. Individual submissions to this Order that are marked “confidential” will not be disclosed without first giving the Company ten (10) days’ notice of the Commission’s intention to do so, except as provided in Sections 6(f) and 21(d) of the FTC Act, 15 U.S.C. §§ 46(f) and 57b-2. This Order does not require approval of the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Penalties may be imposed under applicable provisions of federal law for failure to file Special Reports or for the filing of false reports.

By direction of the Commission.

Joseph J. Simons
Chairman

SEAL

DATE OF ORDER: October 17, 2019

The Report required by this Order, or any inquiry concerning it, should be addressed to:

Stephanie A. Wilkinson
Federal Trade Commission
Office of Policy Planning
600 Pennsylvania Avenue, N.W., Mailstop H-394
Washington, D.C. 20580
Direct Dial: (202) 326-2084
Email: swilkinson@ftc.gov

SPECIFICATIONS

1. For all inpatient admissions that occurred at the Company from January 1, 2011 to the present, submit (in electronic, machine readable format directly to the Commission representative(s) identified in Instruction I12) the following aggregated data on a monthly basis, computed separately for Medicaid, Medicare, commercial, and all other patients:
 - a. Number of patients;
 - b. Total billed charges of the hospital, stated separately to include and exclude any physician services;
 - c. Total amounts of the hospital's billed charges allowed under health plan contracts, stated separately to include and exclude any physician services;
 - d. Total amounts of the hospital's billed charges actually paid by health plans and patients (combined), stated separately to include and exclude any physician services; and
 - e. Case-mix indices computed by summing DRG weights for all discharges.

2. Submit all documents, reports, data, or explanations provided by the Company to, or received by the Company from, [STATE DEPARTMENTS OF HEALTH, STATE ATTORNEYS GENERAL OFFICES, AND OTHER STATE ENTITIES RESPONSIBLE FOR OVERSEEING THE CERTIFICATE OF PUBLIC ADVANTAGE/COOPERATIVE AGREEMENT] since it was approved on [DATE], relating to the prices, quality, access, or innovation for any service the Company provides.

3. Submit all data or reports provided by the Company to, or received by the Company from, quality and access rating organizations since January 1, 2011, including the Leapfrog Group, Society of Thoracic Surgeons, Agency for Healthcare Research and Quality, National Registry of Myocardial Infarction, American Hospital Association, The Joint Commission, Centers for Medicare and Medicaid Services (CMS), Centers for Disease Control and Prevention, and any agency of the state of [STATE NAME].

4. Submit the following data and information (in electronic, machine readable format directly to the Commission representative(s) identified in Instruction I12) on an annual basis, from January 1, 2011 to the present:
 - a. A list of healthcare facilities affiliated with the Company, including the name and address of the facility; a brief description of the services provided at the facility (e.g., hospital, ambulatory surgery, imaging, outpatient physician services); and any codes the Company uses to categorize the facility, including Medicare Provider Number, NPI number, and tax identification number; and
 - b. A list of each physician and mid-level practitioner who provides services at the Company's hospitals and other healthcare facilities, has access to rates that the Company negotiates with health plans, or is reimbursed based on the Company's health plan rate schedule. Please include the healthcare provider's name, specialty, practice group, office address(es), type of relationship with the Company (e.g.,

- employed or other form of affiliation), and any uniform provider identification number, including professional license number and NPI number.
5. Describe the following activities that have occurred at the Company since January 1, 2011:
 - a. Opening, closure, expansion, conversion, or modification of any healthcare facility, and the dates these activities occurred;
 - b. Changes in ownership of any healthcare facility, including transfers of shares or other assets, and the dates these changes occurred; and
 - c. Capital investments exceeding \$500,000, including service expansions or new equipment and technology procurements, and the dates and dollar amounts of the investments.
 6. Describe, and submit strategy documents sufficient to show, the following activities that have occurred at the Company since January 1, 2011:
 - a. Changes in pricing plans or pricing policies, including changes to the chargemaster, for any service provided, and the dates these changes occurred;
 - b. Quality of care initiatives, including quality assurance or quality improvement systems, and the effective dates of the initiatives;
 - c. Population health management initiatives, and the effective dates of the initiatives; and
 - d. Efficiencies, cost savings, or benefits achieved as a result of the [CERTIFICATE OF PUBLIC ADVANTAGE/COOPERATIVE AGREEMENT].
 7. Submit a copy of each health plan contract in effect since January 1, 2011, including both fee-for-service contracts as well as any value-based, pay-for-performance, shared-savings, risk-sharing, capitation, or similar reimbursement model contracts, and the effective dates of each contract.
 8. Describe the following activities that have occurred since January 1, 2016:
 - a. Consolidation of the Company's assets, including the integration of clinical services, electronic health records systems, and financial operations;
 - b. Elimination of services, equipment, or jobs affiliated with the Company;
 - c. Fees or costs associated with the [CERTIFICATE OF PUBLIC ADVANTAGE/COOPERATIVE AGREEMENT]; and
 - d. Changes to the terms and conditions of the [CERTIFICATE OF PUBLIC ADVANTAGE/COOPERATIVE AGREEMENT].
 9. For each employee of the Company included in the salary calculations on CMS Cost Report Data Worksheet S-3 Parts II & III, Hospital Wage Index Information, Form CMS-2552-10, lines 26-43 (CMS Worksheet), submit (in electronic, machine readable format directly to the Commission representative(s) identified in Instruction I12) the following data on an annual basis, from January 1, 2011 to the present:

