

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

**COMMISSIONERS:**

**Deborah Platt Majoras, Chairman  
Pamela Jones Harbour  
Jon Leibowitz  
William E. Kovacic  
J. Thomas Rosch**

<b>In the Matter of</b>	)	
	)	
<b>EVANSTON NORTHWESTERN HEALTHCARE CORPORATION,</b>	)	
<b>a corporation, and</b>	)	<b>Docket No. 9315</b>
	)	
<b>ENH MEDICAL GROUP, INC.</b>	)	<b>PUBLIC</b>
<b>a corporation.</b>	)	
	)	

**SUBMISSION OF EVANSTON NORTHWESTERN HEALTHCARE  
IN EXPLANATION AND SUPPORT OF ITS PROPOSED FINAL ORDER**

On August 6, 2007, the Commission issued its Opinion and Order in this matter. As part of its Opinion, the Commission ordered Respondent Evanston Northwestern Healthcare (“ENH”) to “submit a detailed proposal to the Commission for implementing the type of injunctive relief” selected by the Commission. *See* Opinion at 91. In response to and in compliance with the Commission’s Opinion and Order, Respondent submits a proposed final order and this explanatory memorandum. ENH has made a good faith attempt to compile a submission which comports with the provisions and guidance of the Commission’s Order. The purpose of this supporting submission is to assist the Commission in understanding the rationale underlying the specific provisions of ENH’s proposed order.

**I. Separate Hospital Contracting**

ENH’s proposed order details the establishment of distinct hospital contracting structures to allow Payors the opportunity to negotiate for Inpatient Services separately. ENH’s proposal achieves the Commission’s stated intent of creating “price competition” between Evanston and Highland Park as well as providing Payors with the option to contract with one hospital but not the other. *See* Opinion at 89.

**A. Separate and Distinct Negotiating Teams**

ENH’s proposed order creates distinct and separate negotiating teams: one for Highland Park and another for Evanston and Glenbrook (hereinafter “Evanston”). This proposed order enables *all* Payors to negotiate separate contracts for acute inpatient hospital services at Highland Park and Evanston.

The Commission's Opinion and Order (as well as the Complaint) define the market as excluding outpatient services and government payors. *See* Opinion at 8 (“We do not discuss the Medicare and Medicaid systems further because complaint counsel did not allege that the merger increased the prices paid by the Medicare or Medicaid programs”); *see also* Opinion at 55-57 (“[W]e conclude that the evidence on the record establishes that the relevant product market is acute inpatient hospital services.”). Accordingly, ENH's proposed order relates only to inpatient services contracted through managed care organizations (“MCOs”) at the three hospitals.

The proposed order establishes the “ENH Negotiating Team” and the separate, “Highland Park Negotiating Team.” Each Team reports to different executives—the ENH Chief Operating Officer or the President of Highland Park Hospital, respectively. The ENH Negotiating Team is located in Evanston, Illinois; the HPH Negotiating Team would be located in Highland Park, Illinois.

The Commission's Order permits, and ENH recognizes, that some Payors may elect to not pursue the separate contracting option. *See* Opinion at 91. Therefore, separate negotiations will be instituted at the request of the Payor. At the option of the Payor, the proposed order permits Payors to continue to negotiate for all services at all hospitals. Some Payors may elect this option in order to efficiently utilize their limited contracting resources or for their own administrative efficiency. The proposed order requires Payors to notify ENH in writing of its intent to pursue separate negotiations for inpatient services at Highland Park in order to avoid any ambiguity regarding the intent of the Payor.

#### **B. Contingent Terms or Rates Are Prohibited**

Under the proposed order, if a Payor chooses to engage in separate negotiations, neither the Highland Park Negotiating Team nor the ENH Negotiating Team may make any contracting term or price contingent on the outcome of the other negotiation. In other words, no price or term for contracting with one hospital can be dependent on entering into a contract with the other Team. Thus, the Payors are able to choose to exclude either Evanston or Highland Park to form an alternative network.

Importantly, the right to terminate contracts is not affected by the proposed order. Payors are free to terminate their contracts for all or some services, including Inpatient Services with Highland Park or Evanston. Similarly, Highland Park or Evanston also retain the ability to terminate contracts. In the event of any perceived abuse of these termination rights (or any other provision of the order), the proposed order details a dispute resolution mechanism, discussed in further detail below.

