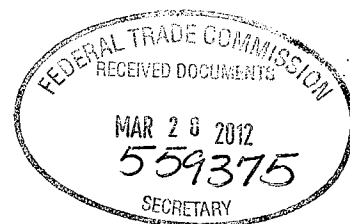


ORIGINAL



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In The Matter Of	)	PUBLIC DOCUMENT
	)	
OSF HEALTHCARE SYSTEM	)	Docket No. 9349
And	)	
ROCKFORD HEALTH SYSTEM	)	

NON-PARTY HUMANA INC.'S MOTION FOR *IN CAMERA*  
TREATMENT OF PROPOSED EVIDENCE

Humana Inc. ("Humana"), which is not a party to the above-captioned matter, respectfully requests that this court grant *in camera* treatment of documents that the undersigned has been notified have been designated for introduction into evidence in the administrative trial in this matter. Pursuant to 16 C.F.R. §§ 3.45 and 4.10(g), Humana seeks *in camera* treatment for the un-redacted versions of following documents:

1. PX4260 (Humana-00018),<sup>1</sup> in its un-redacted form, which is an internal communication regarding the amount of Humana's claims and insured lives in the Rockford area;
2. The un-redacted versions of PX4258-001 (Humana-000007) and PX4258-004 (Humana-000010) and all of PX4258-002 (Humana-000008), which are part of competitive information and research titled "Implications of OSF purchasing Rockford Memorial – Humana's View";
3. The un-redacted versions of PX 4258-006 and 007 (Humana-000001 and 000002), which are internal communications containing Humana's competitive information;
4. The Declaration of Rob Hitchcock in its un-redacted form (PX 0255); and
5. The deposition testimony of Rob Hitchcock and Dave Reynolds, with the exception of the specific testimony identified by Defendants<sup>2</sup>;

<sup>1</sup> Plaintiff identified the documents with a PX prefix. Humana, however, identified its documents with a prefix of "Humana". For convenience sake, both prefixes will be referenced herein.

<sup>2</sup> The pages of the Rob Hitchcock deposition identified by Defendants are: 8-9, 16, 18-19, 21-22, 26, 31-34, 42, 49-50, 54, 56-57, 62-63, 70, 74, 76, 80-81, 86, 88, 105, 108, 123, 149-50, 159, 163, 168 and 173. The pages of the Dave Reynolds deposition identified by Defendants are: 5, 6, 7, 9, 10, 14, 15, 22, 24, 26, 28, 30, 35, 39, 40, 45 and 46. Defendants also made a cursory reference to documents in their Notice, but did not identify any such documents. Humana must assume, therefore, that Defendants do not intend to introduce any documents.

Certain information contained in these documents is competitively sensitive and is held in strict confidence by Humana. Public disclosure of these documents is likely to cause direct, serious harm to Humana's competitive position. Therefore, pursuant to 16 C.F.R. § 3.45(b), Humana respectfully moves for *in camera* treatment of these documents. Humana has, however, provided to all counsel in this matter redacted versions of these documents and has no objection to counsel using the redacted documents. If, however, counsel intends to use the un-redacted versions, Humana requests *in camera* treatment.

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

Requests for *in camera* treatment will be granted where public disclosure of the document in question "will result in a dearly defined, serious injury to the corporation requesting *in camera* treatment." See 16 C.F.R. 3.45. 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." *HP. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

Six factors are considered when a party or non-party believes information is 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)).

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

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

Humana has taken substantial measures to guard the information contained in Exhibits A through D by limiting dissemination of such information and taking every reasonable step to protect its confidentiality. (See Declaration of Helen Thompson ("Decl."), attached as Exhibit E, ¶ 2). Such information is only disclosed to particular Humana employees. *Id.* The information is not known outside of Humana except to the extent necessary to engage in contract negotiations, and it would be extremely difficult for Humana's competitors or other outside persons to access or duplicate the information contained in the documents at issue. *Id.* These efforts demonstrate that Humana has gone through great lengths to preserve the confidentiality of the information contained in these documents.

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

1. The June 10, 2011 Email from Fred Nelson to Rob Hitchcock, In Its Un-Redacted Form, Is Entitled to *In Camera* Treatment.

Pursuant to a subpoena *duces tecum*, non-party Humana produced an internal email from Humana's Market Director, Finance and Provider Engagement, Fred Nelson, to Rob Hitchcock, Humana's Vice President of the Western Division, Medicare Market Operations. A copy of the Email, in both un-redacted and redacted form, is attached hereto as Exhibit A. This email contains highly confidential and proprietary information related to the number of Humana's self-

insured lives in the Rockford area as well as the total amount spent by Humana on claims related to care provided by Primary Care Physicians in Humana's network. This information is not available to the public or to Humana's competitors and was gleaned from Humana's databases, gathered solely for internal use and was not intended for dissemination outside Humana. This information is not otherwise available to those outside Humana, is maintained as a private communication within Humana, and, if made public, would be allow Humana's competitors to take advantage of the pricing information to Humana's detriment. (See Decl. ¶ 3).

As such, it is clear that this email (PX4260) should not be made public and should instead be viewed *in camera* only.