- a. Raw salary information (equivalent to column 2 on the CMS Worksheet);
 - b. Adjusted salary information (equivalent to column 4 on the CMS Worksheet);
 - c. Paid hours (equivalent to column 5 on the CMS Worksheet);
 - d. Any additional compensation or benefits received by the employee not recorded on the CMS Worksheet, including, but not limited to, health insurance, life insurance, and contributions to retirement accounts; and
 - e. Number of other employees reporting directly to the employee (if none, record as zero).
10. Submit for the Company's ultimate parent entity, and for any subordinate entity or division involved in any activity relating to any hospital, healthcare facility, or other healthcare provider owned or operated by the Company, since January 1, 2011:
- a. A list of members of the board of directors or board of trustees, including each member's name, address, occupation, and period of service; and
 - b. A complete set of all meeting minutes and related presentations of: (1) the board of directors or board of trustees, and any committees of the board of directors or board of trustees; and (2) any subsidiary, affiliate, or joint venture that owns or operates a healthcare facility in [STATE NAME].
11. Submit documents sufficient to show and, to the extent not reflected in such documents, describe in detail the Company's policies and procedures relating to the retention and destruction of documents and data.
12. Submit all information described in Instructions I7 and I8 below, and any additional instructions necessary for the Commission to use or interpret the data and information submitted in response to this Order.
13. Submit the name(s) and title(s) of the person(s) responsible for preparing the response to this Order and a copy of all instructions prepared by the Company relating to the steps taken to respond to this Order. Where oral instructions were given, identify the individual who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given.

DEFINITIONS

For the purposes of this Order, the following Definitions apply:

- D1. The term “[COMPANY NAME]” means [COMPANY DESCRIPTION]; its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures; and all directors, officers, employees, agents, and representatives of the foregoing.
- D2. The term “[COMPANY NAME]” means [COMPANY DESCRIPTION]; its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures; and all directors, officers, employees, agents, and representatives of the foregoing.
- D3. The term “the Company” means the Entity resulting from the merger of [COMPANY D2 BY COMPANY D1], known as [CORPORATION NAMES], and the separate corporate Entities of [COMPANY D1 AND COMPANY D2] as they operated before and after the merger.
- D4. The terms “parent,” “subsidiary,” “affiliate,” and “joint venture” refer to any person in which there is partial (25 percent or more) or total ownership or control between the Company and any other person.
- D5. The terms “and” and “or” have both conjunctive and disjunctive meanings.
- D6. The term “[CERTIFICATE OF PUBLIC ADVANTAGE/COOPERATIVE AGREEMENT]” means the [CERTIFICATE OF PUBLIC ADVANTAGE/COOPERATIVE AGREEMENT DESCRIPTION].
- D7. The term “Documents” means any information, on paper or electronic format, including written, recorded, and graphic materials in the possession, custody, or control of the Company.
- D8. The terms “each,” “any,” and “all” mean “each and every.”
- D9. The term “Entity” means any natural person, corporation, company, partnership, joint venture, association, joint-stock company, trust, estate of a deceased natural person, foundation, fund, institution, society, union, or club, whether incorporated or not, wherever located and of whatever citizenship, or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his or her capacity as such.
- D10. The term “Episode” refers to any individual occurrence of a particular medical service.
- D11. The term “General Acute Care Inpatient Services” refers to the provision of Inpatient Services (including any Physician Services that may be provided on an inpatient basis) for medical diagnosis, treatment, and care of physically injured or sick persons with