#### **C. Immediate Implementation of the Negotiating Structure**

The Commission's Order required the reopening and renegotiation of Current Contracts. The Proposed Order does exactly that. Within thirty (30) days, every Payor will receive notification by certified mail apprising them of their option to commence reopening and

renegotiation of Inpatient Services for Highland Park. The notification provisions proposed by Respondent are consistent with the Order entered in *United States v. Morton Plant Hlth Sys.*, No. 94-748-CIV-T-23E, 2000 WL 33223244 at \*3 (M.D. Fla. July 14, 2000).

Either the local chief executive or the Payor's chief executive will receive a notice along with a copy of the Commission's final order. Payors electing to contract separately for Inpatient Services at Highland Park are required to notify ENH in writing. The proposed order establishes a reasonable time frame for Payors to make their decision. Payors can always elect to pursue separate negotiations upon commencing any subsequent negotiation (e.g., upon expiration of the Current Contract or the first renegotiated contract following this order). This provision is consistent with the notification provisions under the ENH Medical Group Consent Order. *See* Consent Order at 7-8 (May 17, 2005).

Respondent's proposed order does not contemplate, and Respondent respectfully submits that the Commission's Order does not require, the reopening or renegotiation of Current Contracts for those Payors who do not elect to pursue separate negotiations for Inpatient Services at Highland Park. Payors who wish to remain in the entire ENH System under a valid contract should not be permitted to improperly use the Commission's Order as an excuse to renegotiate an otherwise valid contract. If a Payor declines to pursue the option of separate contracting for Highland Park Inpatient Services under the terms of the proposed order, there is no competitive justification for permitting the destabilization of a Current Contract upon which patients, Respondent and the Payor all rely.

## **II. Firewall-Type Mechanism**

ENH's proposed order institutes a clear and structured firewall-type mechanism that protects competitively-sensitive information and enables competition between the hospitals. The proposed firewall-type mechanism establishes a wall prohibiting communication or exchange of Managed Care Contracting Information between the ENH Negotiating Team and the Highland Park Negotiating Team at all times. *See* Diagram of Proposed Firewall-Type Mechanism attached as Exhibit A.

Each Team can obtain non-Managed Care Contracting Information, such as historical experience data, but it cannot communicate how or why it intends to *use* such information. Each Team can also obtain information necessary from ENH to engage in competitive negotiations, such as information regarding the hospital's costs, quality, patient mix, service utilization, budgets, capital needs, expenses, and overhead.

In order to preserve the integrity of the firewall-type mechanism, once a Payor has indicated its intent to pursue separate contracting, that Payor is bound to that decision until a Managed Care Contract is executed or a termination becomes effective. Similarly, if a Payor chooses to negotiate for all services with the ENH Negotiating Team, that negotiation must continue to resolution, once again in order to preserve the firewall-type mechanism. To preserve the absolute confidentiality of competitively-sensitive information, the firewall-type mechanism cannot be raised and lowered during the course of a single negotiation with a Payor. Were it otherwise, any party—including Payors or Respondent's—could delay negotiations, exert

bargaining pressure, threaten to restart negotiations, or abuse the firewall-type mechanism for negotiating advantage.

The overwhelming need for ENH's integrated contract administration requires the sharing of all Managed Care Contracting Information with the ENH Corporate Managed Care Department which will be geographically separated from both teams and located in Skokie, Illinois. *See* Diagram of Proposed Firewall-Type Mechanism attached as Exhibit A. As the Commission has found, ENH is an integrated health system. *See* Opinion at 89 ("ENH has integrated the operations of Evanston, Glenbrook, and Highland Park Hospitals."). Importantly, as medical need arises, patients may be transferred to another hospital or may use such integrative services as laboratory, EPIC, record-keeping systems, or services that may be centralized in another ENH hospital than the one in which a patient was admitted. *See* Opinion at 90. In addition, medical staff integration, the Commission found, promoted improvements in quality of care. *See* Opinion at 51. The decision respecting the location of treatment is one best reserved to the doctor and patient—and the order should allow the administrative aspects of billing, payment monitoring, utilization management, etc., to follow suit.

While the Managed Care Contracting Information will be shared with the ENH Corporate Managed Care Department, a firewall-type mechanism will prohibit the sharing of information received from each contracting team with the other team. *See* Diagram of Proposed Firewall-Type Mechanism attached as Exhibit A. The sharing of Managed Care Information with the Corporate Managed Care Department is necessary for ENH to engage in system-wide Contract Administration and to operate as an integrated system. This limited sharing of information, with a group that is enclosed by a firewall, does not create a competitive problem because the two contracting teams cannot access Managed Care Contracting Information from the other team. Thus, the two negotiating teams will always compete against each other for Payor contracts.

Payors electing to negotiate separate Inpatient Service terms and rates for Highland Park will follow already-established Medicare billing procedures for Highland Park. The Medicare and Medicaid programs currently recognize the ENH system as an integrated entity and have developed a billing methodology that does not disrupt or interfere with patient care. Just as under Medicare, when patients are transferred between the three ENH hospitals, the discharging hospital will be reimbursed for the entire inpatient admission under that Managed Care Contract with the discharging hospital.

In order to preserve ENH's integrated capabilities, the administrative functions associated with Contract Administration should remain centralized in order to ensure uniform patient care. Payors, hospitals, and patients all have a compelling need to guarantee that contracts are consistently administered properly, accurately, and in accordance with the negotiated terms. Patients demand proper, accurate, and swift processing of their bills by the hospital and Payors. The centralization of the Business Office within the Corporate Managed Care Department, which manages patient billing, charity care determinations, and customer service, *inter alia*, has its own information technology systems, policies, and directives to ensure that contracts are administered in accordance with patients' needs.

Thus, Respondent's proposed order maintains absolute confidentiality of Managed Care Contracting Information between the two negotiating teams and assures that at all times the negotiating teams compete with each other. Respondent respectfully submits that the provisions of its proposed order comply with the requirements of the Commission's Order and conform to prior consent degrees approved by the Commission. *See United States v. Morton Plant Hlth Sys.*, No. 94-748-CIV-T-23E, 1994 WL 655199 at \*4 (M.D. Fla. Sept. 29, 1994).

### **III. Compliance and Monitoring**

The Commission ordered Respondent to propose mechanisms for the Commission to monitor Respondent's implementation of the required conduct remedy. The proposed order requires that Respondent submit annual compliance reports to the Commission which will detail how Respondent has complied with the terms and conditions of this Order as well as make additional information or employees available at the request of the Commission. Respondent's annual compliance provision is consistent with similar compliance provisions that appear in prior consents approved by the Commission.

The proposed order also requires that Respondent provide all officers and directors with a copy of the final order. Further, the proposed order requires all employees with access to confidential Managed Care Contracting Information to sign a statement that the individual will adhere to the terms and conditions of the order.

Although not detailed in the proposed order, at the request of the Commission Respondent is amenable to the appointment of an independent third party monitor to evaluate Respondent's compliance with the Commission's final order. The Monitor should be truly independent—not currently or previously affiliated with ENH, any Payor(s), or the Commission. The appointment a monitor would be consistent with prior consent orders. *See, e.g., In re Boston Scientific Corp.*, No. 061-0046, 2006 WL 1367835 at Order III (Apr. 20, 2006) (establishing "interim monitor" to ensure compliance with Consent Order); *In re DaVita, Inc.*, No. C-4152, 2005 WL 2492457 at Order s. IV (F.T.C. Oct. 3, 2005) (appointing monitor "to assure [Respondent] expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order").

### **IV. Dispute Resolution**

In requiring a proposal for dispute resolution, the Commission recognized that disputes may arise between Respondent and Payors as a result of its Order. Accordingly, in order to resolve disputes arising between Payors and Respondent regarding the terms of this order expeditiously, the proposed order suggests alternative dispute resolution, common in many commercial contexts. The first step in any controversy would be mediation under the Commercial Mediation Rules of the American Arbitration Association ("AAA"). In the event that the conflict persists, binding arbitration under a mutually-agreed upon arbitrator who would be charged with determining an appropriate resolution. These provisions are commonly-accepted methods of private dispute resolution in the commercial context and are, as a result, reasonable when applied in light of a disagreement between a Payor and the hospital(s).

**V. Sunset Provision**

The proposed order would be scheduled to sunset after ten (10) years or upon the granting of a petition by ENH to the Commission. This provision is consistent with prior Commission Orders. *E.g., In re Valero, L.P.*, No. C-4141, 2005 WL 1541552 at Order XII (“[T]his Order shall terminate ten (10) years from the date this Order becomes final”); *United States v. Morton Plant Hlth. Sys.*, No. 94-748-CIV-T-23E, 1994 WL 655199 at \*5 (M.D. Fla. Sept. 29, 1994) (Order scheduled to expire after five (5) years, if not renewed by Plaintiffs for another five (5) years); *see also In re Exxon Corp.*, No. 971-0007, 1998 WL 512598 at Order VIII (F.T.C. August 1998) (expiration after 10 years).

**VI. Conclusion**

Respondent respectfully submits that it has made a good faith attempt to submit a proposal to the Commission that complies with the various provisions within the Order. In the event that the Commission or Complaint Counsel should differ in their views of ENH’s proposal, Respondent would welcome the opportunity to engage the Commission and/or Complaint Counsel in a dialogue to resolve any controversy with ENH’s proposal.

Dated: September 17, 2007

Duane M. Kelley/jmd  
*On behalf of Respondent*  
*Evanston Northwestern Healthcare*

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served by delivering copies to:

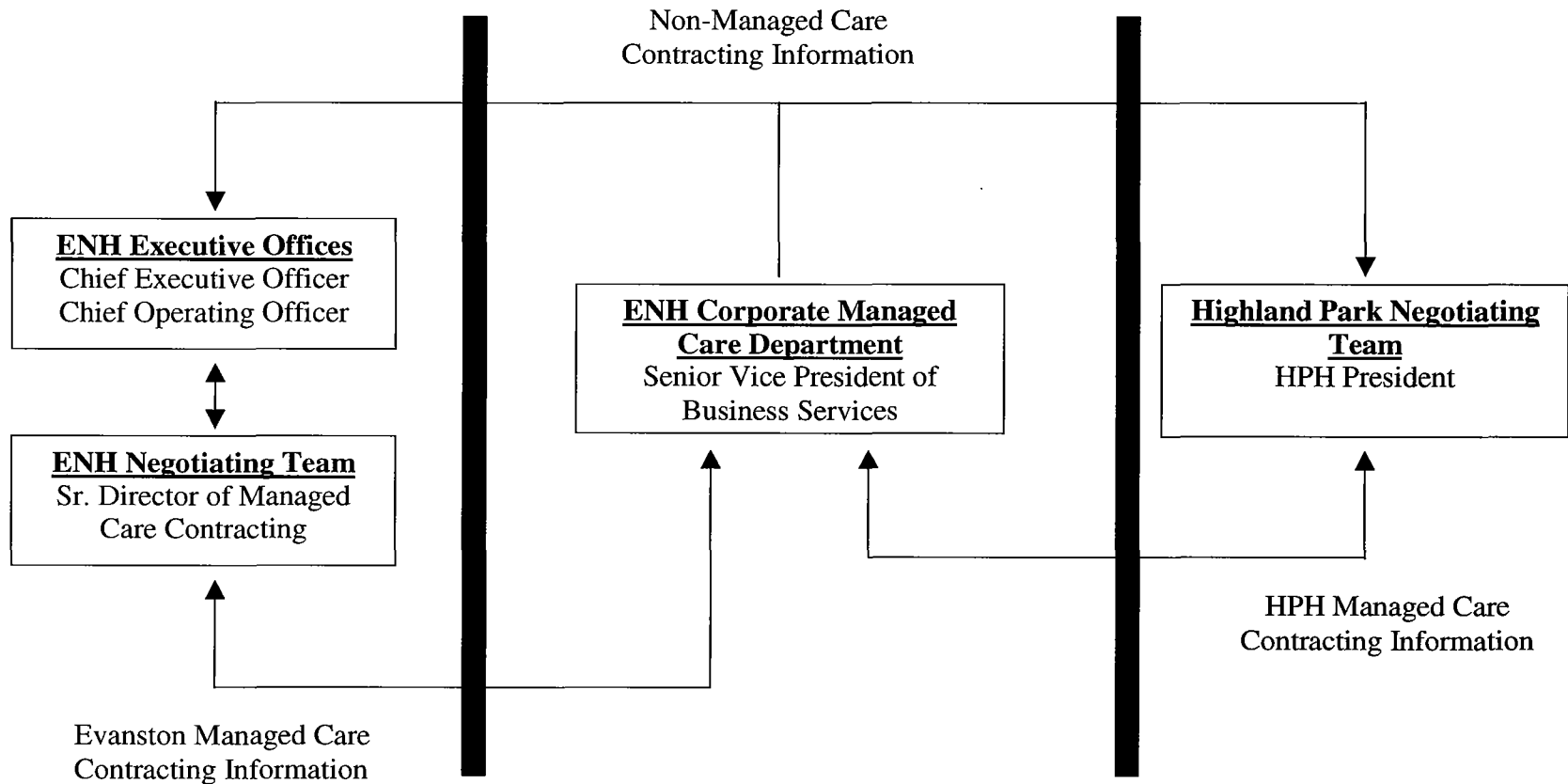
Office of the Secretary  
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Thomas H. Brock  
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(via e-mail and first class mail, postage pre-paid)

Dated: September 17, 2007

Scott C. Walton/jmcl  
Scott C. Walton

**Diagram of ENH Proposed Firewall-Type Mechanism  
Under Separate Payor Negotiations**





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	)	

**PROPOSED FINAL ORDER**

This matter having been heard by the Commission upon the respective submissions by the parties and for the reasons stated in the accompanying Opinion, the Commission hereby issues this Final Order. Accordingly,

**I.**

**IT IS ORDERED** that, as used in this Order, the following definitions shall apply:

- A. "ENH" means Evanston Northwestern Healthcare Corporation, its officers, directors, employees, agents, representatives, successors, and assigns, subsidiaries, divisions, groups, and affiliates controlled by it, and the representative officers, directors, employees, agent, representatives, successors, and assigns of each.
- B. "Highland Park Hospital," hereinafter referred to as Highland Park, means the hospital owned by ENH and located at 777 Park Avenue West, Highland Park, Illinois.
- C. "Evanston Hospital," hereinafter referred to as Evanston, means Evanston Hospital and Glenbrook Hospital, hospitals owned by ENH and located at 2650 Ridge Avenue, Evanston, Illinois, and 2100 Pfingston Road, Glenview, Illinois, respectively.
- D. "Respondent" means ENH.
- E. "ENH Negotiating Team" means the team responsible for negotiating a Managed Care Contract for all services at Evanston as well as outpatient services for Highland

Park when Payors elect separate negotiations, and for all services at all ENH hospitals when Payors do not elect separate negotiations. The ENH Negotiating Team will be separate and distinct from the Highland Park Negotiating Team. The ENH Negotiating Team shall consist of employees or advisors that report to the ENH Chief Operations Officer (“COO”) and will be located at Evanston. The ENH COO is the authorized representative to execute and sign Managed Care Contracts negotiated by the ENH Negotiating Team.

- F. “Highland Park Negotiating Team” means the distinct team that will be responsible for negotiating Managed Care Contracts for Inpatient Services at Highland Park Hospital and will be based in a different location than the ENH Negotiating Team. The Highland Park Negotiating Team shall consist of employees or advisors that report to the President of Highland Park Hospital. The President of Highland Park Hospital shall be the ENH-authorized representative to execute and sign managed care contracts for Inpatient Services for Highland Park Hospital. The Highland Park Negotiating Team may include a Third-Party Consultant.
- G. “Managed Care Contracting Information” means information concerning Managed Care Contracts and negotiations with a specific Payor for Inpatient Services; provided however, that “Managed Care Contracting Information” shall not include: (i) information that is in the public domain or that falls into the public domain through no violation of this Order or breach of any confidentiality or non-disclosure agreement with respect to such information by Respondent; (ii) information that becomes known to ENH from a third party; (iii) information that is required by law to be publicly disclosed; or (iv) aggregate information concerning the financial condition of ENH.
- H. “Payor” means a managed care company, its officers, directors, employees, agents, representatives, successors, and assigns, subsidiaries, divisions, groups, and affiliates controlled by it, and the representative officers, directors, employees, agent, representatives, successors, and assigns of each, that provides access to health care services on an insured, partially insured or a self-insured basis, including plans such as health maintenance organizations (HMO), preferred provider organizations (PPO), and point of service plans (POS). A Payor may be a licensed insurer, an administrative services organization, or both. The services may include network access and development, contract negotiation with providers, provider relations, medical and utilization management and claims administration. This definition specifically excludes all Federal, State and Local Government Payors (including Medicare, Medicaid, and Medicare benefits administered by Managed Care Payors, i.e., Medicare Advantage Plans), provider groups including but not limited to Home Health, Hospice Agencies, Independent Physicians Associations (IPA), ENH self-funded employee insurance plan and any employer direct agreement.
- I. “Third Party Consultant” means an independent third party consultant that may be retained by ENH to assist the Highland Park Negotiating Team. The Third Party Consultant shall not be currently or previously affiliated with ENH, the Federal Trade

Commission, or any Payor. The Third Party Consultant shall assist the Highland Park Negotiating Team with data analysis, contracting strategy, contract language, claims modeling, and any other activity reasonably related to the negotiation of Managed Care Contracts.

- J. “Managed Care Contract” means a contract or agreement for services between ENH and a Payor including but not limited to rates, definitions, terms, conditions and policies.
- K. “Current Contract” means a Managed Care Contract between a Payor and ENH in effect at the time of the entry of this Order.
- L. “Inpatient Services” means general acute care inpatient hospital services which include a broad cluster of medical, surgical, diagnostic, treatment, and other services that are included as part of an admission of a patient to an inpatient bed within Evanston Hospital or Highland Park Hospital.
- M. “Corporate Managed Care Department” means the department that will be responsible for Contract Administration for both Evanston and Highland Park. The Corporate Managed Care Department will report to the ENH Senior Vice President of Business Services and is currently located in Skokie, Illinois. The Managed Care Contracting Department will be prohibited from sharing Managed Care Contracting Information with any person or group prohibited from reviewing or receiving such information.
- N. “Contract Administration” means the act or acts associated with compliance and implementation of final contract terms, such as payment monitoring, communication of Payor medical and administrative policies, utilization management, liaison to the Business Office, annual updates, and organizing managed care-related budget information.
- O. “Contract Management System” means a software application or other system that houses contract rates and is utilized for patient billing and modeling Current Contract rates and/or proposed rates.

## II.

**IT IS FURTHER ORDERED** that, Respondent must establish the ENH Negotiating Team and the Highland Park Negotiating Team that will compete with each other and with other hospitals.

## III.

**IT IS FURTHER ORDERED** that, Respondent must allow all Payors to negotiate separate Managed Care Contracts for Inpatient Services at Evanston on the one hand and for Inpatient Services at Highland Park on the other hand;

- A. At the request of Payors, the Highland Park Negotiating Team shall negotiate for Inpatient Services at Highland Park.
- B. When Payors request separate negotiations for Inpatient Services at Highland Park, the ENH Negotiating Team shall negotiate for all services at Evanston and only outpatient services at Highland Park.
- C. At the request of any specific Payor, the ENH Negotiating Team shall be permitted to negotiate for all services at all ENH Hospitals for that specific Payor.

#### IV.

**IT IS FURTHER ORDERED** that, when a Payor requests separate negotiations, Respondent may not make any contract for Inpatient Services for Evanston or Highland Park contingent on entering into a contract for the other, and may not make the availability of any price or term for a contract for Evanston contingent on entering into a contract for Highland Park or vice-versa.

#### V.

**IT IS FURTHER ORDERED** that, Respondent shall promptly offer all Payors with which it has a Current Contract the option of reopening and renegotiating their contracts with ENH under the terms of this Order;

- A. Within thirty (30) days after the date this order becomes final, ENH shall provide all Payors with which it has a Current Contract notification of this Order and offer the opportunity to negotiate separately with the Highland Park Negotiating Team for Inpatient Services for Highland Park.
- B. Payors shall have thirty (30) days from the date of notification to respond in writing and to specify the Payor's intent to negotiate separately with the Highland Park Negotiating Team for Inpatient Services for Highland Park. Nothing in this Order will affect the rights and responsibilities under any Current Contract with ENH for any Payor who fails to notify ENH in writing within the time allocated.
- C. When ENH receives notification of a Payor's intent to negotiate separately with the Highland Park Negotiating Team for Inpatient Services at Highland Park, the Payor and the Highland Park Negotiating Team shall be given a reasonable amount of time to complete negotiations.
- D. During any subsequent renegotiation with a Payor with a Current Contract or negotiation with a Payor without a Current Contract, ENH will provide the Payor with the option to negotiate separately for Inpatient Services for Highland Park. Any Payor electing to negotiate separately for Inpatient Services at Highland Park shall notify ENH of its intent in writing.

## VI.

**IT IS FURTHER ORDERED** that, Respondent must establish a firewall-type mechanism that prevents the ENH Negotiating Team from requesting, receiving, sharing or otherwise obtaining any Managed Care Contracting Information with respect to Inpatient Services at Highland Park, and prevents the Highland Park Negotiating Team from requesting, receiving, sharing or otherwise obtaining any Managed Care Contracting Information with respect to Evanston, except as otherwise provided in this Order;

- A. ENH shall have one hundred twenty (120) days after the date this order becomes final to establish and implement an appropriate firewall, assemble the Highland Park Negotiating Team and ENH Negotiating Team, including recruiting and training staff, and otherwise prepare to implement the terms of this Order.
- B. Nothing in this Order shall prevent the Highland Park Negotiating Team from requesting, receiving, sharing or otherwise obtaining Managed Care Contracting Information with respect to Highland Park.
- C. Nothing in this Order shall prevent the Highland Park Negotiating Team from requesting, receiving, sharing or otherwise obtaining non-Managed Care Contracting Information related to any ENH hospital or the entire ENH system, including but not limited to, information related to costs, quality, patient mix, service utilization, experience data, budgets, capital needs, expenses, and overhead.
- D. Nothing in this Order shall prevent the ENH Negotiating Team from requesting, receiving, sharing or otherwise obtaining Managed Care Contracting Information with respect to all services at Evanston and outpatient services at Highland Park.
- E. Nothing in this Order shall prevent the ENH Negotiating Team from requesting, receiving, sharing or otherwise obtaining non-Managed Care Contracting Information related to any ENH hospital or the entire ENH system, including but not limited to, information related to costs, quality, patient mix, service utilization, experience data, budgets, capital needs, expenses, and overhead at Evanston and Highland Park.
- F. Should a Payor not elect to negotiate separately with the Highland Park Negotiating Team and the ENH Negotiating Team, nothing in this Order shall prohibit the ENH Negotiation Team from requesting, receiving or otherwise obtaining Managed Care Contracting Information with respect to all services at both Evanston and Highland Park for that particular Payor.

- G. The Corporate Managed Care Department is permitted to use Managed Care Contract Information obtained from both the ENH Negotiating Team and the Highland Park Negotiating Team for the purpose of Contract Administration.
- H. The Corporate Managed Care Department is prohibited from providing, sharing, or otherwise making available:
  - (i) Managed Care Contracting Information from the Highland Park Negotiating Team to the ENH Negotiating Team, except for Managed Care Contracting Information related to a particular Payor who has not elected to contract separately.
  - (ii) Managed Care Contracting Information from the ENH Negotiating Team to the Highland Park Negotiating Team.
- I. ENH shall establish a separate or clearly-partitioned Contract Management System for the Highland Park Negotiating Team and the Evanston Negotiating Team to ensure confidentiality of Managed Care Contracting Information.

## VII.

**IT IS FURTHER ORDERED** that Respondent shall cause each of Respondent's employees having access to Managed Care Contracting Information to sign a statement that the individual will maintain the confidentiality required by the terms and conditions of this Order.

## VIII.

**IT IS FURTHER ORDERED** that Respondent shall, one (1) year from the date this Order becomes final and annually thereafter until the Order terminates or the Commission determines it no longer necessary, submit a verified written report to the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order.

## IX.

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and documents in its possession, or under its control, relating to any matter contained in this Order; and

- B. Upon five (5) days' notice to Respondent, and in the presence of counsel, to interview officers or employees of Respondent.

**X.**

**IT IS FURTHER ORDERED** that, any and all disputes between ENH and Payors with respect to Respondent's compliance with this Order shall be solely and exclusively resolved in accordance with this section. ENH and the Payor shall first try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association ("AAA"). If the dispute cannot be settled by mediation, then by arbitration administered by the AAA under its Commercial Arbitration Rules before a single arbitrator mutually agreed upon by ENH and the Payor. Any mediation or arbitration proceeding shall be conducted in Chicago, Illinois.

**XI.**

**IT IS FURTHER ORDERED** that ENH shall, within sixty (60) days after the date this Order becomes final, send by first-class mail, return receipt requested, a copy of this Order to each officer and director of ENH.

**XII.**

**IT IS FURTHER ORDERED** that, this Order will remain in effect for ten (10) years after the date of its issuance. ENH may petition the Commission at any time for removal or expiration the Order.