1. The Un-redacted Version Of Implications of OSF Purchasing Rockford Memorial – Humana's View, Is Entitled to *In Camera* Treatment.

Humana also produced a Power Point presentation, the first page of which is titled Implications of OSF purchasing Rockford Memorial – Humana's View. The presentation is five pages in total. A copy of the redacted and un-redacted versions of the pages at issue is attached as Exhibit B. Importantly, Humana is not seeking in camera treatment for all of the slides. Indeed, Humana requests only that the *un-redacted* versions of PX4258-001 and PX4258-004 (Humana-000007 and Humana-000010) and all of PX4258-002 (Humana-000008) receive *in camera* treatment. Importantly, the redacted versions of PX4258-001 and PX4258-004 do not require in camera treatment. Two pages of the presentation, PX4258-003 and 005 (Humana-000003 and 000005) need no special treatment, as they contain information gleaned from public sources and are not properly deemed confidential.

In contrast, PX4258-001 and PX4258-004 (Humana-000007 and Humana-000010) and all of PX4258-002 (Humana-000008) contain commercially sensitive information, including specific contract terms that are not public, descriptions of market advantages, as well as

Humana's commercial and Medicare utilization for Rockford Memorial, OSF and SwedishAmerican hospitals. Indeed, the table on PX4258-002 (Humana-000008) specifically identifies the amount of claims made, the amount allowed, the amount paid by Humana and the discount applied with respect to Humana's insureds in Winnebago County. The documents also set forth Humana's market share as it related to each of the three hospital providers. This information was gleaned from Humana's own databases, and is not available to anyone outside Humana, especially competitors. If this information were available to Humana's competitors, it would allow them to peer into Humana's most confidential business information and then use that information to Humana's disadvantage in the marketplace. Moreover, there is no justifiable reason as to why the public at large should have access to this information. (See Decl. ¶ 4).

Humana therefore respectfully requests that **un-redacted** versions of PX4258-001 and PX4258-004 (Humana-000007 and 000010) and all of PX4258-002 (Humana-000008) be given *in camera* treatment, but, if the parties seek to introduce the **redacted** versions of PX4258-001 and 004, then no special treatment is required.

2. The Un-Redacted Versions of Internal Emails Containing Humana's Competitive Information Is Entitled To *In Camera* Treatment.

Another internal email chain is likewise entitled to additional protection. The documents identified as PX4258-006 and 007 (Humana-000001 and 000002) are internal communications which outline premiums paid by Humana insureds as well as strategies for renewing the contracts for employers in Winnebago County. A copy of the redacted and un-redacted versions of the emails is attached hereto as Exhibit C. This information was not intended for public disclosure and deserves *in camera* treatment. As with the other emails and information, this information is maintained solely for Humana's use, is not available to anyone outside Humana and would put Humana at a competitive disadvantage if the information were made public. In

contrast, the **redacted** versions of these communications do not require special treatment. (*Id.* ¶ 5). Accordingly, if the parties wish to introduce the **redacted** versions, *in camera* treatment is not required.

3. The Un-Redacted Declaration of Rob Hitchcock Is Entitled To *In Camera* Treatment.

It is also understood that the parties wish to introduce the Declaration of Rob Hitchcock in this matter. Humana, in communications with the defendants, has already agreed to the use of the Declaration but only in its **redacted** form. The redacted and un-redacted versions are attached for the Court's review as Exhibit D. The un-redacted version is entitled to *in camera* treatment because the information redacted from the Declaration relates directly to the number of Humana insureds in Winnebago County, the amount of money spent by Humana for primary care in Winnebago and Boone counties, and the percentage of Humana's "spend" on primary care services that was paid to Swedish American Hospital. This information is highly sensitive and not available to the general public or Humana's competitors. Moreover, there is no legitimate reason as to why the public needs or is entitled to this business information. The public's right to access and the rights of Humana to protect its confidential commercially sensitive information will be fully served if the redacted information is given *in camera* treatment. *Id.*

4. The Rob Hitchcock and Dave Reynolds Depositions Are Entitled to *In Camera* Treatment.

Finally, with the exception of the testimony identified by the defendants, Humana requests that the remainder of the Rob Hitchcock and Dave Reynolds Depositions receive *in camera* treatment. Mr. Hitchcock has testified as to Humana's internal strategies, its view of the market and how it intends to respond as well as Humana's pricing and reimbursement information. Mr. Reynolds testified as to specific contract terms that are not public and internal

communications regarding Humana's contract strategies. With the exception of the excerpts identified by the parties, there is no justification for allowing this information to be made public. Disclosure of this information could result in serious damage Humana's competitive advantage in the marketplace.

This is information that could be used by Humana's competitors for their own advantage in targeting Humana's providers and analyzing the manner in which Humana determines its rates. *Id.* Disclosure of this information could result in serious damage Humana's competitive advantage in the marketplace. (*Id.* ¶ 6)

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

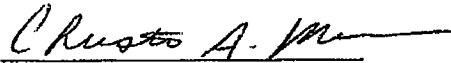
As a non-party to this matter, Humana deserves "special solicitude" as a non-party requesting *in camera* treatment for its confidential business information. *In the Matter of Kaise Aluminum & Chemical Corp.*, 103 F.T.C. 500, 500 (1984) (order directing *in camera* treatment for five-year-old sales 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.* Humana has cooperated with the discovery demands in this case and has even acceded to requests that the redacted versions not receive *in camera* treatment. Conversely, "public understanding of this proceeding does not depend on access to" Humana's highly confidential information. *Id.* The balance of interests clearly favors *in camera* protection for Exhibits A through D. *See Bristol*, 90 F.T.C. at 456 (describing six-factor test for determining secrecy and materiality).

D. Protection for Exhibits A Through D Should Extend For 5 Years.

The nature of the highly confidential information contained in Exhibits A through D warrants lasting protection. Information contained in the documents, including but not limited to

information regarding how Humana negotiates contracts and determines rates, and financial information regarding utilization of various Humana providers, is vital to Humana's competitive position and business strategy. Accordingly, Humana respectfully requests that Exhibits A through D be afforded *in camera* protection for a period of five years.

Respectfully submitted,



Christie A. Moore

John K. Bush

Bingham Greenebaum Doll LLP

3500 National City Tower

101 South Fifth Street

Louisville, KY 40202-3197

Phone: (502) 589-4200

Emails: [cmoore@bgdlegal.com](mailto:cmoore@bgdlegal.com)  
[jbush@bgdlegal.com](mailto:jbush@bgdlegal.com)

COUNSEL FOR HUMANA INC.



CERTIFICATE OF SERVICE

I hereby certify that on the 22<sup>nd</sup> day of March, 2012, a true and correct copy of the foregoing was served, via e-mail, to the following:

Matthew J. Reilly  
Jeffrey H. Perry  
Kenneth W. Field  
Federal Trade Commission  
Bureau of Competition  
600 Pennsylvania Ave., N.W.  
Washington, DC 20580  
Telephone: 202-326-2350  
Facsimile: 202-326-2286  
Email: [mreilly@ftc.gov](mailto:mreilly@ftc.gov)

Richard A. Feinstein, Director  
Norman A. Armstrong, Jr.  
Deputy Director  
Federal Trade Commission  
Bureau of Competition  
Email: [rfeinstein@ftc.gov](mailto:rfeinstein@ftc.gov)  
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*Counsel for Defendant  
OSF Healthcare System*

*Counsel for Defendant  
Rockford Health System*

  
COUNSEL FOR HUMANA INC.

I certify that on March 22, 2012, I caused to be served one copy via email and overnight mail delivery of the foregoing document upon:

Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue NW, Room H-106  
Washington, D.C. 20580  
[oalj@ftc.gov](mailto:oalj@ftc.gov)

I also certify that on March 22, 2012, I caused to be served an original and two copies via overnight mail delivery of the foregoing document along with 3 CDs upon:

Secretary of the Commission  
Donald S. Clark  
Federal Trade Commission  
600 Pennsylvania Avenue NW, Room H-113  
Washington, DC 20580

A true and correct copy of the original in my possession, which is available for review by the parties and the adjudicator.

  
\_\_\_\_\_  
COUNSEL FOR HUMANA INC.

4703634\_1.docx

A

**Rob Hitchcock**

**From:** Fred Nelson  
**Sent:** Friday, June 10, 2011 3:56 PM  
**To:** Rob Hitchcock  
**Subject:** RE: Rockford Information for the FTC

I'll keep this short and sweet. If you want any additional detail, I have it, let me know.

1. Number of Humana self-insured lives in the Rockford area -
2. Total spend on PCPs (IM, FP, GP, Pediatrics); Please break this out by product line (Medicare and Commercial) and by OSF owned PCPs, RHS owned PCPs, Swedish Owned PCPs and all other.

2010 Full Year Claims	Medicare PCP		Commercial PCP/PEDS	
	Group	Claims	Claims	% of Total
Swedish American				
Rockford Memorial				
OSF				
All Other				
Boone/Winnebago				
Total				

**REDACTED**

Fred Nelson, CPA MHA  
Market Director  
Finance and Provider Engagement  
Humana  
Senior Products, Great Lakes Region  
550 W Adams St Chicago, IL 60661  
Phone (312) 441-5076  
Email [fnelson1@humana.com](mailto:fnelson1@humana.com)

**B**

Implications of OSF purchasing Rockford Memorial -  
Humana's View

Positive

- Seamless to members as networks remain intact
- Rockford contract will move from % of Medicare to % to be consistent with OSF contract
- Opportunity to be consistent within a single health system regarding Provider Engagement strategies and quality-based health outcomes
- Humana has a positive relationship with Dr. Ralph Velazquez, OSF Chief Medical Officer
- Opportunity to strengthen the area as a healthcare region

Negative

- Larger health system poses potential negotiation difficulties regarding leveraging the request for additional reimbursement
- Saint Anthony is the third-highest inpatient admitter in the state
- Saint Anthony leverages the OSF brand but there is minimal impact of over-site from OSF headquarters

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# Humana Commercial & Medicare Utilization

Commercial											
Provider Name	Count	Charged	Allowed	Paid	Discount	Admits	Days	ALOS	Per Admit	Per Day	CMI
Rockford Memorial Hospital		\$		\$	%				\$	\$	
Saint Anthony Medical Center		\$	\$	\$	%				\$	\$	
SwedishAmerican Hospital		\$	\$	\$	%				\$	\$	

Medicare											
Provider Name	Count	Charged	Allowed	Paid	Discount	Admits	Days	ALOS	Per Admit	Per Day	CMI
Rockford Memorial		\$	\$	\$	%						
Saint Anthony M		\$	\$	\$	%						
SwedishAmerican		\$	\$	\$	%						

Unique Payer Membership	
Medicare	
Commercial	
Total Lives	

REDACTED

Source: NIS - 2010



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## Rockford (Winnebago County)

- Winnebago county has 43k (2.5% of IL ) Medicare Eligibles
  - 20% are on MA plans
- Rockford consists of three hospitals
  - OSF Saint Anthony
  - Rockford Memorial
  - Swedish American

Hospital	Total Patient Revenue	Medicare Patient Revenue
OSF Saint Anthony	\$858M	\$283M
Rockford Memorial	\$739M	\$241M
Swedish American	\$961M	\$319M

\*Source: ahd.com (American Hospital Directory)



## Current Hospital Comparison

- OSF Saint Anthony has 23% of the Total number of Medicare Certified Beds in Rockford
- Rockford Memorial has 40% of the Total number of Medicare Certified Beds in Rockford
- Swedish American has 37% of the Total number of Medicare Certified Beds in Rockford

Hospital	Medicare Certified Beds	% of Beds
OSF Saint Anthony	254	23%
Rockford Memorial	431	40%
Swedish American	397	37%
<b>Total</b>	<b>1,083</b>	<b>100%</b>

### Market Share (IP Utilization)

Rockford Memorial Hospital		Swedish American Hospital		OSF St. Anthony Medical Center	
Discharges Incl(Dec)	Days of Care	Discharges Incl(Dec)	Days of Care	Discharges Incl(Dec)	Days of Care
<b>REDACTED</b>	<b>REDACTED</b>	<b>REDACTED</b>	<b>REDACTED</b>	<b>REDACTED</b>	<b>REDACTED</b>
Total	Total	Total	Total	Total	Total
					%

\*Source: ahd.com (American Hospital Directory)

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**HUMANA**  
Guidance when you need it most.

## What if OSF buys Rockford Memorial?

- OSF Saint Anthony & Rockford Memorial combined would have 63% of the Total number of Medicare Certified Beds in Rockford
- Swedish American has 37% of the Total number of Medicare Certified Beds in Rockford

Hospital	Medicare Certified Beds	% of Beds
OSF Saint Anthony & Rockford Combined	686	63%
Swedish American	397	37%
Total	1083	100%

\*Source: ahd.com (American Hospital Directory)

C

**Rob Hitchcock**

**From:** MARK FEHRING  
**Sent:** Thursday, October 20, 2011 8:35 AM  
**To:** Rob Hitchcock  
**Subject:** FW: Rockford Groups

Rob,

Below is the large group information. . . . Only two groups. . . Summarized here

**REDACTED**

Lifetouch -- life personal choice case, located in Loves Park -- pmpm \$  
Rockford Toolcraft -- life case, located in Rockford -- pmpm \$

Mark Fehring  
Regional VP of Finance - Midwest  
Humana, Illinois  
Phone: 312-441-5544  
Cell: 312-371-7270

**From:** Theresa Scott  
**Sent:** Thursday, October 20, 2011 8:00 AM  
**To:** MARK FEHRING; Thomas Hammersmark  
**Subject:** RE: Rockford Groups

This will probably be our last renewal for Lifetouch, if they even stay with us. They are a personal choice group with declining enrollment. The current PMPM is \$ we proposed an increase of %.

Rockford Toolcraft is a renewal group. Their sold premium PMPM was \$.

Let me know if you need anything else.

**REDACTED**

**From:** MARK FEHRING  
**Sent:** Thursday, October 20, 2011 7:56 AM  
**To:** Theresa Scott; Thomas Hammersmark  
**Subject:** RE: Rockford Groups

Great.

Can you send me the premium pmpm for each of these groups?

Thanks,

Mark Fehring  
Regional VP of Finance - Midwest  
Humana, Illinois  
Phone: 312-441-5544  
Cell: 312-371-7270

**REDACTED**

**From:** Theresa Scott  
**Sent:** Thursday, October 20, 2011 7:55 AM  
**To:** Thomas Hammersmark; MARK FEHRING  
**Subject:** Rockford Groups

We went through our list of Greater Illinois cases and there are only two in the Rockford area, both are fully insured -

Lifetouch - life personal choice case, located in Loves Park  
Rockford Toolcraft - life case, located in Rockford

I believe we have some Chicago cases that do have lives in the Rockford area, but I don't have a list of which ones those are.

Theresa Scott  
Regional Underwriting Manager - Large Group Renewals  
Illinois and Wisconsin Markets  
(708) 202-6733 (p)  
(312) 601-0462 (f)

Humana-000004

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**D**

DECLARATION OF ROBERT HITCHCOCK

State of Illinois )  
 )  
City of Chicago )

Mr. Robert Hitchcock declares as follows:

1. Since 1997, I have been employed at Humana, Inc. ("Humana"). During my time at Humana, I have served in a number of roles. Currently, I am V.P. Western Division Medicare Operations – a role I have been in since August 2007. Prior to that, I served as President – North Region Medicare Operations, Chief Operating Officer – South Texas Region, General Manager of MSCH Health Plan, and Director of Provider Contracting, among other positions. In my current role, I am responsible for membership growth, pre-tax performance, strategic planning, finance, network development, and medical management initiatives for the Western Division. Humana's Western Division is comprised of 14 states within Humana's Great Lakes, Intermountain, Nevada, and West Coast operations. My Division accounts for [REDACTED] in annual revenues, with [REDACTED] Medicare Advantage members, and markets Medicare health insurance products including Health Maintenance Organization ("HMO"), Local Preferred Provider Organization ("PPO"), Regional PPO, Private-Fee-for-Service, Medicare Supplement and Part D plans. Before joining Humana, I worked as a consultant, advising health care organizations with mergers, acquisitions and affiliations. I am very familiar with hospital and physician contract negotiations, having personally negotiated a number of such contracts in my career. Generally speaking, hospitals that employ physician groups negotiate hospital and physician rates separately; my team handles both hospital and physician service rate negotiations for numerous Humana products.
2. With 2010 revenues of approximately \$33.9 billion, Humana is one of the nation's largest publicly-traded health and supplemental benefits companies. We provide medical benefit plans to more than 10.2 million customers and provide specialty products, such as dental and vision plans, to 7.1 million people. In Illinois, Humana provides roughly [REDACTED] individuals with comprehensive and affordable health plans. Humana offers a wide range

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of health plans for individuals, families, employer groups, and seniors. These include PPO, HMO, traditional indemnity plans, and Medicare supplement and prescription drug plans.

3. Humana is uniquely positioned as an insurer in the Rockford community. Roughly three years ago, it purchased a health plan that was owned and operated by OSF Healthcare System ("OSF"), which owns and operates OSF Saint Anthony Medical Center ("OSF Saint Anthony") in Rockford. When Humana originally purchased the OSF plan, it was a local PPO product. Humana introduced two new products and now offers both a local and regional PPO, as well as an HMO under the former OSF health plan. The contract resulting from that acquisition included a market parity provision guaranteeing that Humana's reimbursement rates are equal to or better than the rates paid to OSF Saint Anthony by other commercial insurers. Additionally, OSF requires that Humana contract with no more than two of the three hospital systems in Rockford – OSF Saint Anthony and either Rockford Memorial Hospital ("Rockford Memorial") or SwedishAmerican Medical Center ("SwedishAmerican"). Humana contracts with Rockford Memorial and OSF Saint Anthony. About of Humana's insured individuals in the Rockford area go to Rockford Memorial and OSF Saint Anthony for their care. Humana's contract with OSF Saint Anthony expires in May 2015. At that time, Humana expects to lose its market parity provision.
  
4. Humana provides health coverage to approximately individuals in Winnebago County under the local and regional PPO and HMO plans. Humana provides Medicare Advantage plans to approximately people and provides another individuals with commercial insurance products. In this area, there are only three competing hospital systems: (1) OSF, (2) Rockford Health System ("RHS"), and (3) SwedishAmerican Health System. Each of these three systems operates one hospital in Rockford. RHS owns and operates Rockford Memorial and SwedishAmerican Health System owns and operates SwedishAmerican. In addition to hospitals, the three systems also employ large groups of primary care physicians and specialty physicians.

REDACTED



5. Because part of my job is to develop provider networks, it is very important that I understand how far our members will travel to visit certain hospitals and physicians. Being familiar with patients' willingness and ability to travel to receive medical care allows me to assess how much more attractive our provider network would be if we added a particular hospital or, conversely, how much less attractive our network would be to our members if we did not renew with a previously-contracted hospital. This information is important to our negotiation strategy with healthcare providers and our willingness to accept rate increases. It is my experience, based on my continued analysis of our networks, that patients generally stay close to home when choosing a hospital.
  
6. For virtually all inpatient hospital service, Rockford-area residents go to OSF Saint Anthony, Rockford Memorial, or SwedishAmerican, which are all located within seven miles of each other. These hospitals primarily serve Winnebago and Boone Counties, with some people traveling to Rockford from eastern Stephenson County. It is my experience that Rockford-area residents do not (and would not) travel to outlying community hospitals, such as Kishwaukee Community Hospital, Rochelle Community Hospital, FHN Memorial Hospital, Mercy Harvard Hospital, or community hospitals in southern Wisconsin for general acute care hospital services. In addition to being significantly farther away, those hospitals have fewer and less sophisticated services than the three Rockford-area hospitals. With rare exceptions for very specialized services that may not be offered close by, patients do not travel to the western Chicago suburbs or north into Wisconsin for medical care.
  
7. Humana is able to gauge member preferences for hospitals based on a number of different sources. First, we look at historical utilization experience of hospitals. We also speak directly with customers, such as brokers or employer groups, who give us feedback on which providers are important for our network. Employers rely on Humana to negotiate competitive rates with healthcare providers because we have more direct access to information such as hospital costs, quality, and member utilization patterns, all of which helps us negotiate more effectively.

8. Because Humana has a unique relationship with OSF, our contract negotiations in Rockford are somewhat different than the normal procedure. Humana's market parity provision guarantees that the rates Humana pays OSF Saint Anthony are no worse than the rates paid by any other insurance company. However, we can only contract with one other hospital in Rockford: either Rockford Memorial or SwedishAmerican. Both Rockford Memorial and SwedishAmerican know that to have a viable network in Rockford, each insurer must have at least two hospitals in its network in order to ensure that its members have at least some choice of hospitals. Although members generally prefer the broadest access possible, it is not necessary to offer all three Rockford hospitals in your network, as our contract with OSF shows. Because of this dynamic, Rockford Memorial and SwedishAmerican vigorously compete to be the "other" Humana provider. If the proposed merger happens, there would no longer be competition to be the second hospital provider and -- most importantly -- the combined OSF Saint Anthony/Rockford Memorial (with two out of three local hospitals) will become a must-have for all insurers in Rockford, not just Humana.
9. Humana's contract with OSF expires in 2015. While Humana currently is guaranteed certain rates and has a market parity provision with OSF until 2015, Humana will begin renegotiating its contract with OSF in 2014. It is likely that during this round of negotiations, Humana will lose its current protections -- such as the market parity provision it currently has -- and it will have more typical negotiations with hospitals in the Rockford area.
10. Typically, when negotiating contracts with healthcare providers, Humana considers several factors. These include the geographic coverage of the facilities, the quality of the provider, the number and quality of nearby competing hospitals, whether the proposed reimbursement rates are comparable to what other health plans pay the hospital in question (based on industry data, consultants, blind surveys, anecdotal evidence, etc.), and whether the rates are comparable to other providers offering similar services that are located nearby. Our goal is to negotiate competitive rates so that Human can offer

competitive products to our membership. In particular, low rates allow Humana to offer more affordable health plans to our current members and to attract new members.

11. The rates that Humana pays to healthcare providers are determined through negotiations with each provider. Our bargaining position in negotiations is largely based on whether we can establish a viable network without a particular provider, that is, whether a certain provider is critical to our ability to offer a viable and attractive provider network to our current and prospective members. The healthcare provider's bargaining position, on the other hand, is based on its ability to not contract with Humana and instead contract only with other health plans, and the expected loss in patient volume the hospital or physician expects to suffer as a result of losing in-network status with Humana's members.
12. I believe Humana's members currently benefit from competition between the three hospitals in the Rockford area. Our ability to terminate the contract with RHS and SwedishAmerican is an important factor that allows us to negotiate competitive rates. For example, RHS understands today that if it demands unreasonably high rates, Humana could let RHS become a non-participating provider and instead include SwedishAmerican in its network. This dynamic gives Humana some leverage in negotiations, and conversely, limits RHS' and SwedishAmerican's ability to demand (and receive) excessive rate increases.
13. If OSF merges with Rockford Memorial, when Humana must renegotiate its contract with OSF in 2014, Humana will face a challenging negotiation. The loss of competition will increase the bargaining position of the merged hospital while decreasing Humana's bargaining position. After the proposed transaction, OSF will control a significant portion of inpatient care in the Rockford area, and face only one remaining competitor – SwedishAmerican. A hospital provider network in Rockford that consisted only of SwedishAmerican – which would be our only alternative to OSF-owned hospitals post-merger – would be far less attractive to our members in the Rockford area than our existing two-hospital network. Our members strongly prefer having some choice, and a one-hospital network would give them little choice. In fact, I do not believe Humana

could offer a viable network consisting solely of SwedishAmerican after the transaction. Any threat of not contracting with either Rockford Memorial or OSF Saint Anthony post-merger would become far less credible. The combined system could require that we contract with both Rockford Memorial and OSF Saint Anthony or lose access to all of the system's hospitals and services – something that would be unacceptable to our members. Even if the combined OSF/RHS allows Humana to contract with only one of the system's hospitals, Humana will need to include at least one of the combined system's hospitals to offer a viable network in Rockford. Because we will need to include at least one of the combined system's hospitals in our network, we likely will be forced to accept rate increases from the merged system that we could avoid absent the merger by threatening – implicitly or explicitly – not to contract with Rockford Memorial or OSF Saint Anthony individually.

14. After the merger, the combined OSF/RHS entity will be, by far, the largest provider in the Rockford area and be the only local provider of a number of key services. For these reasons, I believe this transaction would create a must have hospital that will dominate the Rockford market. Humana will be forced to pay whatever the combined system demands in order to provide our members with at least some choice of local hospitals and to maintain access to critical services. Ultimately, the higher rates charged to Humana will be borne, in large part, by Humana's members – the employers and employees in the Rockford area.
15. I am concerned about the proposed transaction because healthcare affordability is important to our members. Higher hospital rates will significantly increase the already-high healthcare costs our fully-insured members face. Moreover, any price increase will be directly and immediately borne by our approximately self-insured members in the Rockford area since self-insured employers themselves pay the healthcare costs of their employees. In my experience, as healthcare costs rise, fewer people are able to afford health insurance because it becomes too cost prohibitive. Further, even those individuals who can afford to maintain their insurance in the face of

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higher out-of-pocket costs will sometimes defer preventative or other medical care because of the higher costs.

16. Although it is conceptually possible to steer patients from high-cost in-network hospitals to low-cost hospitals by providing certain incentives (e.g., a lower co-pay) for using the low-cost hospital, this practice is generally not acceptable to our members. Our members expect to have, and have expressed a strong preference for, equal access to all in-network healthcare providers. In addition, an in-network hospital that is expected to receive less volume due to such steering would likely object to such an arrangement, or demand rates that could offset the effects of lost patient volume that may result from such steering.
17. Primary care providers ("PCPs") are also a very important aspect of our provider network. Humana considers PCPs to include physicians who specialize in family practice, general practice, internal medicine, as well as pediatrics. Of course, adult members do not typically use pediatricians for their primary care.
18. Humana members in the Rockford area generally see a PCP who is local and close to home. It is my experience that patients choose to stay close to home for medical care, including physician care as well as hospital care. For this reason, our provider network would not be viable or acceptable to Rockford-area residents unless we offered PCPs within both Winnebago and Boone counties.
19. There are only three large PCP groups in the Rockford area: (1) the group owned by OSF; (2) the group owned by RHS; and (3) the group owned by SwedishAmerican. There are very few independent PCPs left in the Rockford area. While there is a community health clinic and a teaching school in Rockford that provide PCP services, I do not consider them viable options to the three large hospital-owned PCP groups. Humana's annual spend on PCP services in Winnebago and Boone counties last year was over \_\_\_\_\_ dollars. OSF's PCP group represented approximately 37 percent of that amount, and RHS represented approximately 42 percent. Only \_\_\_\_\_ percent of Humana's spend on PCP services went to SwedishAmerican hospital, and PCPs that are not

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employed by any of the three large groups represented approximately percent of Humana's total spend.

20. The number of independent physicians, especially PCPs, in the Rockford area is small and continues to decline. Many independent physicians have been acquired by hospital systems such as OSF and RHS. I do not know of any new independent physician practices that have opened in the Rockford area in recent history. Based on my years of working in the healthcare industry, it is my belief that it is very unlikely that any new PCP group will enter the Rockford area and constrain the rates charged by the PCPs employed by OSF and RHS. In this environment, there are many reasons why the number of independent PCPs is declining rather than growing. A new physician practice requires a minimum scale and volume to cover costs such as rent, malpractice insurance, and implementation of electronic medical records. By contrast, a hospital can subsidize an employed physician's practice start-up costs for a number of years, pay more than what is commonly earned in independent practice, and facilitate their admission to the medical staff and coverage of their medical practice.
21. Much like hospital rate negotiations, the proposed merger of OSF and RHS will create additional bargaining leverage for their PCP groups. I am concerned that this substantial increase in leverage could lead to a major rate increase for PCPs because the combined group will be necessary for Humana to have a marketable network in the Rockford area. Right now, Humana could drop RHS's PCP group if it sought unreasonably high rates. If the proposed transaction proceeds, however, there will not be enough PCPs outside of the combined OSF/RHS groups to support a viable network in the Rockford area. As a result, Humana and other health plans will have little leverage to resist such rate increases.
22. It is my experience that there is no difference in the bargaining tactics or strategy between for-profit and non-profit healthcare providers. Regardless of tax status, a religious affiliation, or an academic mission, hospitals and other healthcare providers uniformly seek to obtain as much revenue as possible through increasing reimbursement

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rates. I also do not perceive non-profit hospitals generally (and OSF Saint Anthony's specifically) as providing significantly more charity care than for-profit organizations.

23. Based on my previous work advising health care organizations with mergers and acquisitions, I do not believe that any significant synergies will result from the merger other than the elimination of certain administrative services and overhead. Nor do I believe that the combined hospital could become a "regional provider" on the level of the University of Wisconsin or Mayo Clinic, because Rockford lacks the teaching and research backing, and population foundation, that regional providers generally have. Very specialized procedures, such as organ transplants, will continue to be provided in large metropolitan areas such as Chicago, and the proposed combination of OSF Saint Anthony and Rockford Memorial is highly unlikely to change that.
24. The Rockford area and its residents are well served by having three high-quality hospitals and three competing physician groups. I am not aware of any reasons why the proposed affiliation is needed for OSF or RHS to expand services, increase quality, or achieve any other potential benefit in the Rockford area. Further, I do not believe that Rockford has "too many" hospitals for a city of its size. In fact, all three hospitals appear to serve substantial patient volumes, perform well financially, and are known for providing high-caliber health care. I firmly believe that Humana's members and their employees have benefited from robust competition among the three Rockford-area healthcare providers, which stands in stark contrast to many communities today where patients face less choice and higher costs. If the proposed transaction moves forward, I believe Humana and its members will face significant price increases, and that competitive incentives to provide top-notch care and patient-centered service will be reduced. A combined OSF Saint Anthony and Rockford Memorial will be the dominate provider in Rockford, and will dictate prices to insurers such as Humana.
25. I am making this statement as part of a Federal Trade Commission investigation pursuant to compulsory process in lieu of testimony. This statement contains trade secrets and

confidential commercial information and I request confidential treatment of this statement to the full extent permitted by law.

Pursuant to 28 U.S.C. §1746, I declare, under penalty of perjury, that the foregoing is true and correct.

  
Robert Hitchcock

Signed on this 30 day of June 2011.





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UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In The Matter Of	)	
	)	
OSF HEALTHCARE SYSTEM	)	Docket No. 9349
And	)	
ROCKFORD HEALTH SYSTEM	)	
	)	

PROPOSED ORDER

Non-party Humana Inc. ("Humana"), having filed a motion for *in camera* treatment of proposed evidence containing proprietary, confidential business information;

IT IS HEREBY ORDERED that Humana's Motion is GRANTED and the following documents, in their un-redacted form, will be subject to *in camera* review:

1. PX4260;
2. PX4258-001
3. PX4258-004
3. PX4258-006
4. PX4258-007
5. PX 0255
6. Any deposition testimony not specifically identified by Defendants for use in the trial of this matter.

IT IS FURTHER ORDERED THAT PX4258-002 shall be subject to *in camera* review.

ORDERED: \_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

DATED: \_\_\_\_\_

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

<b>In The Matter Of</b>	)	
	)	
<b>OSF HEALTHCARE SYSTEM</b>	)	<b>Docket No. 9349</b>
<b>And</b>	)	
<b>ROCKFORD HEALTH SYSTEM</b>	)	

**DECLARATION OF HELEN THOMPSON**

I, Helen Thompson, pursuant to 28 U.S.C. § 1746, make the following statement:

1. I am Legal Counsel for Humana Inc. ("Humana"), which responded to a Civil Investigation Demand and third-party subpoena *duces tecum* issued by Complaint Counsel in the above referenced matter. As counsel for Humana, I am familiar with the type of highly confidential information contained in the documents at issue for which Humana seeks *in camera* treatment ("Documents"). Based on my knowledge and familiarity with the Documents and Humana's business practices, designed to protect and maintain the integrity and confidentiality of the information contained in the Documents, I believe that disclosure of these documents, in their un-redacted form, to the public and to competitors of Humana would cause serious competitive injury to Humana.

2. PX4260 is an internal email from Humana's Market Director, Finance and Provider Engagement, Fred Nelson, to Rob Hitchcock, Humana's Vice President of the Western Division, Medicare Market Operations. This email contains highly confidential and proprietary information related to the number of Humana's self-insured lives in the Rockford area as well as the total amount spent by Humana on claims related to care provided by Primary Care Physicians in Humana's network. This information is not available to the public or to Humana's competitors and was gleaned from Humana's databases, gathered solely for internal use and was

not intended for dissemination outside Humana. This information is not otherwise available to those outside Humana, is maintained as a private communication within Humana, and, if made public, would be allow Humana's competitors to take advantage of the pricing information to Humana's detriment.

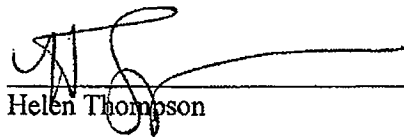
3. The power point documents designated as PX4258 consists of five pages in total. These documents were prepared at the direction of Rob Hitchcock and have not been shared with any competitor or the public. Several of these documents, PX4258-001, 002 and 004 contain commercially sensitive information, including specific contract terms that are not public, descriptions of market advantages, as well as Humana's commercial and Medicare utilization for hospitals in the Rockford market. Indeed, the table on PX4258-002 identifies the amount of claims made, the amount allowed, the amount paid by Humana and the discount applied with respect to Humana's insureds in Winnebago County. These documents also set forth Humana's market share as it related to each of the three hospital providers. This information was gleaned from Humana's own databases, and is not available to anyone outside Humana, especially competitors. If this information were available to Humana's competitors, it would allow them to peer into Humana's most confidential business information and then use that information to Humana's disadvantage in the marketplace.

4. The documents identified as PX4258-006 and 007 are internal communications which outline premiums paid by Humana insureds as well as strategies for renewing the contracts for employers in Winnebago County. As with the other emails and information, this information is maintained solely for Humana's use, is not available to anyone outside Humana and would put Humana at a competitive disadvantage if the information were made public.

5. It is also understood that the parties wish to introduce the Declaration of Rob Hitchcock in this matter. Certain portions of the Declaration relates directly to the number of Humana insureds in Winnebago County, the amount of money spent by Humana for primary care in Winnebago and Boone counties, and the percentage of Humana's "spend" on primary care services that was paid to Swedish American Hospital. This information is highly sensitive and not available to the general public or Humana's competitors.

6. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: March 20, 2012

  
Helen Thompson