- short-term or episodic health problems or infirmities, excluding non-acute long-term services (*e.g.*, skilled nursing care).
- D12. The term “Health Plan” means any health maintenance organization, managed healthcare organization, preferred provider arrangement or organization, managed healthcare plan of any kind, fully-insured health benefit plan, self-insured health benefit plan, other employer or union health benefit plan, Medicare, Medicaid, TRICARE, or private or governmental healthcare plan, or health insurance of any kind.
- D13. The term “Healthcare Facility” means any location where healthcare services are delivered, on an inpatient or outpatient basis, including, but not limited to, Hospitals, ambulatory surgery centers, urgent care centers, physician offices, skilled nursing facilities, and clinical laboratories, as well as locations where radiology services, imaging services, hospice services, and home health services are delivered.
- D14. The term “Hospital” means a facility that provides General Acute Care Inpatient Services, collectively or individually.
- D15. The term “Inpatient Services” refers to the provision of medical services that require at least one overnight stay at a Provider or at least 24-hour nursing care, including any Physician Services rendered as part of the inpatient treatment.
- D16. The term “Mid-level Practitioner” means a nurse practitioner or physician assistant.
- D17. The term “Outpatient Services” refers to the provision of medical services, including Physician Services, that do not require an overnight stay at a Healthcare Facility or 24-hour nursing care.
- D18. The term “Person” includes the Company and means any natural person, corporate Entity, partnership, association, joint venture, government Entity, or trust.
- D19. The term “Physician Group” means a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, or employees, or in which only one physician practices medicine.
- D20. The term “Physician Services” refers to services provided by a physician, Mid-level Practitioner, or Physician Group.
- D21. The term “Provider” means any Entity that provides healthcare services. The term “Provider” includes but is not limited to Hospitals, freestanding outpatient facilities, Physician Groups, individual physicians, and other Healthcare Facilities.
- D22. The term “relating to” means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

- D23.** Any word or term that the Company considers vague or insufficiently defined has the meaning most frequently assigned to it by the Company in the ordinary course of business.

INSTRUCTIONS

For the purposes of this Order, the following Instructions apply:

- I1. All references to year refer to calendar year. Where data/information is requested, provide it separately for each calendar year; if calendar year data/information is not yet available, provide the data/information for the calendar year to date. If calendar year data/information is not kept by the Company, supply the Company's fiscal year data/information, indicating the 12-month period covered, and provide the Company's best estimate of calendar year data/information.
- I2. In order to comply in a manner consistent with the Commission's Rules of Practice, 16 C.F.R. § 2.7(k), the Company shall schedule a teleconference, within 14 days after receiving this Order, with the Commission representative identified in Instruction I13 of this Order to confer regarding production format and method. Upon request, an extension of no more than 30 days for the teleconference may be granted in writing by a Commission official.
- I3. To protect patient privacy, the Company shall mask personal identifying information, such as the patient's name, Social Security number, patient medical record number, or insurance ID, by substituting (a) a unique patient identifier that is different from that for other patients and the same as that for different admissions, discharges, or other treatment episodes for the same patient; and (b) a unique inpatient admission or outpatient visit identifier.
- I4. The Company shall submit data in delimited text or Microsoft Excel format. Other formats should be discussed with the Commission representative identified in Instruction I13 of this Order.
- I5. The Company shall submit documents as instructed below absent the written consent by a Commission official.
 - (a) Documents stored in electronic or hard copy format in the ordinary course of business shall be submitted in electronic format provided that such copies are true, correct, and complete copies of the original documents:
 - (i) Submit Microsoft Access, Excel, and PowerPoint in native format with extracted text and metadata;
 - (ii) Submit all documents other than those identified in subpart (a)(i) in image format with extracted text and metadata; and
 - (iii) Submit all hard copy documents in image format accompanied by OCR.
 - (b) Documents responsive to this Order, regardless of format or form and regardless of whether submitted in paper or electronic form:

- (i) Shall be produced in complete form, un-redacted unless privileged or as required by I3, and in the order in which they appear in the Company's files, and shall not be shuffled or otherwise rearranged. For example:
 - (1) If in their original condition papers were stapled, clipped, or otherwise fastened together or maintained in file folders, binders, covers, or containers, they shall be produced in such form, and any documents that must be removed from their original folders, binders, covers, or containers in order to be produced shall be identified in a manner so as to clearly specify the folder, binder, cover, or container from which such documents came; and
 - (2) If in their original condition electronic documents were maintained in folders or otherwise organized, they shall be produced in such form and information so as to clearly specify the folder or organization format;
 - (ii) If written in a language other than English, shall be translated into verbatim English, with the English translation attached to the foreign language document;
 - (iii) Shall be produced in color where necessary to interpret the document;
 - (iv) Shall be marked on each page with corporate identification and consecutive document control numbers; and
 - (v) Shall be accompanied by an affidavit of an officer of the Company stating that the copies are true, correct, and complete copies of the original documents.
- I6. The Company shall encrypt all data/information before producing it to the Commission. Using NIST FIPS-Compliant¹ cryptographic hardware or software modules is strongly encouraged. All submissions in electronic format shall be produced in the following manner:
- (a) For any submission over 10 gigabytes, use IDE and EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data; data can be provided on a FIPS-Compliant encrypted hard drive.

¹ The National Institute of Standards and Technology (NIST) issued the Federal Information Processing Standard (FIPS) Publications 140-1 and 140-2 that details certified cryptographic modules for use by the U.S. Federal government and other regulated industries that collect, store, transfer, share, and disseminate sensitive but unclassified information. More information about FIPS 140-1 and 140-2 can be found at <http://csrc.nist.gov/groups/STM/index.html>.

- (b) For any submission under 10 gigabytes, use CD-R, CD-ROMs, and DVD-ROM for Windows-compatible personal computers, and USB 2.0 Flash Drives are also acceptable storage formats.
- (c) **All data/information produced in electronic format shall be scanned for and free of viruses. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with this Order.**
- (d) **The password for the encrypted data/information shall be provided separately, via email, to the Commission representative identified in Instruction I12 of this Order.**

However, the Company may produce any data/information responsive to this Order using the Commission's secure file transfer protocol ("FTP"). For instructions on using this FTP, please contact the Commission representative identified in Instruction I13 of this Order.

- 17. Each submission responsive to this Order shall be accompanied with a letter that includes all of the following:
 - (a) Volume name;
 - (b) A description of encryption software/hardware used;
 - (c) The total number of files; and
 - (d) A list of data fields in the Order in which they appear in the data files.
- 18. Each data submission responsive to this Order shall be accompanied by a description of each data field, a data dictionary that specifies what the values of each data field signify, and an identification of the field(s) that respond(s) to any subpart of any Specification of this Order.
- 19. If the Company is unable to answer any question fully, supply such data/information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information/data, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.
- 110. If documents or data responsive to a particular Specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document and data retention policy, but the Company has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents or data to the fullest extent possible, state the Specification(s) to which they

are responsive, and identify persons having knowledge of the content of such documents or data.

- I11. In order for the Company's response to this Order to be complete, the attached certification form must be executed by the official supervising compliance with this Order, notarized, and submitted along with the responsive materials.
- I12. The responses to Specifications 1, 4, and 9 of this Order shall be addressed to the attention of "BE Data Support Center" and delivered, between 8:30 a.m. and 4:30 p.m. ET on any business day prior to and including the return date stated on the face of the attached Order, to BE Data Support Center, Federal Trade Commission, 600 Pennsylvania Ave., NW, Room H-285, Washington, DC 20580. For courier delivery, contact Kevin Richardson at (202) 326-3481, krichardson@ftc.gov; or Constance Herasingh at (202) 326-2147, cherasingh@ftc.gov. Please notify Mr. Richardson and Ms. Herasingh by email in advance of each delivery. Any password(s) necessary to access the response to the Order shall be emailed to Mr. Richardson and Ms. Herasingh.
- I13. Any questions that you have relating to the scope or meaning of anything in this Order or suggestions for possible modifications to it should be directed to Stephanie A. Wilkinson at 202-326-2084, swilkinson@ftc.gov. The responses to Specifications 2-3, 5-8, and 10-13 of this Order shall be addressed to the attention of Ms. Wilkinson and delivered between 8:30 a.m. and 4:30 p.m. ET on any business day prior to and including the return date stated on the face of the attached Order, to the Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, DC 20580. Please notify Ms. Wilkinson by email in advance of each delivery.

CERTIFICATION

This Special Report, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Federal Trade Commission. To the best of my knowledge, the information is true, correct, and complete, subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required data. Where copies rather than original documents have been submitted, the copies are true, correct, and complete.

TYPE OR PRINT NAME AND TITLE

(Signature)

Subscribed and sworn to before me at the City of _____,

State of _____, this _____ day of _____, 20__.

(Notary Public)

My Commission expires: