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

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| In the Matter of<br>Phoebe Putney Health System, Inc.<br>a corporation, and<br><br>Phoebe Putney Memorial Hospital, Inc.<br>a corporation, and<br><br>Phoebe North, Inc.<br>a corporation, and<br><br>HCA Inc.<br>a corporation, and<br><br>Palmyra Park Hospital, Inc.<br>a corporation, and<br><br>Hospital Authority of Albany-Dougherty County | **PUBLIC**<br><br>Docket No. 9348 |

**COVENTRY HEALTH CARE OF GEORGIA, INC. AND AETNA INC.'S JOINT MOTION TO LIMIT SUBPOENA *DUCES TECUM***

Pursuant to Section 3.34(c) of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.34(c), non-parties Coventry Health Care of Georgia, Inc. ("Coventry") and Aetna Inc. ("Aetna" and collectively with Coventry, the "Health Plans") hereby move to limit the subpoenas *duces tecum* (the "Subpoenas") served on them on April 26, 2013.

## INTRODUCTION

On April 26, 2013, Respondents Phoebe Putney Memorial Hospital, Inc., Phoebe Putney Health System, Inc., and Hospital Authority of Albany-Dougherty County (collectively, "Respondents" or "Phoebe") served identical subpoenas *duces tecum* (the "Subpoenas") on the Health Plans. Copies of the Subpoenas are attached hereto as Exhibit A. The Subpoenas demand that the Health Plans collect, review, and produce 19 extraordinarily broad categories of

documents—18 of which demand "all documents"—by May 21, 2013. Responding would be akin to the Health Plans responding to a Second Request for Information from the FTC *in connection with a merger of their own*, not that of other, unrelated parties. In addition to being overly burdensome, the Subpoenas are too vague to be actionable in many instances and are all but impossible to comply with in the time allotted. The burden and expense required to comply with the Subpoenas far outweighs any benefit Respondents could hope to obtain, particularly considering the Health Plans' previous and impending productions in this matter.

The Health Plans have been negotiating in good faith with the Respondents to narrow the scope of the Subpoenas. The Health Plans have agreed to produce limited sets of responsive documents in addition to documents that were already produced to the FTC in this matter. Phoebe's counsel made a counter-proposal early the morning of May 17, 2013. Phoebe's proposal was not satisfactory because the would-be remaining requests still require the Health Plans to engage in a burdensome email and document collection, review, and production encompassing a large geographic area and across a broad swath of the Health Plans' business operations. Therefore, as of the filing of this motion the parties have not reached a final agreement that would reduce the burden imposed by the Subpoenas in any meaningful way. In order to preserve their rights, the Health Plans determined that they must move to limit the Subpoenas. The Health Plans respectfully request that the scope of the Subpoenas be limited to the documents already produced to the FTC during its investigation and the documents the Health Plans have agreed with Respondents to produce under the Subpoenas (and, in Aetna's case, with the FTC under the FTC's April 25, 2013 subpoena) as described in detail below. Additionally, the Health Plans request an award of their costs in complying with the Subpoenas.

## FACTUAL BACKGROUND

Aetna and Coventry each provide health insurance products and services to employers and individuals throughout the State of Georgia. Their products include Health Maintenance Organization (HMO), Point-of-Service (POS), Preferred Provider Organization (PPO), and Medicare Advantage offerings. On May 7, 2013, Aetna acquired Coventry's parent company, Coventry Health Care, Inc.

This matter concerns the planned acquisition of the Palmyra Medical Center by the Hospital Authority of Albany-Dougherty County (the "Transaction"). In February 2011, the FTC issued Civil Investigative Demands ("CIDs") relating to the Transaction to each of the Health Plans. The CIDs are attached hereto as Exhibit B. The CIDs requested several categories of documents, including contracts with hospitals in the relevant geographic area, documents reflecting negotiations of those contracts, data regarding inpatient admissions, information regarding products offered, documents relating to price increases, and documents relating to comparisons of hospitals. (*See generally* Ex. B).

In response to the CID, Coventry produced a large volume of documents and data to the FTC. (*See* Declaration of Thomas Wehrle in Support of Motion to Limit Subpoena *Duces Tecum* Served on Coventry Health Care of Georgia, Inc. ("Wehrle Decl."), attached hereto as Ex. D, ¶ 6). Those documents include:

1. Coventry's contracts with hospitals in the Albany, Georgia market since January 1, 2004;
2. Documents used to develop or negotiate rates in the Albany market;

3. Individual claim level information for inpatient and outpatient treatment episodes for each year from 2007 to 2010 for Coventry's commercial members in hospitals in the "relevant area" in the CID, which encompasses numerous counties in Georgia;
4. HMO/POS plan designs offered to customers, counties in which the plan designs were offered, and a summary of preferred providers;
5. Membership by county, product type, and year; and
6. Documents used to set rates and area factors.

(*See* Declaration of Joseph Eckert in Support of Motion to Limit Subpoena *Duces Tecum* Served on Coventry Health Care of Georgia, Inc. ("Eckert Decl."), attached hereto as Ex. E, ¶ 18).

In 2011, Aetna similarly produced a large volume of documents and data to the FTC in response to its CID. (*See* Declaration of Anthony J. Dennis in Support of Motion to Limit Subpoena *Duces Tecum* Served on Aetna Inc. ("Dennis Decl."), attached hereto as Ex. F, ¶ 10). Those documents included:

1. Aetna's contracts and associated contract negotiation and correspondence files with hospitals in the Albany, Georgia market and surrounding Georgia counties since January 1, 2004;
2. Documents used to develop or negotiate rates in the Albany, Georgia market and surrounding Georgia counties;
3. Individual claim level information for inpatient and outpatient treatment episodes for each year from 2008 to January, 2011 for Aetna's commercial members in hospitals in the "relevant area" as defined in the CID, which include the Albany, Georgia market and surrounding counties in Georgia;

4. Health plan designs offered to customers, counties in which the plan designs were offered, and a summary of preferred providers;
5. Membership by county, product type, and year; and
6. Documents used to set rates and area factors.

(*Id.*).

In response to the Subpoenas, and in a showing of good faith during negotiations with Phoebe, Coventry agreed to collect, review, and produce a limited set of responsive documents. In response to Request No. 1, Coventry has agreed to produce the working contract files for Phoebe Putney Memorial Hospital and Palmyra Park Hospital maintained by the Coventry representative responsible for contracting with these hospitals (Jerry Welch, Director, Network Development). (Eckert Decl. ¶ 12). In response to Request Nos. 2, 5, and 12 Coventry will produce Primary Care Assessment Tool ("PCAT") reports from 2008 to 2012. (Eckert Decl. ¶ 13). These documents are directly responsive because the PCAT is an economic modeling tool used by Coventry to determine the cost impact of contract reimbursement changes at a particular hospital. They are most often used to evaluate the impact of proposed reimbursement changes to existing rates for a particular hospital. Coventry sometimes compares rates of two competing hospitals in order to determine the cost position of each. For example, claims incurred at one hospital will be modeled against a competing hospital in order to try to determine a relative cost difference between the two facilities. (Eckert Decl. ¶ 13).

Coventry has also agreed to produce Medical Expense Review ("MER") Reports from 2008 to 2012, which are responsive to Request Nos. 6 and 12. (Eckert Decl. ¶ 14). Coventry produces MER Reports on an annual, and sometimes quarterly, basis. The reports are directly responsive to the Subpoena because they track year-over-year unit cost and utilization trends by a

number of medical cost categories, including facility, physician, ancillary providers, and pharmacy. The company uses these reports to highlight outlier changes in unit cost or utilization. (Eckert Decl. ¶ 14).

In response to Request No. 11, Coventry has agreed to produce individual claim-level information for inpatient and outpatient treatment episodes from 2011 to the present for its commercial HMO/POS members. In response to Request No. 16, Coventry has agreed to produce all contracts which include or included a most-favored-nation clause within the time frame specified in the Subpoena. Lastly, in response to Request No. 19, Coventry has agreed to produce its membership data for the counties in Georgia within the "Geographic Area" in the Subpoena.

Also in response to the Subpoenas, and in a showing of good faith during negotiations with Phoebe, Aetna agreed to collect, review, and produce a limited set of responsive documents. In response to Request No. 11, Aetna has agreed to produce individual claim level information for inpatient and outpatient treatment episodes from 2011 to the present for its commercial members, as well as its commercial membership data for the State of Georgia in response to Request No. 19. In addition, Phoebe will receive Aetna's production in response to the more narrowly drawn FTC Subpoena, which includes an update of the majority of Aetna's CID production. (Dennis Decl. ¶ 17).

On April 25, 2013, the FTC served a subpoena *duces tecum* ("FTC Subpoena") on Aetna. The FTC's Subpoena is attached hereto as Exhibit C. Consisting of only seven specifications, the FTC Subpoena essentially requests an update of previously provided contracts and other materials since January 2011 to ensure that the FTC (and, therefore, Phoebe) has the latest contract addenda and other relevant materials since the CID production. (*Id.*). In contrast to the

Subpoena, the FTC's definition of "relevant area" consists of six counties in Georgia—Baker, Dougherty, Lee, Mitchell, Terrell and Worth. (*Id.*). Aetna and the FTC have agreed to a modified return date of Wednesday, May 22, 2013. (*Id.*). Aetna is in the midst of this production to the FTC and a copy will be provided to Phoebe.

Phoebe also served on Aetna a subpoena *ad testificandum* seeking to depose Cary Goldenthal, Aetna's market network head for the relevant portions of Georgia in which Respondents operate. (Dennis Decl. ¶ 15). That deposition took place on May 16, 2013, during which Phoebe had ample opportunity to probe Aetna's perspective on the Transaction and competition in the relevant area. (*Id.*).

Both Coventry and Aetna had several conversations with Phoebe's counsel in an attempt to narrow the scope of the Subpoenas. During those conversations, Coventry and Aetna agreed to produce limited documents that were responsive to the Subpoenas and relevant to the matters at issue in this administrative proceeding. (*See* Eckert Decl. ¶¶ 12-17; Dennis Decl. ¶ 17). Phoebe's counsel agreed to extend the deadline by which the Health Plans must produce documents by one week to May 28, 2013. Phoebe also agreed, at least as to Coventry, to limit the term "health care facility" as referenced in the Subpoenas from any "entities that provide health care services" to hospitals only. The Health Plans made clear to Phoebe's counsel that it would be impossible to collect, review, and produce all of the documents demanded by the Subpoenas within a time frame that would be useful to Phoebe without further reducing the Subpoenas' scope. (*See, e.g.,* Dennis Decl. ¶ 11).

Very early morning on May 17th, Phoebe made a counter-proposal agreeing to limit the scope of the Subpoenas somewhat. (*See* Dennis Decl. ¶ 18). Phoebe's proposal, while welcome, was not sufficient to eliminate the burden on the Health Plans to engage in an exhaustive email

and document collection, review, and production to cover a large geographic area and a broad swath of the Health Plans' business operations. The Subpoenas' scope remains hopelessly broad. This is particularly frustrating because it appears that Phoebe has not fully reviewed what is already in their possession. Phoebe may very well already have all the documents they need from the Health Plans to vigorously defend themselves, but instead of doing the work to figure that out in advance, Phoebe chose to cast a wide net and pass the burden to the Health Plans. Moreoever, given that Phoebe has not been able to synthesize what is already in their possession, it is doubtful they will be able to scratch the surface of the exponentially larger volume of documents they seek to catch in their net (even if timely production was possible).

## ARGUMENT AND CITATION OF AUTHORITY

While discovery may be obtained from a non-party, discovery may only be obtained where it is "reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent." 16 C.F.R. § 3.31(c)(1). The mere possibility of obtaining relevant information is not sufficient. Further, the Administrative Law Judge may quash or limit discovery if he or she determines that:

> (i) The discovery sought from a party or third party is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
>
> (ii) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or
>
> (iii) The burden and expense of the proposed discovery on a party or third party outweigh its likely benefit.

16 C.F.R. § 3.31(c).

Ultimately, the inquiry here is whether the Respondents have issued reasonable demands. *See, e.g., SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1030 (D.C. Cir. 1978) ("'[T]he gist of the

protection is in the requirement . . . that the disclosure sought shall not be unreasonable.' Correspondingly, the need for moderation in the subpoena's call is a matter of reasonableness[.]" (quoting *Okla. Press Publ'g Co. v. Walling*, 327 U.S. 186, 208 (1946))). Reasonableness requires that "specification of the documents [be] adequate, but not excessive, for the purposes of the relevant inquiry." *Id.* Compulsory process is reasonable and thus enforceable where the requests are "reasonably relevant ... and not unduly burdensome to produce." *F.T.C. v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992) (internal quotation marks and citations omitted). Moreover, the burden imposed by the Subpoenas on the Health Plans as non-parties to the dispute bears significant weight. *Laxalt v. McClatchy,* 116 F.R.D. 455, 458 (D. Nev. 1986) ("The rule is thus well established that nonparties to litigation enjoy greater protection from discovery than normal parties.").

The Subpoenas are overly broad, duplicative, and so cost- and time-intensive as to be unreasonably burdensome. Phoebe already has a substantial volume of data from the Health Plans, which it has not bothered to review comprehensively. In addition, Phoebe will have the benefit of the documents the Health Plans have agreed in good faith to produce in response to certain of the Subpoenas' requests and in response to the FTC Subpoena to Aetna. The remaining requests in the Subpoenas seek vast quantities of information from a broad swath of the Health Plans' business operations in an impossibly, and frankly unrealistic, time frame.

**A. The Subpoenas Are Overly Broad.**

The Subpoenas are grossly overbroad. Most of the requests are so broad as to be either incomprehensible or wholly indefinite. Among the 19 document requests, 17 of them call for all documents in the Health Plans' control, rather than "documents sufficient to show" the relevant subject matter. In addition, the Subpoena's key terms and relevant area are defined far too

expansively. For example, Phoebe's relevant "geographic area" is defined to include fifty-two counties across three states in contrast to the FTC's six relevant counties. (*Compare* the FTC Subpoena at 3 *with* the Subpoenas at 2.) Although Phoebe limited the geographic area for some requests, they did not limit the scope for all of the requests. (*See* Dennis Decl. ¶ ¶ 18-21 (referring to Request Nos 1, 2, 10, and 12)). The Subpoenas should be limited to the geographic area as defined in the FTC's Complaint. (Compl. ¶ 51).

Likewise, the term "health care facility," critical to several of the Subpoenas' requests, is defined as broadly as imaginable to include all "entities that provide health care services." The Subpoenas should be limited to hospitals in the FTC's limited geographic area.

The Subpoenas also define the Health Plans, and therefore the entities that must search their files, in the broadest possible way encompassing each of the Health Plans' "subsidiaries, affiliates, and predecessors." Based on this language, the Subpoenas could apply in some circumstances to any Aetna Inc. or Coventry Health Care, Inc. health plan in the country. The Subpoenas' scope should be limited to the Health Plans' respective entities operating in the State of Georgia.

The Subpoena, as drafted, would require Coventry to cull from and review millions of pages of documents across 11 departments or areas at Coventry, including Network Operations, Underwriting, Actuarial, Medical Management, Marketing, Finance, Sales, Product Development, Information Technology, and Medical Economics. (Eckert Decl. ¶ 4; Wehrle Decl. ¶ 7). Likewise, numerous departments at Aetna are implicated by the Subpoenas' scope. (Dennis Decl. ¶ 8). At Coventry, the Network Operations department alone has at least 20 employees whose files would need to be searched. (Eckert Decl. ¶ 4).

Document Request No. 10 is a good illustration of the Subpoenas' breadth. It requests:

> All documents relating to the basis upon which (i) employers select or are perceived to select among payors or health plans, (ii) enrollees select or are perceived to select among payors or health plans, or (iii) Your Company or any other payor offers different reimbursement rates to health care facilities based on the quality of care provided at that facility.

This request is extremely subjective and seeks production of *all documents* in the Health Plans' possession that relates in any way to how employers and enrollees select or are perceived to select among payors or health plans, and how the Health Plans or any other payor offers different reimbursement rates to health care facilities in the entire Geographic Area. Coventry, for one, does not track this information in a systematic or comprehensive manner and, thus, the effort required to compile this information would be immense. (*Id.* ¶¶ 5-6).

Even more burdensome, Document Request No. 13 seeks:

> All documents relating to whether [the Health Plan] passes on, would pass on, or has passed on, increases or reductions in hospital reimbursement rates, including by Phoebe or Palmyra, to health plan members and/or subscribers.

This request is extremely broad and seeks production of *all documents* in the Health Plans' possession relating to expansive subject matter, including pricing exercises and analyses regarding trends, unit costs, utilization, and discounts. In their most recent proposal, Phoebe offered to limit this request to Phoebe or Palmyra instead of all hospitals. However, even with this limitation, this request consequently seeks documents that would be in the possession of custodians in numerous departments at Coventry such as Network Operations, Actuarial, Underwriting, and Marketing, among others (not including Aetna's counterpart departments). (*See id.* ¶¶ 7-8).

Document Request No. 1 is similarly broad, seeking all contracts with any health care facility in the State of Georgia, and any document relating to any such contract or negotiations.

By way of example, every document in the Coventry Network Operations department, among other departments, would be potentially responsive. (*Id.*).

Document Request No. 9 seeks "all proposals . . . that discuss any health care facility or hospital located in the Geographic Area." Here again, Phoebe's latest offer—to limit the request to proposals that discuss Phoebe or Palmyra—is too little, too late. Responding fully to this request as drafted would require collecting, reviewing, and producing any formal or informal proposals submitted to any potential client. To illustrate the breadth and burden of this Request, Coventry's commercial group's Sales department issues 1800 quotes each month. (*Id.* ¶ 10).

These 4 requests are illustrative of the burden imposed by all 19 of Phoebe's document requests. Extrapolating from Coventry's Network Operations department's universe of potentially responsive documents and the number of custodians potentially involved, Coventry estimates that the collection would consist of approximately 2 terabytes of data. (Wehrle Decl. ¶ 9). After de-duping, indexing, and harvesting potentially responsive data, the Subpoenas could yield approximately 300 gigabytes of data that would then have to undergo attorney review. (*Id.*). One gigabyte of data is roughly equivalent to 15,000 to 20,000 documents. (*Id.*).

The broad scope of the Subpoenas is beyond reason or justification. Phoebe should not be permitted to cast a net far exceeding the breadth of potentially relevant information. The enormous amount of information sought over a five-year time period would impose an extraordinary financial and operational burden on the Health Plans' resources. Where, as here, the information sought, on the whole, is only marginally or conceivably relevant, production is not justified or appropriate.

**B. The Subpoenas Demand Compliance Within an Unreasonable Time Period.**

Responding to the Subpoenas would involve collecting documents from numerous different departments within each of the Health Plans, each with a significant number of potentially relevant custodians. Coventry's Network Operations department alone has about 20 custodians with potentially responsive documents. In addition, there are numerous departmental files and shared drives and databases from which to collect, search, and process data. (*Id.* ¶ 7). For just the 20 likely custodians in Coventry's Network Operations, collecting, processing, searching, and exporting potentially responsive data could take 296 hours. (*Id.* ¶ 9). And, that is before conducting attorney review for responsiveness, privilege, and confidentiality. Moreover, with the five-year date range proposed, potentially responsive documents would already have been archived to magnetic media and stored off site making the retrieval, search, and production that much more time-consuming and burdensome. (*Id.* ¶ 8). Responding would be extremely challenging even if the Health Plans were given many months to respond, but pragmatically impossible in the approximately *four-week* time frame allowed by the Subpoenas. Making matters worse, two weeks have already been lost trying to negotiate down the scope of the Subpoenas. (Dennis Decl. ¶¶ 9, 16, 18). But, even if the time frame was feasible, the expense of production would still be unreasonable.

**C. The Costs Associated With Responding to the Subpoenas Is Unduly Burdensome.**

The breadth of the Subpoenas and the time frame within which production is demanded would impose an immense financial, administrative, and operational cost on the Health Plans. As described above, Coventry estimates the Subpoena would cost it 296 hours in human resources just to collect and process data from the 20 likely custodians in Coventry's Network Operations. This translates to an estimate of $74,000, before attorney review costs. (Wehrle Decl. ¶ 9).

Adding attorney review could cost Coventry upwards of $3.75 million. (Wehrle Decl. ¶ 11). And, this is just a small portion of the potentially relevant custodians and information in Coventry's files alone.

The Health Plans are not parties in this proceeding and their conduct is not at issue. The Subpoenas—with their enormous scope—would be burdensome on *any* party. However, with respect to a *non-party*, the financial, administrative, and operational costs here are simply unreasonable. Accordingly, the burden and expense required to comply with the Subpoenas far outweighs any benefit Respondents could hope to obtain, particularly considering the Health Plans' previous and impending productions.

For these reasons, the Health Plans respectfully request that the Subpoenas be limited to the documents the Health Plans previously produced in this matter and have agreed to produce as outlined above.

## RESPONSES AND SPECIFIC OBJECTIONS TO DOCUMENT REQUESTS

In addition to the general objections described above, the Health Plans object to each of the Subpoenas' requests for the reasons explained below. In addition, the Health Plans object to each request insofar as it requests information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege.

**Request No. 1**: All contracts between Your Company and any health care facility in the State of Georgia, including all amendments, appendices, and related documents reflecting any contract terms including any analyses, reports, or correspondence relating to any contract, proposed contract, or contract negotiations.

Subject to the general objections described above, Coventry states that it has previously produced its contracts in effect at any time from January 1, 2004 through 2010 with hospitals in the Albany, Georgia market, and each physician organization owned by a hospital under contract

or affiliated through a physician-hospital organization. Additionally, Coventry will produce its contract negotiation and correspondence files for Phoebe Putney Memorial Hospital and Palmyra Park Hospital maintained by the Coventry representative responsible for contracting with these hospitals.

Subject to the general objections described above, Aetna states that it has previously produced its contracts in effect at any time since January 1, 2004 with hospitals and physician organizations owned by a hospital under contract or affiliated through a physician-hospital organization in the Albany, Georgia market and surrounding counties. Aetna also produced all associated contract negotiation and correspondence files. In addition, Aetna will produce similar documents from January 1, 2011 to the present in response to the FTC Subpoena.

The Health Plans object to producing any additional documents pursuant to this Request on the grounds that it is overly broad, unduly burdensome, and seeks information that is not relevant or reasonably calculated to yield relevant information.

**Request No. 2**: All documents relating to the criteria or factors used by Your Company in selecting which health care facility to contract with in the state of Georgia, and all documents that apply those criteria.

Subject to the general objections described above, Coventry states that it has previously produced in response to the CID documents used to develop or negotiate rates in the Albany, Georgia market. In addition, Coventry will produce Primary Care Assessment Tool ("PCAT") reports from 2008 to 2012. These documents are an economic modeling tool used by Coventry to determine the cost impact of contract reimbursement changes at a particular hospital. They are most often used to evaluate the impact of proposed reimbursement changes to existing rates for a particular hospital.

Subject to the general objections described above, Aetna states that it has previously produced in response to the CID documents used to develop or negotiate rates in the Albany, Georgia market and surrounding counties.

The Health Plans object to producing any additional documents pursuant to this Request on the grounds that it is overly broad, unduly burdensome, and seeks information that is not relevant or reasonably calculated to yield relevant information.

**Request No. 3**: All documents relating to competition between and among payors in the State of Georgia, including but not limited to, the desirability or necessity of entering into contracts with any individual health care facility or hospital system.

The Health Plans object to producing documents pursuant to this Request on the grounds that it is overly broad, unduly burdensome, and seeks information that is not relevant or reasonably calculated to yield relevant information.

**Request No. 4**: All documents relating to the Transaction, including but not limited to, all documents sent to or received from the Federal Trade Commission and all documents relating to any communications between You and the Federal Trade Commission or any existing or potential customer regarding the Transaction.

Subject to the general objections described above, Coventry states that a copy of the CID issued to Coventry in 2011, along with all documents produced in response to that CID, have been provided to Respondents.

Subject to the general objections described above, Aetna states that a copy of the CID issued to Aetna in 2011, along with all documents produced in response to that CID have been provided to Phoebe. Likewise, Aetna's response to the FTC Subpoena will be provided to Respondents.

The Health Plans object to producing any additional documents pursuant to this Request on the grounds that it is overly broad, unduly burdensome, and seeks information that is not relevant or reasonably calculated to yield relevant information.

**Request No. 5**: All documents relating to competition between health care facilities in the State of Georgia, including but not limited to, market studies, quality assessments, forecasts, and surveys.

Subject to the general objections described above, Coventry states that it will produce PCAT reports from 2008 to 2012. These documents are an economic modeling tool used by Coventry to determine the cost impact of contract reimbursement changes at a particular hospital. They are most often used to evaluate the impact of proposed reimbursement changes to existing rates for a particular hospital. They are also used to compare rates of two competing hospitals in order to determine the cost position of each.

The Health Plans object to producing any additional documents pursuant to this Request on the grounds that it is overly broad, unduly burdensome, and seeks information that is not relevant or reasonably calculated to yield relevant information.

**Request No. 6**: All documents describing, discussing, summarizing, or analyzing the utilization of hospitals in the Geographic Area by enrollees in any health plan that You sponsor or administer.

Subject to the general objections described above, Coventry states that it will produce Medical Expense Review ("MER") Reports from 2008 to 2012. Coventry produces MER Reports on an annual, and sometimes quarterly, basis. The reports track year-over-year unit cost and utilization trends by a number of medical cost categories, including facility, physician, ancillary providers, and pharmacy. Coventry uses these reports to highlight outlier changes in unit cost or utilization.

The Health Plans object to producing any additional documents pursuant to this Request on the grounds that it is overly broad, unduly burdensome, and seeks information that is not relevant or reasonably calculated to yield relevant information.

**Request No. 7**: All documents relating to the shift, diversion, or referral, or impediments to the shift, diversion, or referral, or patients or any category of patients to or from any hospital or any

health care facility in the Geographic Area by any payor, including but not limited to, Your Company.

The Health Plans object to producing documents pursuant to this Request on the grounds that it is overly broad, unduly burdensome, and seeks information that is not relevant or reasonably calculated to yield relevant information.

**Request No. 8**: All documents relating to any complaints by Your Company or any other payor that any health care facility in the Geographic Area is raising the rates on its charge master.

The Health Plans object to producing any additional documents pursuant to this Request on the grounds that it is overly broad, unduly burdensome, and seeks information that is not relevant or reasonably calculated to yield relevant information.

**Request No. 9**: All proposals by Your Company or any other payor to employers, sponsors, employer groups, unions, agencies, counties, or municipalities that discuss any health care facility or hospital located in the Geographic Area.

The Health Plans object to producing any additional documents pursuant to this Request on the grounds that it is overly broad, unduly burdensome, and seeks information that is not relevant or reasonably calculated to yield relevant information.

**Request No. 10**: All documents relating to the basis upon which (i) employers select or are perceived to select among payors or health plans, (ii) enrollees select or are perceived to select among payors or health plans, or (iii) Your Company or any other payor offers different reimbursement rates to health care facilities based on the quality of care provided at that facility.

The Health Plans object to producing any additional documents pursuant to this Request on the grounds that it is overly broad, unduly burdensome, and seeks information that is not relevant or reasonably calculated to yield relevant information.

**Request No. 11**: For each year during the relevant time period, provide individual claim level, annual electronic inpatient files in delimited text format that include the following individual data elements for each inpatient discharge at all hospitals in the State of Georgia:

(a) a numerical patient identifier that masks the true identity (name) of the patient;

(b) a unique claim number for that inpatient episode;

(c) all submitted data elements included on the UB-92 or UB-04 depending on which form of the claim was submitted to You by the hospital, with all data elements identified by name and a full and complete definition for each data element;

(d) the Diagnosis Related Group ("DRG") version and number assigned;

(e) the allowed amount of the claim as determined by You, the amount You paid the hospital for that claim, and whether the hospital was paid under a per-diem, DRG, capitation, percentage of charges, or some other type of reimbursement methodology;

(f) the amount of patient copay, deductible, and any other out-of-pocket responsibility;

(g) the commercial name of the health plan product in which the patient was enrolled, including whether that product is an HMO, PPO, or POS product, the number of tiers used to identify in-network facilities to the extent any such product contained tiers, whether that product is a commercial product sold to employers or whether it is a product sold to beneficiaries of Government insurance programs such as Medicare or Medicaid, and if so, which Government program;

(h) whether the hospital was paid as an "in-network" or "out-of-network facility," and if paid as an "in-network facility," the "tier" in which the hospital was assigned;

(i) the identity of the patient's admitting physician and, if different, the identity of the patient's primary treating physician;

(j) all crosswalk or lookup files necessary to translate encoded or numeric data fields to their English meaning, as well as an English description of the possible values for any encoded data element;

(k) the name(s) of the employee(s) at the health plan responsible for compiling and maintaining this data file during the relevant period; and

(l) the name(s) of the employee(s) at the managed care plan principally responsible for analyzing the data over the relevant period and who made comparisons of different hospitals' reimbursement rates or prices.

Subject to the general objections described above, Coventry states that it has previously produced in response to the CID individual claim-level information for inpatient and outpatient treatment episodes for each year from 2007 to 2010 for Coventry's commercial members in hospitals in the "relevant area" in the CID, which encompasses numerous counties in Georgia.

Coventry also will produce individual claim-level information for inpatient and outpatient treatment episodes from 2011 to the present for its commercial members in the State of Georgia.

Subject to the general objections described above, Aetna states that it has previously produced in response to the CID individual claim-level information for inpatient and outpatient treatment episodes for each year from 2008 to January, 2011 for Aetna's commercial members in hospitals in the "relevant area" as defined in the FTC's February, 2011 CID, which include the Albany, Georgia market and surrounding counties in Georgia. Aetna also will produce individual claim-level information for inpatient and outpatient treatment episodes from 2011 to the present for its commercial members in the State of Georgia.

The Health Plans object to producing any additional documents pursuant to this Request on the grounds that it is overly broad, unduly burdensome, and seeks information that is not relevant or reasonably calculated to yield relevant information.

**Request No. 12**: All documents relating to studies, analyses, or comparisons of hospital reimbursement rates in the Geographic Area, including any studies, analyses, or comparisons of the reimbursement rates of hospitals in the Geographic Area to hospitals outside the Geographic Area.

Subject to the general objections described above, Coventry states that it will produce Medical Expense Review ("MER") Reports from 2008 to 2012. Coventry produces MER Reports on an annual, and sometimes quarterly, basis. The reports track year-over-year unit cost and utilization trends by a number of medical cost categories, including facility, physician, ancillary providers, and pharmacy. Coventry uses these reports to highlight outlier changes in unit cost or utilization.

The Health Plans object to producing any additional documents pursuant to this Request on the grounds that it is overly broad, unduly burdensome, and seeks information that is not relevant or reasonably calculated to yield relevant information.

**Request No. 13**: All documents relating to whether Your Company passes on, or would pass on, or has passed on, increases or reductions in hospital reimbursement rates, including by Phoebe or Palmyra, to health plan members and/or subscribers.

The Health Plans object to producing documents pursuant to this Request on the grounds that it is overly broad, unduly burdensome, and seeks information that is not relevant or reasonably calculated to yield relevant information.

**Request No. 14**: All documents relating to how Your Company sets pricing (insurance premiums) to its health plan subscribers and/or members, including but not limited to, whether it separately sets prices on a local, regional, statewide, or national basis.

The Health Plans object to producing documents pursuant to this Request on the grounds that it is overly broad, unduly burdensome, and seeks information that is not relevant or reasonably calculated to yield relevant information.

**Request No. 15**: For any of Your health plans where Palmyra was "in-network" and Phoebe was "out-of-network" and any of Your health plans where both Phoebe and Palmyra were "in network," all documents relating to or comparing health plan member and/or subscriber usage of Palmyra versus Phoebe, including all documents discussing the difference in cost, if any, to both the health plan and to the health plan members and/or subscribers in utilizing Phoebe in lieu of Palmyra or Palmyra in lieu of Phoebe.

The Health Plans object to producing documents pursuant to this Request on the grounds that it is overly broad, unduly burdensome, and seeks information that is not relevant or reasonably calculated to yield relevant information.

**Request No. 16**: All documents relating to most-favored nation agreements, including Your Company's efforts to obtain most-favored-nation agreements with any hospital in the state of Georgia, and the extent to which Your Company has been affected by other payors' most-favored-nation agreements with hospitals in the state of Georgia.

Subject to the general objections described above, Coventry states that it will produce the single contract it had which included a most-favored-nation clause.

Subject to the general objections described above, Aetna states that it will produce any responsive contracts in its files.

The Health Plans object to producing any additional documents pursuant to this Request on the grounds that it is overly broad, unduly burdensome, and seeks information that is not relevant or reasonably calculated to yield relevant information.

**Request No. 17**: All documents relating to cost-shifting by any hospital in the State of Georgia.

The Health Plans object to producing documents pursuant to this Request on the grounds that it is overly broad, unduly burdensome, and seeks information that is not relevant or reasonably calculated to yield relevant information.

**Request No. 18**: All documents relating to competition to You from the Phoebe Health Plan.

The Health Plans object to producing documents pursuant to this Request on the grounds that it is overly broad, unduly burdensome, and seeks information that is not relevant or reasonably calculated to yield relevant information.

**Request No. 19**: Documents sufficient to show the number of Your members and/or subscribers residing in the state of Georgia for each health plan product offered by You, organized by county.

Subject to the general objections described above, Coventry states that it will produce responsive membership data.

Subject to the general objections described above, Aetna states that it will produce responsive membership data.

The Health Plans object to producing any additional documents pursuant to this Request on the grounds that it is overly broad, unduly burdensome, and seeks information that is not relevant or reasonably calculated to yield relevant information.

## REQUEST FOR COSTS OF RESPONDING TO THIS SUBPOENA

Phoebe should bear the costs of the Health Plans' production. As explained above, the costs imposed by the Subpoenas on the Health Plans, which are non-parties, are considerable. The Health Plans will be required to expend valuable financial, human, and operational resources complying with the Subpoenas. As such, the Health Plans respectfully request an award of their costs in complying with the Subpoenas.

## RULE 3.22(g) CERTIFICATION

Pursuant to FTC Rule of Practice 3.22(g), 16 C.F.R. § 3.22(g), counsel for Coventry and Aetna hereby certify that they have conferred with Phoebe's counsel by phone and email in a good faith attempt to resolve by agreement the issues raised herein. On Tuesday, May 7, 2013, Kerry Mustico, as counsel for Coventry, and John Fedele, counsel for Phoebe, conferred by telephone in a good faith attempt to resolve the issues set forth in the Motion. Counsel had additional telephone conferences on May 8 and 10. Anthony Dennis, counsel for Aetna, also separately conferred with Mr. Fedele on May 6, 7, and 8 in a good faith attempt to resolve by agreement the issues raised herein. (Dennis Decl. ¶ 9). Then, on May 16, Ms. Mustico and Messrs. Dennis and Fedele conferred together in a final attempt to resolve the issues. On May 17, Mr. Fedele sent an email to counsel for the Health Plans, but counsel have been unable to reach agreement on the disputed issues.

## CONCLUSION

For all the foregoing reasons, the Health Plans respectfully request that the Administrative Law Judge limit the scope of the Subpoenas to the documents previously produced by the Health Plans and the documents the Health Plans have agreed to produce as described above.

Dated: May 17, 2013

Respectfully Submitted,

*/s/ Kerry M. Mustico*

Arthur N. Lerner
Kerry M. Mustico
Crowell & Moring LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004-2595
Telephone: (202) 624-2500
Facsimile: (202) 628-5116

*Attorneys for Aetna Inc. and Coventry Health Care of Georgia, Inc.*

## CERTIFICATE OF SERVICE

I hereby certify that this 17th day of May, 2013, a true and correct copy of the foregoing **JOINT MOTION TO LIMIT SUBPOENA *DUCES TECUM*** was electronically filed with the Federal Trade Commission using the FTC E-File system which will automatically send e-mail notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
Room H113
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
dclark@ftc.gov

I also certify that I delivered a copy of the foregoing via electronic mail and hand delivery to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
Room H110
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
oalj@ftc.gov

and by electronic mail and first-class mail to:

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New York, NY 10017

*/s/ Kerry M. Mustico*

Kerry M. Mustico

## CERTIFICATE OF ELECTRONIC FILING

I hereby certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

Dated: May 17, 2013

*/s/ Kerry M. Mustico*
Kerry M. Mustico

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

| | | |
|---|---|---|
| In the Matter of | ) | **PUBLIC** |
| Phoebe Putney Health System, Inc.<br>a corporation, and | ) | |
| Phoebe Putney Memorial Hospital, Inc.<br>a corporation, and | ) | Docket No. 9348 |
| HCA Inc.<br>a corporation, and | ) | |
| Palmyra Park Hospital, Inc.<br>a corporation, and | ) | |
| Hospital Authority of Albany-Dougherty County | ) | |

**[PROPOSED] ORDER GRANTING COVENTRY HEALTH CARE OF GEORGIA, INC. AND AETNA INC.'S JOINT MOTION TO LIMIT SUBPOENA *DUCES TECUM***

Non-parties Coventry Health Care of Georgia, Inc. and Aetna Inc. (the "Health Plans") filed a Joint Motion to Limit Subpoena *Duces Tecum* issued by Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., and Hospital Authority of Albany-Dougherty County ("Respondents") on or about April 26, 2013. In their Motion, the Health Plans seek to limit the scope of the subpoenas served on them by the Respondents to the documents previously produced by the Health Plans and the documents the Health Plans have agreed to produce as described in the Health Plans' Motion. Having considered the Motion, and any opposition thereto, it is

GRANTED; and

IT IS HEREBY ORDERED that the subpoenas *duces tecum* served on Coventry Health Care of Georgia, Inc. and Aetna Inc. are limited in scope to encompass only the documents previously produced by Coventry and Aetna in this matter and the documents Aetna and Coventry have agreed to produce as described in their Motion.

Signed this ___ day of May, 2013.

D. Michael Chappell
Administrative Law Judge

# EXHIBIT A

To Motion to Quash Subpoena *Duces Tecum*

# SUBPOENA DUCES TECUM

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

| 1. TO | 2. FROM |
|---|---|
| Coventry Health Care of Georgia<br>C/O Joe Eckert, CEO, Or Person<br>Authorized to Receive Service<br>1100 Circle 75 Parkway, Suite 1400<br>Atlanta, GA 30339 | UNITED STATES OF AMERICA<br>FEDERAL TRADE COMMISSION |

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

| 3. PLACE OF PRODUCTION | 4. MATERIAL WILL BE PRODUCED TO |
|---|---|
| Baker & McKenzie LLP<br>815 Connecticut Avenue, NW<br>Washington, DC 20006 | John J. Fedele, Respondents<br>5. DATE AND TIME OF PRODUCTION<br>May 21, 2013 - 5:00p.m. EDT |

6. SUBJECT OF PROCEEDING

7. MATERIAL TO BE PRODUCED

Documents and materials responsive to the attached Subpoena Duces Tecum Requests for Production

| 8. ADMINISTRATIVE LAW JUDGE | 9. COUNSEL AND PARTY ISSUING SUBPOENA |
|---|---|
| Michael D. Chappell<br><br>Federal Trade Commission<br>Washington, D.C. 20580 | Lee K. Van Voorhis<br>815 Connecticut Avenue, NW<br>Washington, DC 20006 |

| DATE SIGNED | SIGNATURE OF COUNSEL ISSUING SUBPOENA |
|---|---|
| 04/26/2013 | |

## GENERAL INSTRUCTIONS

### APPEARANCE

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

### MOTION TO LIMIT OR QUASH

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

### TRAVEL EXPENSES

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

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

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

## RETURN OF SERVICE

*I hereby certify that a duplicate original of the within subpoena was duly served:* (check the method used)

○ *in person.*

⊗ *by registered mail.*

○ *by leaving copy at principal office or place of business, to wit:*

*on the person named herein on:*

(Month, day, and year)

April 26, 2013

(Name of person making service)

Brian E. Rafkin, Esquire

(Official title)

Attorney

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

| | | |
|---|---|---|
| In the Matter of<br>Phoebe Putney Health System, Inc.<br>a corporation, and<br><br>Phoebe Putney Memorial Hospital, Inc.<br>a corporation, and<br><br>HCA Inc.<br>a corporation, and<br><br>Palmyra Park Hospital, Inc.<br>a corporation, and<br><br>Hospital Authority of Albany-Dougherty County | ) | **Docket No. 9348** |

**RESPONDENTS' SUBPOENA *DUCES TECUM* TO**
**Coventry Health Care of Georgia**

Pursuant to the Federal Trade Commission's Rules of Practice, 16 C.F.R. §§ 3.31 and 3.34, and the Scheduling Order entered by Chief Administrative Law Judge Chappell on April 4, 2013, Respondents, Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., and Hospital Authority of Albany-Dougherty County ("Phoebe") hereby request that Coventry Health Care of Georgia produce the documents set forth below in accordance with the Definitions and Instructions set forth below:

**DEFINITIONS**

A. The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Thus, you should produce documents that exist in machine-readable form, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage.

B. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

C. The term "communication" means any transfer of information, written, oral, or by any other means.

D. The terms "constitute," "contain," "discuss," "analyze," or "relate to" mean constituting, reflecting, respecting, regarding, concerning, pertaining to, referring to, relating to, stating, describing, recording, noting, embodying, memorializing, containing, mentioning, studying, assessing, analyzing, or discussing.

E. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in your possession, custody, or control. The term documents includes, without limitation: electronic mail messages; electronic correspondence and drafts of documents; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed on computer systems; copies of documents that are not identical duplicates of the originals in that person's files; and copies of documents the originals of which are not in your possession, custody, or control.

F. The terms "each," "any," and "all" mean "each and every."

G. The term "Geographic Area" means the geographic area including the following counties in Alabama, Florida, and Georgia: Alabama: Barbour, Henry, Houston, Lee, and Russell; Florida: Gadsen, Jackson, Jefferson, Hamilton, Leon, and Madison; Georgia: Bibb, Bleckley, Brooks, Calhoun, Chattahoochee, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Echols, Grady, Harris, Houston, Irwin, Jeff Davis, Lanier, Lee, Lowndes, Macon, Marion, Miller, Mitchell, Muscogee, Peach, Pulaski, Quitman, Randolph, Schley, Seminole, Stewart, Sumter, Talbot, Taylor, Telfair, Terrell, Thomas, Tift, Turner, Twiggs, Upson, Webster, Wilcox, and Worth.

H. The term "hospital" means a health care facility providing care through specialized staff and equipment on either an in-patient or out-patient basis.

I. The term "health care facility" means a hospital, health maintenance organization facility, ambulatory care center, first aid or other clinic, urgent care center, free-standing emergency care center, imaging center, ambulatory surgery center and all other entities that provide health care services.

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

K. The term "including" shall mean "including without limitation."

L. The term "insurance premiums" means the fees paid for coverage of medical benefits for a defined benefit period.

M. The term "Palmyra" means HCA/Palmyra, Palmyra Medical Center, and Palmyra Park Hospital doing business as Palmyra Medical Center and its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.

N. The term "payor" means a person other than a natural person that pays any health care expenses of any other person, and all of its directors, officers, employees, agents and representatives. This payor includes, but is not limited to: Blue Cross and Blue Shield, commercial insurance companies, health maintenance organizations, preferred provider organizations, competitive medical plans, union trust funds, multiple employer trusts, corporate or governmental self-insured health benefits plans, Medicare, or Medicaid.

O. The term "person" or "persons" means natural persons, groups of natural persons acting as individuals, groups of natural persons acting in a collegial capacity (*e.g.*, as a committee, board, panel, etc.), associations, representative bodies, government bodies, agencies, or any other commercial entity, incorporated business, social or government entity.

P. The term "Phoebe" means Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., Phoebe Health Partners.

Q. The term "reimbursement rate" means the rate paid to a health care provider for performing a certain procedure.

R. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, reflecting, describing, analyzing, identifying, or stating.

S. The term "Transaction" means the Hospital Authority of Albany-Dougherty County's acquisition of Palmyra Park Hospital, which was consummated in December 2011.

T. The term "You" and "Your" mean **Coventry Health Care of Georgia** and all of its subsidiaries, affiliates or predecessors.

U. Unless otherwise defined, all words and phrases used in this First Request for the Production of Documents shall be accorded their usual meaning as defined by Webster's New Universal Unabridged Dictionary, Fully Revised and Updated (2003).

## INSTRUCTIONS

A. All responsive documents should be produced by May 21, 2013.

B. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents and/or information for each of the years from January 1, 2008 to the present.

C. Unless modified by agreement with Respondents, this Subpoena requires a complete search of all Your files. You shall produce all responsive documents, wherever located, that are in the actual or constructive possession, custody, or control of Your Company and its representatives, attorneys, and other agents, including, but not limited to, consultants, accountants, lawyers, or any other person retained by, consulted by, or working on behalf or under the direction of You.

D. This subpoena is governed by the terms of the attached Protective Order Governing Discovery Material issued on April 21, 2011.

E. To protect patient privacy, You shall mask any Sensitive Personally Identifiable Information ("PII") or Sensitive Health Information ("SHI"). For purposes of this Subpoena, PII means an individual's Social Security Number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security Number, driver's license number or other state identification number or a foreign country equivalent, passport number, financial account numbers, credit or debit card numbers. For purposes of this Subpoena, SHI includes medical records or other individually identifiable health information. Where required by a particular request, You shall substitute for the masked information 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. Otherwise, You shall redact the PII or SHI but is not required to replace it with an alternate identifier.

F. Forms of Production: Your Company shall submit documents as instructed below absent written consent signed by Respondents.

(1) 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:

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

(b) Submit all other documents other than those identified in subpart (1)(a) in image format with extracted text and metadata; and

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

(2) For each document submitted in electronic format, include the following metadata fields and information:

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

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

(c) For email attachments: beginning Bates or document identification number, ending Bates or document identification number, page count,

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

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

(3) Submit electronic files and images as follows:

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

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

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

(4) All documents responsive to this request, regardless of format or form and regardless of whether submitted in hard copy or electronic format:

(a) Shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in Your Company's files and shall not be shuffled or otherwise rearranged;

(b) Shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black-and-white photocopying or conversion to TIFF format of any document (*e.g.*, a chart or graph), makes any substantive information contained in the document unintelligible, Your Company must submit the original document, a like-colored photocopy, or a JPEG format image);

(c) If written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;

(d) Shall be marked on each page with corporate identification and consecutive document control numbers; and

(e) Shall be accompanied by an index that identifies: (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that person's documents, and if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s),

provide the index both as a printed hard copy and in machine-readable form.

G. If you object to responding fully to any of the below requests for documents based on a claim of privilege, You shall provide pursuant to 16 C.F.R. § 3.38A, for each such interrogatory, a schedule containing the following information: (a) the date of all responsive documents, (b) the sender of the document, (c) the addressee, (d) the number of pages, (e) the subject matter, (f) the basis on which the privilege is claimed, (g) the names of all persons to whom copies of any part of the document were furnished, together with an identification of their employer and their job titles, (h) the present location of the document and all copies thereof, and (i) each person who has ever had possession, custody, or control of the documents.

H. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business but Your Company has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents 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.

I. Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to John Fedele at (202) 835-6144. The response to the request shall be addressed to the attention of John Fedele, Baker & McKenzie LLP, 815 Connecticut Ave. NW, Washington, D.C. 20006, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to Baker & McKenzie.

## DOCUMENTS TO BE PRODUCED

1. All contracts between Your Company and any health care facility in the State of Georgia, including all amendments, appendices, and related documents reflecting any contract terms including any analyses, reports, or correspondence relating to any contract, proposed contract, or contract negotiations.

2. All documents relating to the criteria or factors used by Your Company in selecting which health care facility to contract with in the State of Georgia, and all documents that apply those criteria.

3. All documents relating to competition between and among payors in the State of Georgia, including but not limited to, the desirability or necessity of entering into contracts with any individual health care facility or hospital system.

4. All documents relating to the Transaction, including but not limited to, all documents sent to or received from the Federal Trade Commission and all documents relating to any communications between You and the Federal Trade Commission or any existing or potential customer regarding the Transaction.

5. All documents relating to competition between health care facilities in the State of Georgia, including but not limited to, market studies, quality assessments, forecasts, and surveys.

6. All documents describing, discussing, summarizing, or analyzing the utilization of hospitals in the Geographic Area by enrollees in any health plan that You sponsor or administer.

7. All documents relating to the shift, diversion, or referral, or impediments to the shift, diversion, or referral, of patients or any category of patients to or from any hospital or any health care facility in the Geographic Area by any payor, including but not limited to, Your Company.

8. All documents relating to any complaints by Your Company or any other payor that any heath care facility in the Geographic Area is raising the rates on its charge master.

9. All proposals by Your Company or any other payor to employers, sponsors, employer groups, unions, agencies, counties, or municipalities that discuss any health care facility or hospital located in the Geographic Area.

10. All documents relating to the basis upon which (i) employers select or are perceived to select among payors or health plans, (ii) enrollees select or are perceived to select among payors or health plans, or (iii) Your Company or any other payor offers different reimbursement rates to health care facilities based on the quality of care provided at that facility.

11. For each year during the relevant period, provide individual claim level, annual electronic inpatient files in delimited text format that include the following individual data elements for each inpatient discharge at all hospitals in the State of Georgia:

    (a) a numerical patient identifier that masks the true identity (name) of the patient;

    (b) a unique claim number for that inpatient episode;

    (c) all submitted data elements included on the UB-92 or UB-04 depending on which form of the claim was submitted to You by the hospital, with all data elements identified by name and a full and complete definition for each data element;

    (d) the Diagnosis Related Group ("DRG") version and number assigned;

    (e) the allowed amount of the claim as determined by You, the amount You paid the hospital for that claim, and whether the hospital was paid under a per-diem, DRG, capitation, percentage of charges, or some other type of reimbursement methodology;

    (f) the amount of patient copay, deductible, and any other out-of-pocket responsibility;

(g) the commercial name of the health plan product in which the patient was enrolled, including whether that product is an HMO, PPO, or POS product, the number of tiers used to identify in-network facilities to the extent any such product contained tiers, whether that product is a commercial product sold to employers or whether it is a product sold to beneficiaries of Government insurance programs such as Medicare or Medicaid, and if so, which Government program;

(h) whether the hospital was paid as an "in-network" or "out-of-network facility," and if paid as an "in-network facility," the "tier" in which the hospital was assigned;

(i) the identity of the patient's admitting physician and, if different, the identity of the patient's primary treating physician;

(j) all crosswalk or lookup files necessary to translate encoded or numeric data fields to their English meaning, as well as an English description of the possible values for any encoded data element;

(k) the name(s) of the employee(s) at the health plan responsible for compiling and maintaining this data file during the relevant period; and

(l) the name(s) of the employee(s) at the managed care plan principally responsible for analyzing the data over the relevant period and who made comparisons of different hospitals' reimbursement rates or prices.

12. All documents relating to studies, analyses, or comparisons of hospital reimbursement rates in the Geographic Area, including any studies, analyses, or comparisons of the reimbursement rates of hospitals in the Geographic Area to hospitals outside the Geographic Area.

13. All documents relating to whether Your Company passes on, would pass on, or has passed on, increases or reductions in hospital reimbursement rates, including by Phoebe or Palmyra, to health plan members and/or subscribers.

14. All documents relating to how Your Company sets pricing (insurance premiums) to its health plan subscribers and/or members, including but not limited to, whether it separately sets prices on a local, regional, statewide, or national basis.

15. For any of Your health plans where Palmyra was "in-network" and Phoebe was "out-of-network" and any of Your health plans where both Phoebe and Palmyra were "in network," all documents relating to or comparing health plan member and/or subscriber usage of Palmyra versus Phoebe, including all documents discussing the difference in cost, if any, to both the health plan and to the health plan members and/or subscribers in utilizing Phoebe in lieu of Palmyra or Palmyra in lieu of Phoebe.

16. All documents relating to most-favored-nation agreements, including Your Company's efforts to obtain most-favored-nation agreements with any hospital in the State of Georgia, and the extent to which Your Company has been affected by other payors' most-favored-nation agreements with hospitals in the State of Georgia.

17. All documents relating to cost-shifting by any hospital in the State of Georgia.

18. All documents relating to competition to You from the Phoebe Health Plan.

19. Documents sufficient to show the number of Your members and/or subscribers residing in the State of Georgia for each health plan product offered by You, organized by County.

## CERTIFICATION

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that this response to the Subpoena *Duces Tecum* has been prepared by me or under my personal supervision from the records of Coventry Health Care of Georgia and is complete and correct to the best of my knowledge and belief.

Where copies rather than original documents have been submitted, the copies are true, correct, and complete copies of the original documents. If Respondents use such copies in any court or administrative proceeding, Coventry Health Care of Georgia will not object based upon Respondents not offering the original document.

| | |
|---|---|
| (Signature of Official) | (Title/Company) |
| (Typed Name of Above Official) | (Office Telephone) |

Dated: April 26, 2013

Respectfully submitted,

By /s/ Lee K. Van Voorhis
Lee K. Van Voorhis, Esq.
Katherine I. Funk, Esq.
Brian F. Burke, Esq.
Jennifer A. Semko, Esq.
John J. Fedele, Esq.
Teisha C. Johnson, Esq.
Brian Rafkin, Esq.
Jeremy W. Cline, Esq.
Baker & McKenzie LLP
815 Connecticut Avenue, NW
Washington, DC 20006
*Counsel For Phoebe Putney Memorial Hospital, Inc. and Phoebe Putney Health System, Inc.*

Emmet J. Bondurant, Esq.
Frank M. Lowrey, Esq.
Michael A. Caplan, Esq.
Bondurant, Mixson & Elmore LLP
1201 W. Peachtree Street, Suite 3900
Atlanta, Georgia 30309
*Counsel for Respondent Hospital Authority of Albany-Dougherty County*

## CERTIFICATE OF SERVICE

I hereby certify that this 26th day of April, 2013, I delivered via FEDEX this Subpoena *Duces Tecum* to:

Coventry Health Care of Georgia
C/O Joe Eckert, CEO, Or Person Authorized to Receive Service
1100 Circle 75 Parkway, Suite 1400
Atlanta, GA 30339

I also certify that I delivered via electronic mail a copy of the foregoing document to:

Edward D. Hassi, Esq.
Trial Counsel
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
ehassi@ftc.gov

Jeff K. Perry, Esq.
Assistant Director
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
jperry@ftc.gov

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1201 West Peachtree St. N.W., Suite 3900
Atlanta, GA 30309

Kevin J. Arquit, Esq.
karquit@stblaw.com
Jennifer Rie, Esq
jrie@stblaw.com
Aimee H. Goldstein, Esq.
agoldstein@stblaw.com
425 Lexington Avenue
New York, NY 1001703954
(212) 455-7680

This 26th day of April, 2013.

By:

/s/ Jeremy Cline
Jeremy W. Cline, Esq.
*Counsel for Phoebe Putney Memorial Hospital, Inc. and Phoebe Putney Health System, Inc.*

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

ORIGINAL


| | |
|---|---|
| In the Matter of<br><br>PHOEBE PUTNEY HEALTH SYSTEM, INC., and<br><br>PHOEBE PUTNEY MEMORIAL HOSPITAL, INC., and<br><br>PHOEBE NORTH, INC., and<br><br>HCA INC., and<br><br>PALMYRA PARK HOSPITAL, INC., and<br><br>HOSPITAL AUTHORITY OF, ALBANY-DOUGHERTY COUNTY,<br>Respondents. | DOCKET NO. 9348 |

**PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL**

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

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: April 21, 2011

## ATTACHMENT A

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

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

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.

2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.

3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.

4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.

5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL–FTC Docket No. 9348" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL–FTC Docket No. 9348" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

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

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

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

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

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

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

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

# SUBPOENA DUCES TECUM

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

1. TO Aetna, Inc.
C/O Cary Goldenthal, Vice President Georgia Network, Or Person Authorized to Receive Service
1100 Abernathy Rd, Suite 375
Atlanta, GA 30328

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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

3. PLACE OF PRODUCTION

Baker & McKenzie LLP
815 Connecticut Avenue, NW
Washington, DC 20006

4. MATERIAL WILL BE PRODUCED TO

John J. Fedele, Respondents

5. DATE AND TIME OF PRODUCTION

May 21, 2013 - 5:00p.m. EDT

6. SUBJECT OF PROCEEDING

Docket 9348, In the matter of Phoebe Putney Heath System, et.al.

7. MATERIAL TO BE PRODUCED

Documents and materials responsive to the attached Subpoena Duces Tecum Requests for Production

8. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

9. COUNSEL AND PARTY ISSUING SUBPOENA

Lee Van Voorhis
815 Connecticut Avenue, NW
Washington, DC 20006
202-835-6162

DATE SIGNED

04/26/2013

SIGNATURE OF COUNSEL ISSUING SUBPOENA

GENERAL INSTRUCTIONS

**APPEARANCE**

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

**MOTION TO LIMIT OR QUASH**

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

**TRAVEL EXPENSES**

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

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

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

## RETURN OF SERVICE

*I hereby certify that a duplicate original of the within subpoena was duly served:* (check the method used)

( ) *in person.*

(X) *by registered mail.*

( ) *by leaving copy at principal office or place of business, to wit:*

*on the person named herein on:*

(Month, day, and year)

April 26, 2013

(Name of person making service)

Brian E. Rafkin, Esquire

(Official title)

Attorney

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

| | | |
|---|---|---|
| In the Matter of<br>Phoebe Putney Health System, Inc.<br>a corporation, and<br><br>Phoebe Putney Memorial Hospital, Inc.<br>a corporation, and<br><br>HCA Inc.<br>a corporation, and<br><br>Palmyra Park Hospital, Inc.<br>a corporation, and<br><br>Hospital Authority of Albany-Dougherty County | ) | **Docket No. 9348** |

**RESPONDENTS' SUBPOENA *DUCES TECUM* TO**
**Aetna, Inc.**

Pursuant to the Federal Trade Commission's Rules of Practice, 16 C.F.R. §§ 3.31 and 3.34, and the Scheduling Order entered by Chief Administrative Law Judge Chappell on April 4, 2013, Respondents, Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., and Hospital Authority of Albany-Dougherty County ("Phoebe") hereby request that Aetna, Inc. produce the documents set forth below in accordance with the Definitions and Instructions set forth below:

## DEFINITIONS

A. The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Thus, you should produce documents that exist in machine-readable form, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage.

B. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

C. The term "communication" means any transfer of information, written, oral, or by any other means.

D. The terms "constitute," "contain," "discuss," "analyze," or "relate to" mean constituting, reflecting, respecting, regarding, concerning, pertaining to, referring to, relating to, stating, describing, recording, noting, embodying, memorializing, containing, mentioning, studying, assessing, analyzing, or discussing.

E. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in your possession, custody, or control. The term documents includes, without limitation: electronic mail messages; electronic correspondence and drafts of documents; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed on computer systems; copies of documents that are not identical duplicates of the originals in that person's files; and copies of documents the originals of which are not in your possession, custody, or control.

F. The terms "each," "any," and "all" mean "each and every."

G. The term "Geographic Area" means the geographic area including the following counties in Alabama, Florida, and Georgia: Alabama: Barbour, Henry, Houston, Lee, and Russell; Florida: Gadsen, Jackson, Jefferson, Hamilton, Leon, and Madison; Georgia: Bibb, Bleckley, Brooks, Calhoun, Chattahoochee, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Echols, Grady, Harris, Houston, Irwin, Jeff Davis, Lanier, Lee, Lowndes, Macon, Marion, Miller, Mitchell, Muscogee, Peach, Pulaski, Quitman, Randolph, Schley, Seminole, Stewart, Sumter, Talbot, Taylor, Telfair, Terrell, Thomas, Tift, Turner, Twiggs, Upson, Webster, Wilcox, and Worth.

H. The term "hospital" means a health care facility providing care through specialized staff and equipment on either an in-patient or out-patient basis.

I. The term "health care facility" means a hospital, health maintenance organization facility, ambulatory care center, first aid or other clinic, urgent care center, free-standing emergency care center, imaging center, ambulatory surgery center and all other entities that provide health care services.

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

K. The term "including" shall mean "including without limitation."

L. The term "insurance premiums" means the fees paid for coverage of medical benefits for a defined benefit period.

M. The term "Palmyra" means HCA/Palmyra, Palmyra Medical Center, and Palmyra Park Hospital doing business as Palmyra Medical Center and its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.

N. The term "payor" means a person other than a natural person that pays any health care expenses of any other person, and all of its directors, officers, employees, agents and representatives. This payor includes, but is not limited to: Blue Cross and Blue Shield, commercial insurance companies, health maintenance organizations, preferred provider organizations, competitive medical plans, union trust funds, multiple employer trusts, corporate or governmental self-insured health benefits plans, Medicare, or Medicaid.

O. The term "person" or "persons" means natural persons, groups of natural persons acting as individuals, groups of natural persons acting in a collegial capacity (*e.g.*, as a committee, board, panel, etc.), associations, representative bodies, government bodies, agencies, or any other commercial entity, incorporated business, social or government entity.

P. The term "Phoebe" means Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., Phoebe Health Partners.

Q. The term "reimbursement rate" means the rate paid to a health care provider for performing a certain procedure.

R. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, reflecting, describing, analyzing, identifying, or stating.

S. The term "Transaction" means the Hospital Authority of Albany-Dougherty County's acquisition of Palmyra Park Hospital, which was consummated in December 2011.

T. The term "You" and "Your" mean **Aetna, Inc.** and all of its subsidiaries, affiliates or predecessors.

U. Unless otherwise defined, all words and phrases used in this First Request for the Production of Documents shall be accorded their usual meaning as defined by Webster's New Universal Unabridged Dictionary, Fully Revised and Updated (2003).

## INSTRUCTIONS

A. All responsive documents should be produced by May 21, 2013.

B. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents and/or information for each of the years from January 1, 2008 to the present.

C. Unless modified by agreement with Respondents, this Subpoena requires a complete search of all Your files. You shall produce all responsive documents, wherever located, that are in the actual or constructive possession, custody, or control of Your Company and its representatives, attorneys, and other agents, including, but not limited to, consultants, accountants, lawyers, or any other person retained by, consulted by, or working on behalf or under the direction of You.

D. This subpoena is governed by the terms of the attached Protective Order Governing Discovery Material issued on April 21, 2011.

E. To protect patient privacy, You shall mask any Sensitive Personally Identifiable Information ("PII") or Sensitive Health Information ("SHI"). For purposes of this Subpoena, PII means an individual's Social Security Number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security Number, driver's license number or other state identification number or a foreign country equivalent, passport number, financial account numbers, credit or debit card numbers. For purposes of this Subpoena, SHI includes medical records or other individually identifiable health information. Where required by a particular request, You shall substitute for the masked information 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. Otherwise, You shall redact the PII or SHI but is not required to replace it with an alternate identifier.

F. Forms of Production: Your Company shall submit documents as instructed below absent written consent signed by Respondents.

(1) 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:

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

(b) Submit all other documents other than those identified in subpart (1)(a) in image format with extracted text and metadata; and

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

(2) For each document submitted in electronic format, include the following metadata fields and information:

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

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

(c) For email attachments: beginning Bates or document identification number, ending Bates or document identification number, page count,

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

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

(3) Submit electronic files and images as follows:

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

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

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

(4) All documents responsive to this request, regardless of format or form and regardless of whether submitted in hard copy or electronic format:

(a) Shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in Your Company's files and shall not be shuffled or otherwise rearranged;

(b) Shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black-and-white photocopying or conversion to TIFF format of any document (*e.g.*, a chart or graph), makes any substantive information contained in the document unintelligible, Your Company must submit the original document, a like-colored photocopy, or a JPEG format image);

(c) If written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;

(d) Shall be marked on each page with corporate identification and consecutive document control numbers; and

(e) Shall be accompanied by an index that identifies: (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that person's documents, and if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s),

provide the index both as a printed hard copy and in machine-readable form.

G. If you object to responding fully to any of the below requests for documents based on a claim of privilege, You shall provide pursuant to 16 C.F.R. § 3.38A, for each such interrogatory, a schedule containing the following information: (a) the date of all responsive documents, (b) the sender of the document, (c) the addressee, (d) the number of pages, (e) the subject matter, (f) the basis on which the privilege is claimed, (g) the names of all persons to whom copies of any part of the document were furnished, together with an identification of their employer and their job titles, (h) the present location of the document and all copies thereof, and (i) each person who has ever had possession, custody, or control of the documents.

H. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business but Your Company has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents 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.

I. Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to John Fedele at (202) 835-6144. The response to the request shall be addressed to the attention of John Fedele, Baker & McKenzie LLP, 815 Connecticut Ave. NW, Washington, D.C. 20006, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to Baker & McKenzie.

## DOCUMENTS TO BE PRODUCED

1. All contracts between Your Company and any health care facility in the State of Georgia, including all amendments, appendices, and related documents reflecting any contract terms including any analyses, reports, or correspondence relating to any contract, proposed contract, or contract negotiations.

2. All documents relating to the criteria or factors used by Your Company in selecting which health care facility to contract with in the State of Georgia, and all documents that apply those criteria.

3. All documents relating to competition between and among payors in the State of Georgia, including but not limited to, the desirability or necessity of entering into contracts with any individual health care facility or hospital system.

4. All documents relating to the Transaction, including but not limited to, all documents sent to or received from the Federal Trade Commission and all documents relating to any communications between You and the Federal Trade Commission or any existing or potential customer regarding the Transaction.

5. All documents relating to competition between health care facilities in the State of Georgia, including but not limited to, market studies, quality assessments, forecasts, and surveys.

6. All documents describing, discussing, summarizing, or analyzing the utilization of hospitals in the Geographic Area by enrollees in any health plan that You sponsor or administer.

7. All documents relating to the shift, diversion, or referral, or impediments to the shift, diversion, or referral, of patients or any category of patients to or from any hospital or any health care facility in the Geographic Area by any payor, including but not limited to, Your Company.

8. All documents relating to any complaints by Your Company or any other payor that any heath care facility in the Geographic Area is raising the rates on its charge master.

9. All proposals by Your Company or any other payor to employers, sponsors, employer groups, unions, agencies, counties, or municipalities that discuss any health care facility or hospital located in the Geographic Area.

10. All documents relating to the basis upon which (i) employers select or are perceived to select among payors or health plans, (ii) enrollees select or are perceived to select among payors or health plans, or (iii) Your Company or any other payor offers different reimbursement rates to health care facilities based on the quality of care provided at that facility.

11. For each year during the relevant period, provide individual claim level, annual electronic inpatient files in delimited text format that include the following individual data elements for each inpatient discharge at all hospitals in the State of Georgia:

    (a) a numerical patient identifier that masks the true identity (name) of the patient;

    (b) a unique claim number for that inpatient episode;

    (c) all submitted data elements included on the UB-92 or UB-04 depending on which form of the claim was submitted to You by the hospital, with all data elements identified by name and a full and complete definition for each data element;

    (d) the Diagnosis Related Group ("DRG") version and number assigned;

    (e) the allowed amount of the claim as determined by You, the amount You paid the hospital for that claim, and whether the hospital was paid under a per-diem, DRG, capitation, percentage of charges, or some other type of reimbursement methodology;

    (f) the amount of patient copay, deductible, and any other out-of-pocket responsibility;

(g) the commercial name of the health plan product in which the patient was enrolled, including whether that product is an HMO, PPO, or POS product, the number of tiers used to identify in-network facilities to the extent any such product contained tiers, whether that product is a commercial product sold to employers or whether it is a product sold to beneficiaries of Government insurance programs such as Medicare or Medicaid, and if so, which Government program;

(h) whether the hospital was paid as an "in-network" or "out-of-network facility," and if paid as an "in-network facility," the "tier" in which the hospital was assigned;

(i) the identity of the patient's admitting physician and, if different, the identity of the patient's primary treating physician;

(j) all crosswalk or lookup files necessary to translate encoded or numeric data fields to their English meaning, as well as an English description of the possible values for any encoded data element;

(k) the name(s) of the employee(s) at the health plan responsible for compiling and maintaining this data file during the relevant period; and

(l) the name(s) of the employee(s) at the managed care plan principally responsible for analyzing the data over the relevant period and who made comparisons of different hospitals' reimbursement rates or prices.

12. All documents relating to studies, analyses, or comparisons of hospital reimbursement rates in the Geographic Area, including any studies, analyses, or comparisons of the reimbursement rates of hospitals in the Geographic Area to hospitals outside the Geographic Area.

13. All documents relating to whether Your Company passes on, would pass on, or has passed on, increases or reductions in hospital reimbursement rates, including by Phoebe or Palmyra, to health plan members and/or subscribers.

14. All documents relating to how Your Company sets pricing (insurance premiums) to its health plan subscribers and/or members, including but not limited to, whether it separately sets prices on a local, regional, statewide, or national basis.

15. For any of Your health plans where Palmyra was "in-network" and Phoebe was "out-of-network" and any of Your health plans where both Phoebe and Palmyra were "in network," all documents relating to or comparing health plan member and/or subscriber usage of Palmyra versus Phoebe, including all documents discussing the difference in cost, if any, to both the health plan and to the health plan members and/or subscribers in utilizing Phoebe in lieu of Palmyra or Palmyra in lieu of Phoebe.

16. All documents relating to most-favored-nation agreements, including Your Company's efforts to obtain most-favored-nation agreements with any hospital in the State of Georgia, and the extent to which Your Company has been affected by other payors' most-favored-nation agreements with hospitals in the State of Georgia.

17. All documents relating to cost-shifting by any hospital in the State of Georgia.

18. All documents relating to competition to You from the Phoebe Health Plan.

19. Documents sufficient to show the number of Your members and/or subscribers residing in the State of Georgia for each health plan product offered by You, organized by County.

## CERTIFICATION

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that this response to the Subpoena *Duces Tecum* has been prepared by me or under my personal supervision from the records of Aetna, Inc. and is complete and correct to the best of my knowledge and belief.

Where copies rather than original documents have been submitted, the copies are true, correct, and complete copies of the original documents. If Respondents use such copies in any court or administrative proceeding, Aetna, Inc. will not object based upon Respondents not offering the original document.

| | |
|---|---|
| (Signature of Official) | (Title/Company) |
| (Typed Name of Above Official) | (Office Telephone) |

Dated: April 26, 2013

Respectfully submitted,

By /s/ Lee K. Van Voorhis
Lee K. Van Voorhis, Esq.
Katherine I. Funk, Esq.
Brian F. Burke, Esq.
Jennifer A. Semko, Esq.
John J. Fedele, Esq.
Teisha C. Johnson, Esq.
Brian Rafkin, Esq.
Jeremy W. Cline, Esq.
Baker & McKenzie LLP
815 Connecticut Avenue, NW
Washington, DC 20006
*Counsel For Phoebe Putney Memorial Hospital, Inc. and Phoebe Putney Health System, Inc.*

Emmet J. Bondurant, Esq.
Frank M. Lowrey, Esq.
Michael A. Caplan, Esq.
Bondurant, Mixson & Elmore LLP
1201 W. Peachtree Street, Suite 3900
Atlanta, Georgia 30309
*Counsel for Respondent Hospital Authority of Albany-Dougherty County*

## CERTIFICATE OF SERVICE

I hereby certify that this 26th day of April, 2013, I delivered via FEDEX this Subpoena *Duces Tecum* to:

Aetna, Inc.
C/O Cary Goldenthal, Vice President Georgia Network, Or Person Authorized to Receive Service
1100 Abernathy Rd, Suite 375
Atlanta, GA 30328

I also certify that I delivered via electronic mail a copy of the foregoing document to:

Edward D. Hassi, Esq.
Trial Counsel
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
ehassi@ftc.gov

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Assistant Director
Federal Trade Commission
Bureau of Competition
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425 Lexington Avenue
New York, NY 1001703954
(212) 455-7680

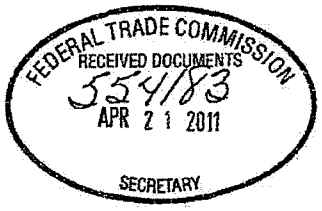
This 26th day of April, 2013.

By:

/s/ Jeremy Cline
Jeremy W. Cline, Esq.
*Counsel for Phoebe Putney Memorial Hospital, Inc. and Phoebe Putney Health System, Inc.*

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

**ORIGINAL**




| | | |
|---|---|---|
| In the Matter of | ) | |
| PHOEBE PUTNEY HEALTH SYSTEM, INC., and | ) | |
| PHOEBE PUTNEY MEMORIAL HOSPITAL, INC., and | ) | DOCKET NO. 9348 |
| PHOEBE NORTH, INC., and | ) | |
| HCA INC., and | ) | |
| PALMYRA PARK HOSPITAL, INC., and | ) | |
| HOSPITAL AUTHORITY OF, ALBANY-DOUGHERTY COUNTY, Respondents. | ) | |

**PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL**

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

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: April 21, 2011

## ATTACHMENT A

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

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

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.

2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.

3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.

4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.

5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL–FTC Docket No. 9348" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL–FTC Docket No. 9348" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

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

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

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

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

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

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

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

# EXHIBIT B

To Motion to Quash Subpoena *Duces Tecum*

United States of America
Federal Trade Commission

# CIVIL INVESTIGATIVE DEMAND

1. TO

Coventry Health Care, Inc.
C/O Thomas Zielinski, Esq.
67 Rockledge Drive, Suite 900
Bethesda, Maryland 20817

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

☐ You are required to appear and testify.

| LOCATION OF HEARING | YOUR APPEARANCE WILL BE BEFORE |
|---|---|
| Federal Trade Commission<br>601 New Jersey Avenue, N.W.<br>Suite 5257<br>Washington, D.C. 20001 | Goldie Walker or other designated counsel<br><br>DATE AND TIME OF HEARING OR DEPOSITION |

☒ You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

☒ You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

February 22, 2011

3. SUBJECT OF INVESTIGATION

Proposed Acquisition by the Hospital Authority of Albany-Dougherty County of Palmyra Park Medical Center, Inc. from HCA, Inc.
FTC File No. 111-0067. See the attached Resolution authorizing use of Compulsory Process.

| 4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN | 5. COMMISSION COUNSEL |
|---|---|
| Matthew Reilly, Records Custodian<br>Goldie Walker, Deputy Records Custodian | Goldie Walker, Esq.<br>(202) 326-2919 |

| DATE ISSUED | COMMISSIONER'S SIGNATURE |
|---|---|
| 2/15/11 | Edith Ramirez |

## INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

## PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

## YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

## TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

## Form of Certificate of Compliance*

I/We do certify that all of the documents and information required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to such interrogatory or uncompleted portion and the reasons for the objections have been stated.

Signature _____

Title _____

Sworn to before me this day

_____ _____

_____
Notary Public

_____

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

**CIVIL INVESTIGATIVE DEMAND**
**ISSUED TO COVENTRY HEALTH CARE, INC.**
**FTC File 111-0067**

Unless modified by agreement with the staff of the Federal Trade Commission, each Specification of this Civil Investigative Demand ("CID") requires a complete search of "the Company" as defined in the Definitions and Instructions which appear after the following Specifications. If the Company believes that the required search or any other part of the CID can be narrowed in any way that is consistent with the Commission's need for information, you are encouraged to discuss such questions and possible modifications with the Commission representative identified in this CID. All modifications to this CID must be agreed to in writing.

## SPECIFICATIONS

1. Submit, for each year from 2004 to the present, all contracts now in effect or that were in effect at any time since January 1, 2004, with hospitals in the relevant area, and each physician organization under contract with the Company whose contract was negotiated by or in conjunction with any such hospital (such as, but not limited to, a hospital-owned medical group practice, or hospital-affiliated physician-hospital organization), including any amendments or modifications thereto.

2. Submit, for each hospital contract provided or identified in response to Specification 1, a description of any services associated with covered treatments or diagnoses for which payments are made to another provider, and include the identity of each such provider by each service identified.

3. Submit, for each year from 2004 to the present, all documents relating to the development or negotiation of the contracts provided or identified in response to Specification 1, including, but not limited to, communications with hospitals, internal Company decisions regarding negotiating positions and proposed and final reimbursement rates, computer spreadsheets and programs the Company uses in connection with pricing decisions, training manuals or other internal documents that describe the Company's methods and procedures for determining proposed and final reimbursement rates, planned contracts (including contracts not entered into, not yet finalized or in force, or no longer in force), and amendments or modifications to existing contracts. Also provide a description of the ways in which these documents and information sources are used in the rate-setting process; and identify the Company's specific financial and operational benchmarks and requirements that impact the determination of the Company's proposed and final reimbursement rates.

4. Submit, for each year from 2006 to the present, for each inpatient admission, or outpatient treatment episode, for any patient residing in the relevant area, and in any county in Georgia, except for those counties in the Metro Atalanta area:

   a. the identity of the hospital, healthcare facility, or physician practice at which the patient was treated, including the owner of the hospital, healthcare facility, or

physician practice, the address of the hospital, healthcare facility, or physician practice including ZIP code, and any hospital, healthcare facility, or physician practice identification number used for reimbursement purposes;

b. a unique patient identifier, different from that for other patients and the same as that for different admissions, discharges, or other treatment episodes for the same patient (to protect patient privacy, the Company shall mask personal identifying information, such as the patient's name or Social Security number, by substituting a unique patient identifier);

c. the patient's residence 5-digit ZIP code;

d. the patient's age (in years), gender, and race;

e. the patient's newborn status;

f. whether the treatment episode was inpatient or outpatient, if inpatient, the date of admission and date of discharge, and if outpatient, the date of treatment;

g. the primary associated DRG and ICD9 diagnosis and procedure codes, and any secondary DRG and ICD9 diagnosis and procedure codes;

h. whether the treatment provided was for an emergency;

i. the source of the patient (such as by referral from another hospital, or by a physician who does not admit the patient);

j. the specific name of the entity and type of health plan offered by the Company (such as HMO, POS, PPO, ASO, etc.) that was the principal source of payment;

k. for each product listed in Specification 4(j), identify whether this product is offered through a managed care contract with Medicare, Medicaid, or other public health insurance program;

l. whether the hospital, healthcare facility, or physician practice identified in response to Specification 4(a) was a participating provider under the patient's health plan and, if the patient's health plan had different tiers of participating providers, which tier the hospital, healthcare facility, or physician practice was in;

m. whether there was a capitation arrangement with a health plan, if any, covering the patient (identify the arrangement);

n. the billed charges of the hospital, healthcare facility, or physician practice, allowed charges under the patient's health plan, the amount of charges actually

paid by the health plan, whether the amount of charges actually paid by the health plan includes any adjustments under any stop-loss provisions, and any additional amounts paid by the patient;

o. any breakdown of the hospital's, healthcare facility's, or physician practice's charges by any categories of hospital services rendered to the patient (such as medical/surgical, obstetrics, pediatrics, or ICU) for which the Company provides reimbursement to the hospital, healthcare facility, or physician practice at different per diem or other rates;

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

q. the amount of any reimbursement by the Company to any physicians, separately from any reimbursement to the hospital, healthcare facility, or physician practice for any physician services associated with the admission or treatment, or for any services associated with covered treatments or diagnoses identified in Specification 4(n); and

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

5. Identify, for each hospital under contract with the Company in the relevant area since January 1, 2004, and for each such hospital each physician organization under contract with the Company whose contract was negotiated by or in conjunction with the hospital, each person who is or was responsible for the Company's negotiation of contracts with the hospital or physician organization, the health plans or products for which each such person negotiates, and the time periods of that person's responsibilities.

6. Describe, for each health insurance product (such as HMO, POS, PPO, ASO, etc.) offered by the Company in the relevant area since January 1, 2006:

a. the name of the plan as it is referred to in the Company's claims data provided in response to Specification 4;

b. the number of covered lives in the plan, stated by county, if possible;

c. the counties in which the plan is offered;

d. the hospitals and physicians that are included in the plan or are preferred providers in the plan (if the plan is tiered, describe the hospitals and physicians in each tier); and, for each physician, the physician's specialty, employer, and affiliated hospital; and

e. the services or procedures covered by the plan and, for each service or procedure:

(i) all deductibles, co-pays, or co-insurance that apply and how these differ across tiers or between preferred and non-preferred providers; and

(ii) any other inducements offered to plan patients to use certain providers.

7. Submit all documents relating to the impact of hospital and other provider price increases, or the actual or contemplated changes in the composition of a provider network, in the relevant area during the relevant time period, on the price or quality of the health plan products offered by the Company, or other persons, to employers, employees, or other customers.

8. Submit all documents relating to (a) the quality of any hospital in the relevant area, and (b) any comparisons of quality, cost, price, variety or breadth of services, or consumer preference between or among any hospitals in the relevant area.

9. Submit all documents analyzing or discussing the effect of any merger, joint venture, acquisition, consolidation, or divestiture of hospitals in the relevant area, including both the relevant transaction and other transactions, on the hospitals' prices, costs, services, quality, or any other aspect of competitive performance, including, but not limited to, documents comparing the actual cost savings or other benefits of such transactions to those previously projected, and documents discussing how such benefits were or might be achieved.

10. Submit all information described in Instruction U below relating to, and other instructions necessary for the Commission to use or interpret, the databases or other data compilations submitted in response to this CID, to the extent such documentation is not contained in documents submitted in response to this CID.

11. Submit the name(s) and title(s) of the person(s) responsible for preparing the response to this CID and a copy of all instructions prepared by the Company relating to the steps taken to respond to this CID. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given. For each Specification, identify the individual(s) who assisted in the preparation of the response, with a listing of the persons (identified by name and corporate title or job description) whose files were searched by each.

## DEFINITIONS AND INSTRUCTIONS

For the purposes of this CID, the following definitions and instructions apply:

A. The term "the Company" means Coventry Health Care, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.

B. The terms "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.

C. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in the possession, custody or control of the Company. The term "documents" includes, without limitation: electronic mail messages; electronic correspondence and drafts of documents; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed on computer systems; copies of documents that are not identical duplicates of the originals in that person's files; and copies of documents the originals of which are not in the possession, custody, or control of the Company.

(1) Unless otherwise specified, the term "documents" excludes (a) bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature; (b) architectural plans and engineering blueprints; and (c) documents solely relating to environmental, tax, human resources, OSHA, or ERISA issues.

(2) The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the Company should produce documents that exist in machine-readable form, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off company premises. If the Company believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with the Commission's need for documents and information, you are encouraged to discuss a possible modification to this instruction with the Commission representatives identified on the last page of this CID. The Commission representative will consider modifying this instruction to:

(a) exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from files that exist in personal computers, portable computers, workstations, minicomputers, mainframes, and servers searched by the Company;

(b) limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, or certain time periods or certain specifications identified by Commission representatives; or

(c) include other proposals consistent with Commission policy and the facts of the case.

(3) If the Company intends to utilize any De-duplication or Near-de-duplication software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media in response to this CID, or if the Company's computer systems contain or utilize such software, the Company must contact Commission representatives to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this CID.

D. The term "person" includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

E. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating, but not merely referring to.

F. The terms "and" and "or" have both conjunctive and disjunctive meanings.

G. The terms "each," "any," and "all" mean "each and every."

H. 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.

I. The term "plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.

J. The term "relevant service" means the provision of general acute care hospital services including (1) inpatient services; (2) outpatient services; (3) emergency room services; (4) gastroenterological services; and (5) diagnostic imaging and scanning services including magnetic resonance imaging ("MRI"). The relevant service encompasses the provision of hospital care for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities but excludes treatments of mental illness or substance abuse, long-term services such as skilled nursing care, and services provided by a non-employee physician or non-owned physician organizations.

K. The term "relevant area" means the area encompassing the following counties in the State of Georgia: Atkinson, Baker, Ben Hill, Berrien, Brooks, Calhoun, Chattahoochee,

Clay, Clinch, Coffee, Colquitt, Cook, Crisp, Decatur, Dooly, Dougherty, Early, Echols, Grady, Houston, Irwin, Lanier, Lee, Lowndes, Macon, Marion, Miller, Mitchell, Quitman, Pulaski, Randolph, Schley, Seminole, Stewart, Sumter, Terrell, Thomas, Tift, Turner, Webster, Wilcox, and Worth.

L. The term "Metro Atlanta" area means the area encompassing the following counties in the State of Georgia: Fulton, DeKalb, Gwinnett, Cobb, Clayton, Cherokee, Douglas, Fayette, Rockdale, Hall, Coweta, Paulding, Forsyth, and Bartow.

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

N. The term "hospital" means a facility that provides the relevant service as defined herein.

O. The term "provider" means a facility that provides any of the relevant services as defined herein, including, but not limited to, hospitals, physician group practices, or other healthcare facilities.

P. 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

Q. The term "operate" with reference to a hospital facility means to directly or indirectly own or lease the facility or unit, manage its operations on behalf of another person under a management contract, have the power to appoint the majority of the facility's governing board or body, or otherwise directly or indirectly control the facility or unit.

R. The term "relevant transaction" means and includes the proposed joinder or acquisition by the Hospital Authority of Albany - Dougherty County (the "Hospital Authority") of Palmyra Park Hospital, Inc. d/b/a Palmyra Medical Center ("Palmyra"), from HCA Inc., and all related transactions or agreements.

S. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents and/or information for each of the years from January 1, 2006, to the present. Where information is requested, provide it separately for each year. Where yearly data is not yet available, provide data for the calendar year to date. If calendar year information is not available, supply the Company's fiscal year data indicating the twelve month period covered, and provide the Company's best estimate of calendar year data.

T. This CID shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this CID produced or obtained by

the Company up to forty-five (45) calendar days prior to the date of the Company's full compliance with this CID.

U. To protect patient privacy, the Company shall mask any Sensitive Personally Identifiable Information ("PII") or Sensitive Health Information ("SHI"). For purposes of this CID, PII means an individual's Social Security Number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security Number, driver's license number or other state identification number or a foreign country equivalent, passport number, financial account numbers, credit or debit card numbers. For purposes of this CID, SHI includes medical records or other individually identifiable health information. Where required by a particular specification, the Company shall substitute for the masked information 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. Otherwise, the Company shall redact the PII or SHI but is not required to replace it with an alternate identifier.

V. Forms of Production: The Company shall submit documents as instructed below absent written consent signed by an Assistant Director of the Commission's Bureau of Competition.

(1) 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:

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

(b) Submit all other documents other than those identified in subpart (1)(a) in image format with extracted text[1] and metadata; and

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

(2) For each document submitted in electronic format, include the following metadata fields and information:

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

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[1]"Extracted text" is a term of art that refers to the underlying text of a native file that allows the native file to be converted into another searchable format.

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

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

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

(3) If the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media in response to this CID, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this CID.

(4) Submit data compilations in Excel spreadsheet or in delimited text formats, with all underlying data un-redacted and all underlying formulas and algorithms intact.

(5) Submit electronic files and images as follows:

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

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

(c) **All documents produced in electronic format shall be scanned for and free of viruses. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with this CID.**

W. All documents responsive to this CID, regardless of format or form and regardless of whether submitted in hard copy or electronic format:

(1) Shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in the Company's files and shall not be shuffled or otherwise rearranged. For example:

(a) If in their original condition hard copy documents 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

(b) If in their original condition electronic documents were maintained in folders or otherwise organized, they shall be produced in such form and information shall be produced so as to clearly specify the folder or organization format;

(2) If written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;

(3) Shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black-and-white photocopying or conversion to TIFF format of any document (*e.g.*, a chart or graph), makes any substantive information contained in the document unintelligible, the Company must submit the original document, a like-colored photocopy, or a JPEG format image);

(4) Shall be marked on each page with corporate identification and consecutive document control numbers;

(5) 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; and

(6) Shall be accompanied by an index that identifies: (a) the name of each person from whom responsive documents are submitted; and (b) the corresponding consecutive document control number(s) used to identify that person's documents, and if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that Commission representatives determine prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission representative will provide a sample index upon request.

X. If any documents are withheld from production based upon a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log (hereinafter "Complete Log") that includes each document's authors, addressees, date, a description of each document, and all recipients of the original and any copies. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full name, title, and employer or firm. Denote all attorneys with an asterisk and state the representation. The description of the subject matter shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable Commission staff, the Commission, or a court to assess the applicability of the privilege claimed. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all nonprivileged portions of any responsive document (including nonprivileged or redactable attachments) for which a claim of privilege is asserted (except where the only nonprivileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the Company that were not directly or indirectly furnished to the Company or any third-party, such as internal law firm memoranda, may be omitted from the log.

In place of a Complete Log of all documents withheld from production based on a claim of privilege, the Company may elect to submit a Partial Privilege Log ("Partial Log") for each person searched by the Company whose documents are withheld based on such claim and a Complete Log for a subset of those persons, as specified below:

(1) The Partial Log will contain the following information: (a) the name of each person from whom responsive documents are withheld on the basis of a claim of privilege; and (b) the total number of documents that are withheld under a claim of privilege (stating the number of attachments separately) contained in each such person's files. Submit all nonprivileged portions of any responsive document (including nonprivileged or redactable attachments) for which a claim of privilege is asserted (except where the only nonprivileged information has already been produced in response to this instruction), noting where redactions in the document have been made.

(2) Within five (5) business days after receipt of the Partial Log, Commission staff may identify in writing five individuals or ten percent of the total number of persons searched, whichever is greater, for which the Company will be required to produce a Complete Log in order to certify compliance with this CID.

(3) For the Company to exercise the option to produce a Partial Log, the Company must provide a signed statement in which the Company acknowledges and agrees that, in consideration for being permitted to submit a Partial Log:

(a) the Commission retains the right to serve a discovery request or requests regarding documents withheld on grounds of privilege in the event the Commission seeks relief through judicial or administrative proceedings;

(b) the Company will produce a Complete Log of all documents withheld from production based on a claim of privilege no later than fifteen (15) calendar days after such a discovery request is served, which will occur promptly after the filing of the Commission's complaint; and

(c) the Company waives all objections to such discovery, including the production of a Complete Log of all documents withheld from production based on a claim of privilege, except for any objections based strictly on privilege.

(4) The Company shall retain all privileged documents that are responsive to this CID until the completion of any investigation of the relevant transaction.

(5) The Commission will retain the right to require the Company to produce a Complete Log for all persons searched in appropriate circumstances.

Y. If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, 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.

Z. If documents 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 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 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.

AA. In order for the Company's response to this CID to be complete, the attached certification form must be executed by the official supervising compliance with this CID, notarized, and submitted along with the responsive materials.

Any questions you have relating to the scope or meaning of anything in this CID or suggestions for possible modifications thereto should be directed to Stephen Sockwell at (202) 326-2950. The response to the CID shall be addressed to the attention of Stephen Sockwell, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission's offices at 601 New Jersey Ave N.W., Washington, DC 20580. Please notify the staff listed above in advance of each such delivery.

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
**William E. Kovacic**
**J. Thomas Rosch**
**Edith Ramirez**
**Julie Brill**

## RESOLUTION AUTHORIZING USE OF COMPULSORY PROCESS IN A NONPUBLIC INVESTIGATION

File No. 111 0067

Nature and Scope of Investigation:

To determine whether the proposed acquisition by The Hospital Authority of Albany-Dougherty County and/or Phoebe Putney Health System, Inc. of Palmyra Park Hospital, Inc. from HCA, Inc. is in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; to determine whether the proposed acquisition, if consummated, would be in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, or Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; and to determine whether the requirements of Section 7A of the Clayton Act, 15 U.S.C. § 18a, have been or will be fulfilled with respect to said transaction.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq.* and supplements thereto.

By direction of the Commission.

Donald S. Clark
Secretary

Issued: February 8, 2011

United States of America
Federal Trade Commission

# CIVIL INVESTIGATIVE DEMAND

1. TO

Aetna, Inc.
C/O Anthony J. Dennis
151 Farmington Avenue
Hartford, CT 06156

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

☐ You are required to appear and testify.

| LOCATION OF HEARING | YOUR APPEARANCE WILL BE BEFORE |
|---|---|
| Federal Trade Commission<br>601 New Jersey Avenue, N.W.<br>Suite 5257<br>Washington, D.C. 20001 | Goldie Walker or other designated counsel |
| | DATE AND TIME OF HEARING OR DEPOSITION |

☒ You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

☒ You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

February 22, 2011

3. SUBJECT OF INVESTIGATION

Proposed Acquisition by the Hospital Authority of Albany-Dougherty County of Palmyra Park Medical Center, Inc. from HCA, Inc.
FTC File No. 111-0067. See the attached Resolution authorizing use of Compulsory Process.

| 4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN | 5. COMMISSION COUNSEL |
|---|---|
| Matthew Reilly, Records Custodian<br>Goldie Walker, Deputy Records Custodian | Goldie Walker, Esq.<br>(202) 326-2919 |

| DATE ISSUED | COMMISSIONER'S SIGNATURE |
|---|---|
| 2/15/11 | Edith D. |

## INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

## PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

## YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

## TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

# Form of Certificate of Compliance*

I/We do certify that all of the documents and information required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to such interrogatory or uncompleted portion and the reasons for the objections have been stated.

Signature _____

Title _____

Sworn to before me this day

_____ _____

_____
Notary Public

_____

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

**CIVIL INVESTIGATIVE DEMAND**
**ISSUED TO AETNA, INC.**
**FTC File 111-0067**

Unless modified by agreement with the staff of the Federal Trade Commission, each Specification of this Civil Investigative Demand ("CID") requires a complete search of "the Company" as defined in the Definitions and Instructions which appear after the following Specifications. If the Company believes that the required search or any other part of the CID can be narrowed in any way that is consistent with the Commission's need for information, you are encouraged to discuss such questions and possible modifications with the Commission representative identified in this CID. All modifications to this CID must be agreed to in writing.

## SPECIFICATIONS

1. Submit, for each year from 2004 to the present, all contracts now in effect or that were in effect at any time since January 1, 2004, with hospitals in the relevant area, and each physician organization under contract with the Company whose contract was negotiated by or in conjunction with any such hospital (such as, but not limited to, a hospital-owned medical group practice, or hospital-affiliated physician-hospital organization), including any amendments or modifications thereto.

2. Submit, for each hospital contract provided or identified in response to Specification 1, a description of any services associated with covered treatments or diagnoses for which payments are made to another provider, and include the identity of each such provider by each service identified.

3. Submit, for each year from 2004 to the present, all documents relating to the development or negotiation of the contracts provided or identified in response to Specification 1, including, but not limited to, communications with hospitals, internal Company decisions regarding negotiating positions and proposed and final reimbursement rates, computer spreadsheets and programs the Company uses in connection with pricing decisions, training manuals or other internal documents that describe the Company's methods and procedures for determining proposed and final reimbursement rates, planned contracts (including contracts not entered into, not yet finalized or in force, or no longer in force), and amendments or modifications to existing contracts. Also provide a description of the ways in which these documents and information sources are used in the rate-setting process; and identify the Company's specific financial and operational benchmarks and requirements that impact the determination of the Company's proposed and final reimbursement rates.

4. Submit, for each year from 2006 to the present, for each inpatient admission, or outpatient treatment episode, for any patient residing in the relevant area, and in any county in Georgia, except for those counties in the Metro Atalanta area:

    a. the identity of the hospital, healthcare facility, or physician practice at which the patient was treated, including the owner of the hospital, healthcare facility, or

physician practice, the address of the hospital, healthcare facility, or physician practice including ZIP code, and any hospital, healthcare facility, or physician practice identification number used for reimbursement purposes;

b. a unique patient identifier, different from that for other patients and the same as that for different admissions, discharges, or other treatment episodes for the same patient (to protect patient privacy, the Company shall mask personal identifying information, such as the patient's name or Social Security number, by substituting a unique patient identifier);

c. the patient's residence 5-digit ZIP code;

d. the patient's age (in years), gender, and race;

e. the patient's newborn status;

f. whether the treatment episode was inpatient or outpatient, if inpatient, the date of admission and date of discharge, and if outpatient, the date of treatment;

g. the primary associated DRG and ICD9 diagnosis and procedure codes, and any secondary DRG and ICD9 diagnosis and procedure codes;

h. whether the treatment provided was for an emergency;

i. the source of the patient (such as by referral from another hospital, or by a physician who does not admit the patient);

j. the specific name of the entity and type of health plan offered by the Company (such as HMO, POS, PPO, ASO, etc.) that was the principal source of payment;

k. for each product listed in Specification 4(j), identify whether this product is offered through a managed care contract with Medicare, Medicaid, or other public health insurance program;

l. whether the hospital, healthcare facility, or physician practice identified in response to Specification 4(a) was a participating provider under the patient's health plan and, if the patient's health plan had different tiers of participating providers, which tier the hospital, healthcare facility, or physician practice was in;

m. whether there was a capitation arrangement with a health plan, if any, covering the patient (identify the arrangement);

n. the billed charges of the hospital, healthcare facility, or physician practice, allowed charges under the patient's health plan, the amount of charges actually

paid by the health plan, whether the amount of charges actually paid by the health plan includes any adjustments under any stop-loss provisions, and any additional amounts paid by the patient;

o. any breakdown of the hospital's, healthcare facility's, or physician practice's charges by any categories of hospital services rendered to the patient (such as medical/surgical, obstetrics, pediatrics, or ICU) for which the Company provides reimbursement to the hospital, healthcare facility, or physician practice at different per diem or other rates;

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

q. the amount of any reimbursement by the Company to any physicians, separately from any reimbursement to the hospital, healthcare facility, or physician practice for any physician services associated with the admission or treatment, or for any services associated with covered treatments or diagnoses identified in Specification 4(n); and

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

5. Identify, for each hospital under contract with the Company in the relevant area since January 1, 2004, and for each such hospital each physician organization under contract with the Company whose contract was negotiated by or in conjunction with the hospital, each person who is or was responsible for the Company's negotiation of contracts with the hospital or physician organization, the health plans or products for which each such person negotiates, and the time periods of that person's responsibilities.

6. Describe, for each health insurance product (such as HMO, POS, PPO, ASO, etc.) offered by the Company in the relevant area since January 1, 2006:

a. the name of the plan as it is referred to in the Company's claims data provided in response to Specification 4;

b. the number of covered lives in the plan, stated by county, if possible;

c. the counties in which the plan is offered;

d. the hospitals and physicians that are included in the plan or are preferred providers in the plan (if the plan is tiered, describe the hospitals and physicians in each tier); and, for each physician, the physician's specialty, employer, and affiliated hospital; and

e. the services or procedures covered by the plan and, for each service or procedure:

(i) all deductibles, co-pays, or co-insurance that apply and how these differ across tiers or between preferred and non-preferred providers; and

(ii) any other inducements offered to plan patients to use certain providers.

7. Submit all documents relating to the impact of hospital and other provider price increases, or the actual or contemplated changes in the composition of a provider network, in the relevant area during the relevant time period, on the price or quality of the health plan products offered by the Company, or other persons, to employers, employees, or other customers.

8. Submit all documents relating to (a) the quality of any hospital in the relevant area, and (b) any comparisons of quality, cost, price, variety or breadth of services, or consumer preference between or among any hospitals in the relevant area.

9. Submit all documents analyzing or discussing the effect of any merger, joint venture, acquisition, consolidation, or divestiture of hospitals in the relevant area, including both the relevant transaction and other transactions, on the hospitals' prices, costs, services, quality, or any other aspect of competitive performance, including, but not limited to, documents comparing the actual cost savings or other benefits of such transactions to those previously projected, and documents discussing how such benefits were or might be achieved.

10. Submit all information described in Instruction U below relating to, and other instructions necessary for the Commission to use or interpret, the databases or other data compilations submitted in response to this CID, to the extent such documentation is not contained in documents submitted in response to this CID.

11. Submit the name(s) and title(s) of the person(s) responsible for preparing the response to this CID and a copy of all instructions prepared by the Company relating to the steps taken to respond to this CID. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given. For each Specification, identify the individual(s) who assisted in the preparation of the response, with a listing of the persons (identified by name and corporate title or job description) whose files were searched by each.

## DEFINITIONS AND INSTRUCTIONS

For the purposes of this CID, the following definitions and instructions apply:

A. The term "the Company" means Aetna, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.

B. The terms "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.

C. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in the possession, custody or control of the Company. The term "documents" includes, without limitation: electronic mail messages; electronic correspondence and drafts of documents; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed on computer systems; copies of documents that are not identical duplicates of the originals in that person's files; and copies of documents the originals of which are not in the possession, custody, or control of the Company.

(1) Unless otherwise specified, the term "documents" excludes (a) bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature; (b) architectural plans and engineering blueprints; and (c) documents solely relating to environmental, tax, human resources, OSHA, or ERISA issues.

(2) The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the Company should produce documents that exist in machine-readable form, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off company premises. If the Company believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with the Commission's need for documents and information, you are encouraged to discuss a possible modification to this instruction with the Commission representatives identified on the last page of this CID. The Commission representative will consider modifying this instruction to:

(a) exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from files that exist in personal computers, portable computers, workstations, minicomputers, mainframes, and servers searched by the Company;

(b) limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, or certain time periods or certain specifications identified by Commission representatives; or

(c) include other proposals consistent with Commission policy and the facts of the case.

(3) If the Company intends to utilize any De-duplication or Near-de-duplication software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media in response to this CID, or if the Company's computer systems contain or utilize such software, the Company must contact Commission representatives to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this CID.

D. The term "person" includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

E. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating, but not merely referring to.

F. The terms "and" and "or" have both conjunctive and disjunctive meanings.

G. The terms "each," "any," and "all" mean "each and every."

H. 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.

I. The term "plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.

J. The term "relevant service" means the provision of general acute care hospital services including (1) inpatient services; (2) outpatient services; (3) emergency room services; (4) gastroenterological services; and (5) diagnostic imaging and scanning services including magnetic resonance imaging ("MRI"). The relevant service encompasses the provision of hospital care for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities but excludes treatments of mental illness or substance abuse, long-term services such as skilled nursing care, and services provided by a non-employee physician or non-owned physician organizations.

K. The term "relevant area" means the area encompassing the following counties in the State of Georgia: Atkinson, Baker, Ben Hill, Berrien, Brooks, Calhoun, Chattahoochee,

Clay, Clinch, Coffee, Colquitt, Cook, Crisp, Decatur, Dooly, Dougherty, Early, Echols, Grady, Houston, Irwin, Lanier, Lee, Lowndes, Macon, Marion, Miller, Mitchell, Quitman, Pulaski, Randolph, Schley, Seminole, Stewart, Sumter, Terrell, Thomas, Tift, Turner, Webster, Wilcox, and Worth.

L. The term "Metro Atlanta" area means the area encompassing the following counties in the State of Georgia: Fulton, DeKalb, Gwinnett, Cobb, Clayton, Cherokee, Douglas, Fayette, Rockdale, Hall, Coweta, Paulding, Forsyth, and Bartow.

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

N. The term "hospital" means a facility that provides the relevant service as defined herein.

O. The term "provider" means a facility that provides any of the relevant services as defined herein, including, but not limited to, hospitals, physician group practices, or other healthcare facilities.

P. 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

Q. The term "operate" with reference to a hospital facility means to directly or indirectly own or lease the facility or unit, manage its operations on behalf of another person under a management contract, have the power to appoint the majority of the facility's governing board or body, or otherwise directly or indirectly control the facility or unit.

R. The term "relevant transaction" means and includes the proposed joinder or acquisition by the Hospital Authority of Albany - Dougherty County (the "Hospital Authority") of Palmyra Park Hospital, Inc. d/b/a Palmyra Medical Center ("Palmyra"), from HCA Inc., and all related transactions or agreements.

S. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents and/or information for each of the years from January 1, 2006, to the present. Where information is requested, provide it separately for each year. Where yearly data is not yet available, provide data for the calendar year to date. If calendar year information is not available, supply the Company's fiscal year data indicating the twelve month period covered, and provide the Company's best estimate of calendar year data.

T. This CID shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this CID produced or obtained by

the Company up to forty-five (45) calendar days prior to the date of the Company's full compliance with this CID.

U. To protect patient privacy, the Company shall mask any Sensitive Personally Identifiable Information ("PII") or Sensitive Health Information ("SHI"). For purposes of this CID, PII means an individual's Social Security Number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security Number, driver's license number or other state identification number or a foreign country equivalent, passport number, financial account numbers, credit or debit card numbers. For purposes of this CID, SHI includes medical records or other individually identifiable health information. Where required by a particular specification, the Company shall substitute for the masked information 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. Otherwise, the Company shall redact the PII or SHI but is not required to replace it with an alternate identifier.

V. Forms of Production: The Company shall submit documents as instructed below absent written consent signed by an Assistant Director of the Commission's Bureau of Competition.

(1) 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:

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

(b) Submit all other documents other than those identified in subpart (1)(a) in image format with extracted text[1] and metadata; and

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

(2) For each document submitted in electronic format, include the following metadata fields and information:

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

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[1]"Extracted text" is a term of art that refers to the underlying text of a native file that allows the native file to be converted into another searchable format.

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

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

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

(3) If the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media in response to this CID, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this CID.

(4) Submit data compilations in Excel spreadsheet or in delimited text formats, with all underlying data un-redacted and all underlying formulas and algorithms intact.

(5) Submit electronic files and images as follows:

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

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

(c) **All documents produced in electronic format shall be scanned for and free of viruses. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with this CID.**

W. All documents responsive to this CID, regardless of format or form and regardless of whether submitted in hard copy or electronic format:

(1) Shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in the Company's files and shall not be shuffled or otherwise rearranged. For example:

(a) If in their original condition hard copy documents 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

(b) If in their original condition electronic documents were maintained in folders or otherwise organized, they shall be produced in such form and information shall be produced so as to clearly specify the folder or organization format;

(2) If written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;

(3) Shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black-and-white photocopying or conversion to TIFF format of any document (*e.g.*, a chart or graph), makes any substantive information contained in the document unintelligible, the Company must submit the original document, a like-colored photocopy, or a JPEG format image);

(4) Shall be marked on each page with corporate identification and consecutive document control numbers;

(5) 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; and

(6) Shall be accompanied by an index that identifies: (a) the name of each person from whom responsive documents are submitted; and (b) the corresponding consecutive document control number(s) used to identify that person's documents, and if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that Commission representatives determine prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission representative will provide a sample index upon request.

X. If any documents are withheld from production based upon a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log (hereinafter "Complete Log") that includes each document's authors, addressees, date, a description of each document, and all recipients of the original and any copies. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full name, title, and employer or firm. Denote all attorneys with an asterisk and state the representation. The description of the subject matter shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable Commission staff, the Commission, or a court to assess the applicability of the privilege claimed. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all nonprivileged portions of any responsive document (including nonprivileged or redactable attachments) for which a claim of privilege is asserted (except where the only nonprivileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the Company that were not directly or indirectly furnished to the Company or any third-party, such as internal law firm memoranda, may be omitted from the log.

In place of a Complete Log of all documents withheld from production based on a claim of privilege, the Company may elect to submit a Partial Privilege Log ("Partial Log") for each person searched by the Company whose documents are withheld based on such claim and a Complete Log for a subset of those persons, as specified below:

(1) The Partial Log will contain the following information: (a) the name of each person from whom responsive documents are withheld on the basis of a claim of privilege; and (b) the total number of documents that are withheld under a claim of privilege (stating the number of attachments separately) contained in each such person's files. Submit all nonprivileged portions of any responsive document (including nonprivileged or redactable attachments) for which a claim of privilege is asserted (except where the only nonprivileged information has already been produced in response to this instruction), noting where redactions in the document have been made.

(2) Within five (5) business days after receipt of the Partial Log, Commission staff may identify in writing five individuals or ten percent of the total number of persons searched, whichever is greater, for which the Company will be required to produce a Complete Log in order to certify compliance with this CID.

(3) For the Company to exercise the option to produce a Partial Log, the Company must provide a signed statement in which the Company acknowledges and agrees that, in consideration for being permitted to submit a Partial Log:

(a) the Commission retains the right to serve a discovery request or requests regarding documents withheld on grounds of privilege in the event the Commission seeks relief through judicial or administrative proceedings;

(b) the Company will produce a Complete Log of all documents withheld from production based on a claim of privilege no later than fifteen (15) calendar days after such a discovery request is served, which will occur promptly after the filing of the Commission's complaint; and

(c) the Company waives all objections to such discovery, including the production of a Complete Log of all documents withheld from production based on a claim of privilege, except for any objections based strictly on privilege.

(4) The Company shall retain all privileged documents that are responsive to this CID until the completion of any investigation of the relevant transaction.

(5) The Commission will retain the right to require the Company to produce a Complete Log for all persons searched in appropriate circumstances.

Y. If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, 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.

Z. If documents 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 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 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.

AA. In order for the Company's response to this CID to be complete, the attached certification form must be executed by the official supervising compliance with this CID, notarized, and submitted along with the responsive materials.

Any questions you have relating to the scope or meaning of anything in this CID or suggestions for possible modifications thereto should be directed to Stephen Sockwell at (202) 326-2950. The response to the CID shall be addressed to the attention of Stephen Sockwell, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission's offices at 601 New Jersey Ave N.W., Washington, DC 20580. Please notify the staff listed above in advance of each such delivery.

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

**COMMISSIONERS:** **Jon Leibowitz, Chairman**
**William E. Kovacic**
**J. Thomas Rosch**
**Edith Ramirez**
**Julie Brill**

# RESOLUTION AUTHORIZING USE OF COMPULSORY PROCESS IN A NONPUBLIC INVESTIGATION

File No. 111 0067

Nature and Scope of Investigation:

To determine whether the proposed acquisition by The Hospital Authority of Albany-Dougherty County and/or Phoebe Putney Health System, Inc. of Palmyra Park Hospital, Inc. from HCA, Inc. is in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; to determine whether the proposed acquisition, if consummated, would be in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, or Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; and to determine whether the requirements of Section 7A of the Clayton Act, 15 U.S.C. § 18a, have been or will be fulfilled with respect to said transaction.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq.* and supplements thereto.

By direction of the Commission.

Donald S. Clark
Secretary

Issued: February 8, 2011

# EXHIBIT C

To Motion to Quash Subpoena *Duces Tecum*

# SUBPOENA DUCES TECUM

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

1. TO

Aetna, Inc.
c/o Anthony Dennis
151 Farmington Avenue
Hartford, CT 06156

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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

3. PLACE OF PRODUCTION

Federal Trade Commission
601 New Jersey Avenue NW
Washington, DC 20001

4. MATERIAL WILL BE PRODUCED TO

Stephen Sockwell, Complaint Counsel

5. DATE AND TIME OF PRODUCTION

May 16, 2013

6. SUBJECT OF PROCEEDING

In the Matter of Phoebe Putney Health System, Inc., et al., Docket No. 9348

7. MATERIAL TO BE PRODUCED

Documents & materials responsive to the attached Subpoena Duces Tecum Requests for Production

8. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

9. COUNSEL AND PARTY ISSUING SUBPOENA

Jeffrey Perry or designee
Federal Trade Commission
601 New Jersey Avenue NW
Washington, DC 20001
(202) 326-2331

DATE SIGNED

4/25/13

SIGNATURE OF COUNSEL ISSUING SUBPOENA

GENERAL INSTRUCTIONS

**APPEARANCE**

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

**MOTION TO LIMIT OR QUASH**

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

**TRAVEL EXPENSES**

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

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

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

## RETURN OF SERVICE

*I hereby certify that a duplicate original of the within subpoena was duly served:* (check the method used)

○ *in person.*

◉ *by registered mail.*

○ *by leaving copy at principal office or place of business, to wit:*

*on the person named herein on:*

April 25, 2013

(Month, day, and year)

Devon Kelly

(Name of person making service)

Litigation Support Specialist

(Official title)

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

| | | |
|---|---|---|
| **In the Matter of** | ) | |
| **Phoebe Putney Health System, Inc.**<br>**a corporation, and** | ) | |
| **Phoebe Putney Memorial Hospital, Inc.**<br>**a corporation, and** | ) | DOCKET NO. 9348 |
| **Phoebe North, Inc.**<br>**a corporation, and** | ) | |
| **HCA Inc.**<br>**a corporation, and** | ) | |
| **Palmyra Park Hospital, Inc.**<br>**a corporation, and** | ) | |
| **Hospital Authority of Albany-Dougherty County.** | ) | |

## COMPLAINT COUNSEL'S SUBPOENA *DUCES TECUM* TO AETNA, INC.

Pursuant to the Federal Trade Commission's Rules of Practice, 16 C.F.R. §§ 3.31 and 3.34, and the Scheduling Order entered by Chief Administrative Law Judge Chappell on April 4, 2013, Complaint Counsel hereby requests that Aetna, Inc. produce the following in accordance with the Definitions and Instructions set forth below:

1. Submit all contracts currently in effect or having been in effect at any time since January 1, 2011, with hospitals in the relevant area, and with each physician organization whose contract with the Company was negotiated by or in conjunction with any such hospital (such as, but not limited to, a hospital-owned medical group practice, or hospital-affiliated physician-hospital organization), including any amendments or modifications thereto.

2. Submit, for each hospital contract provided or identified in response to Specification 1, a listing of which physician services (if any) are included in the hospital's payment for an inpatient admission, and which physician services are billed separately.

3. Submit, for each year from 2011 to the present, all documents relating to the development or negotiation of the contracts provided or identified in response to Specification 1, including, but not limited to, communications with hospitals, internal Company documents or analyses relating to negotiating positions and proposed and final reimbursement rates, computer spreadsheets and programs the Company uses in connection with pricing decisions, training manuals or other internal documents that describe the Company's methods and procedures for determining proposed and final reimbursement rates, planned contracts (including contracts not entered into, not yet finalized or in force, or no longer in force), and amendments or modifications to existing contracts.

4. Submit all documents relating to the efforts or plans of any hospital in the relevant area to induce, impose, or otherwise secure, its exclusive participation in the Company's preferred provider network or the exclusion of another hospital or provider from the Company's network.

5. Submit all documents that relate to changes in hospital charges or reimbursement rates for provision of relevant services in the relevant area at any time after Phoebe Putney acquired Palmyra Park Hospital.

6. Submit all documents relating to (a) enhancements or changes in hospital quality or quality of relevant services offered by hospitals in the relevant area, (b) the transfer, relocation, limitation, diminution, or elimination of any relevant service offered at either the former Palmyra Park Hospital, currently known as Phoebe North, or Phoebe Putney Memorial Hospital, or (c) changes or shifts in the provision of, or consolidation of, relevant services provided by the former Palmyra Hospital and Phoebe Putney Memorial Hospital.

7. All documents that relate to reimbursement programs or initiatives of the Company to encourage or incentivize hospitals in the relevant area to meet standards of quality set forth by the Company.

## DEFINITIONS

1. The term "the Company" means Aetna, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.

2. The terms "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.

3. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in the possession, custody or control of the Company. The term "documents" includes, without limitation: electronic mail messages; electronic correspondence and drafts of documents; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed on computer systems; copies of documents that are not identical duplicates of the originals in that person's files; and copies of documents the originals of which are not in the possession, custody, or control of the Company.

4. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating, but not merely referring to.

5. The term "person" includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust

6. The terms "and" and "or" have both conjunctive and disjunctive meanings.

7. The terms "each," "any," and "all" mean "each and every."

8. The term "relevant service" means inpatient general acute care hospital services (*e.g.*, the provision of hospital care for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities, excluding the treatment of mental illness or substance abuse, or long-term services such as skilled nursing care), collectively and individually.

9. The term "relevant area" means the area encompassing the counties of Baker, Dougherty, Lee, Mitchell, Terrell, and Worth in the state of Georgia

## INSTRUCTIONS

I.1. All documents should be produced within 21 days of the issuance of this Subpoena.

I.2. Unless modified by agreement with Complaint Counsel, this Subpoena requires a complete search of all the files of the Company. The Company shall produce all responsive documents, wherever located, that are in the actual or constructive possession,

custody, or control of the Company and its representatives, attorneys, and other agents, including, but not limited to, consultants, accountants, lawyers, or any other person retained by, consulted by, or working on behalf or under the direction of the Company.

I.3. This Subpoena is continuing in nature and shall be supplemented in the event that additional documents responsive to this request are created, prepared, or received between the time of the Company's initial response and trial.

I.4. To protect patient privacy, the Company shall mask any Sensitive Personally Identifiable Information ("PII") or Sensitive Health Information ("SHI"). For purposes of this Subpoena, PII means an individual's Social Security Number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security Number, driver's license number or other state identification number or a foreign country equivalent, passport number, financial account numbers, credit or debit card numbers. For purposes of this Subpoena, SHI includes medical records or other individually identifiable health information. Where required by a particular request, the Company shall substitute for the masked information 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. Otherwise, the Company shall redact the PII or SHI but is not required to replace it with an alternate identifier.

I.5. Forms of Production: The Company shall submit documents as instructed below absent written consent of Complaint Counsel.

1. The Company shall encrypt any data and information before producing to Complaint Counsel. Using NIST FIPS-Compliant[1] cryptographic hardware or software modules is strongly encouraged.

   (a) For any production 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;

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

   (c) **All information produced in electronic format shall be scanned for and free of viruses. Complaint Counsel will return any infected media**

[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.

**for replacement, which may affect the timing of the Company's compliance with the Subpoena.**

2. Each submission responsive to the Subpoena 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.

3. The password for any encrypted data and information shall be provided **separately**, via email, to the representative(s) identified in the final Instruction of this Subpoena.

4. For Request 1 and to the extent any other responsive data exists electronically, provide (a) such data in delimited text or Microsoft Excel format with all underlying data un-redacted and all underlying formulas and algorithms intact; and (b) the entire file or record, including but not limited to, the data or data fields requested.

5. 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:

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

   (b) Submit all other documents other than those identified in subpart (1)(a) in image format with extracted text and metadata; and

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

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

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

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

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

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

7. All documents responsive to this Subpoena, regardless of format or form and regardless of whether submitted in hard copy or electronic format:

(a) Shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in the Company's files and shall not be shuffled or otherwise rearranged. For example:

i. If in their original condition hard copy documents 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

ii. If in their original condition electronic documents were maintained in folders or otherwise organized, they shall be produced in such form and information shall be produced so as to clearly specify the folder or organization format;

(b) If written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;

(c) Shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black-and-white photocopying or conversion to TIFF format of any

document (*e.g.*, a chart or graph), makes any substantive information contained in the document unintelligible, the Company must submit the original document, a like-colored photocopy, or a JPEG format image);

(d) Shall be marked on each page with corporate identification and consecutive document control numbers;

(e) 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; and

(f) Shall be accompanied by an index that identifies: (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that person's documents, and if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that Complaint Counsel representatives determine prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Complaint Counsel representative will provide a sample index upon request.

I.6. If any documents are withheld from production based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log that includes each document's authors, addressees, date, a description of each document, and all recipients of the original and any copies. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full name, title, and employer or firm, and denote all attorneys with an asterisk. The description of the subject matter shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable Complaint Counsel or a court to assess the applicability of the privilege claimed. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the Company that were not directly or indirectly furnished to the Company or any third-party, such as internal law firm memoranda, may be omitted from the log.

I.7. If documents 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 retention policy, but the Company has reason to believe such documents have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the request(s) to which they are responsive, and identify persons having knowledge of the content of such documents.

I.8. In order for the Company's response to this Subpoena to be complete, the attached certification form must be executed by the official supervising compliance with this Subpoena, notarized, and submitted along with the responsive materials.

I.9. Any questions relating to the scope or meaning of anything in this Subpoena or suggestions for possible modifications thereto should be directed to Stephen Sockwell at (202) 326-2950. The response to the Subpoena shall be addressed to the attention of Stephen Sockwell, Federal Trade Commission, Suite 5249, 601 New Jersey Avenue, NW, Washington, DC 20580,

## CERTIFICATION

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that this response to the Subpoena *Duces Tecum* has been prepared by me or under my personal supervision from the records of Aetna, Inc. and is complete and correct to the best of my knowledge and belief.

Where copies rather than original documents have been submitted, the copies are true, correct, and complete copies of the original documents. If Complaint Counsel uses such copies in any court or administrative proceeding, Aetna, Inc. will not object based upon Complaint Counsel not offering the original document.

_____ _____

(Signature of Official) (Title/Company)

_____ _____

(Typed Name of Above Official) (Office Telephone)

## CERTIFICATE OF SERVICE

This is to certify that on April 25, 2013, I delivered via electronic mail and Federal Express Complaint Counsel's *Subpoena Duces Tecum* to:

Aetna, Inc.
c/o Anthony Dennis
151 Farmington Avenue
Hartford, CT 06156
(860) 273-5668
DennisAJ@aetna.com

This is to certify that on April 25, 2013, I delivered via electronic mail a copy of Complaint Counsel's *Subpoena Duces* Tecum to:

Lee K. Van Voorhis, Esq.
Katherine I. Funk, Esq.
Teisha C. Johnson, Esq.
Brian Rafkin, Esq.
Jeremy Cline, Esq.
Brian Burke, Esq.
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*Counsel for Respondent*
*HCA Inc. and Palmyra Park Hospital, Inc.*

By: s/ Maria DiMoscato
Maria DiMoscato
Attorney

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

**ORIGINAL**


| | |
|---|---|
| In the Matter of<br><br>PHOEBE PUTNEY HEALTH SYSTEM, INC., and<br><br>PHOEBE PUTNEY MEMORIAL HOSPITAL, INC., and<br><br>PHOEBE NORTH, INC., and<br><br>HCA INC., and<br><br>PALMYRA PARK HOSPITAL, INC., and<br><br>HOSPITAL AUTHORITY OF, ALBANY-DOUGHERTY COUNTY,<br>Respondents. | DOCKET NO. 9348 |

**PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL**

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

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: April 21, 2011

## ATTACHMENT A

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

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

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.

2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.

3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.

4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.

5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL–FTC Docket No. 9348" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL–FTC Docket No. 9348" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

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

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

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

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

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

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

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

# EXHIBIT D

To Motion to Quash Subpoena *Duces Tecum*

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

| | | |
|---|---|---|
| In the Matter of | ) | |
| Phoebe Putney Health System, Inc.<br>a corporation, and | ) | |
| Phoebe Putney Memorial Hospital, Inc.<br>a corporation, and | ) | Docket No. 9348 |
| HCA Inc.<br>a corporation, and | ) | |
| Palmyra Park Hospital, Inc.<br>a corporation, and | ) | |
| Hospital Authority of Albany-Dougherty County | ) | |

**DECLARATION OF THOMAS WEHRLE IN SUPPORT OF MOTION TO LIMIT SUBPOENA *DUCES TECUM* SERVED ON COVENTRY HEALTH CARE OF GEORGIA, INC.**

I, Thomas Wehrle, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, states as follows:

1. I am over twenty-one years of age. The facts set forth in this declaration are within my personal knowledge, and I am competent to testify thereto. I submit this declaration in support of Coventry Health Care of Georgia, Inc. and Aetna Inc.'s Motion to Limit Subpoena *Duces Tecum*.

2. I am employed by Coventry Health Care, Inc., which is the parent company of Coventry Health Care of Georgia, Inc. ("Coventry"), as Director, Information Risk Management. I have served in this capacity for Coventry since September 2005. I have worked for Coventry Health Care for 10 years. My responsibilities include leading Coventry Health Care's network

security, system security, computer forensics, and e-discovery capabilities. In connection with my responsibilities, I am familiar with Coventry's business practices for maintaining and storing data, as well as collecting and searching documents in response to discovery requests and subpoenas.

3. I have the following certifications: GIAC Information Security Professional, Certified Digital Media Collector, Certified Digital Forensic Examiner, Certified Computer Crimes Investigator, and Project Management Professional. In addition, I am a fully-badged and credentialed Special Agent with the U.S. Air Force Office of Special Investigations.

4. I have reviewed the Subpoena *Duces Tecum* dated April 26, 2013 served on Coventry Health Care of Georgia (the "Subpoena") by Respondents Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., and Hospital Authority of Albany-Dougherty County (collectively, "Phoebe").

5. In my role at Coventry Health Care, I supervised Coventry's identification and production of documents in response to the Federal Trade Commission's Civil Investigative Demand issued in this matter in February, 2011 (the "CID"). Therefore, I am familiar with Coventry's efforts thus far to identify and produce documents in this matter.

6. Coventry collected and produced 169 megabytes of data totaling 200 digital files in response to the CID. The data collected and produced consists of medical claims, the Coventry Health Care of Georgia Provider Directory, benefit plan data, and geographical area factor analysis for the State of Georgia.

7. The Subpoena, as drafted, is extremely broad and seeks a huge volume of information. To comply with the Subpoena as written, Coventry would likely be required to review and, if responsive, produce millions of pages of documents across 11 departments or

areas at Coventry. I understand that Coventry's Network Operations department has 20 custodians alone with potentially responsive documents. In addition, there are numerous departmental files and shared drives and databases from which to collect, search, and process data.

8. The Subpoena seeks information over a five-year time period and would impose an extraordinary burden on Coventry's operational, administrative, and financial resources. With the date range proposed, potentially responsive documents would have already been archived to magnetic media and stored off-site making the retrieval, searching, and production of this data unreasonably burdensome.

9. Extrapolated from the Network Operations department's universe of potentially responsive documents and the number of custodians potentially involved, Coventry estimates that the collection would consist of approximately 2 terabytes of data. From the 2 terabytes of data collected, duplicate files would be removed and the data would be indexed. The harvesting of potentially responsive data would yield approximately 300 gigabytes of data that would then have to undergo attorney review. One gigabyte of data is roughly equivalent to 15,000 to 20,000 documents. For *just* the 20 likely custodians in the Network Operations department *alone*, this harvesting effort would take approximately 296 hours, costing Coventry approximately $74,000 or more.

10. In another document review involving a similar volume of data, Coventry expended 256 person hours to complete the collection, processing, searching, and exporting of the data. The cost of this effort was $64,000.

11. Once harvesting for Coventry-wide custodians was complete, Coventry would then have to expend between 75,000 and 100,000 person-hours (assuming an aggressive pace of

one document reviewed per minute) to review these documents for responsiveness and privilege, costing between approximately $3.75 million and $5 million (assuming a conservative $50 per person-hour rate).

12. The Subpoena requests production within three weeks of receipt. I understand that the deadline was extended to May 28, 2013. However, even with the one-week extension, it would be impossible for Coventry to collect, process, review for responsiveness, privilege, and confidentiality, and produce all of the documents requested in the Subpoena within the time allotted, given the number of person-hours required to harvest and then review and produce these documents, as set forth above.

13. Moreover, because much of the information requested in the Subpoena may contain sensitive personal health or identifying information, Coventry will need to protect the confidentiality of the documents it produces by de-identifying some portion of its production. Such protective measures will add to the financial, administrative, and operational costs of complying with the Subpoena.

14. Based on my experience in information risk management, the principles and burdens described above would apply as a general matter to Aetna as well since I understand we have similar organizational structures—albeit with potential variations in scale—given that Aetna recently acquired Coventry but has not yet integrated the two entities' data systems.

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

Executed on May 17, 2013.

Thomas Wehrle

# EXHIBIT E

To Motion to Quash Subpoena *Duces Tecum*

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

| | | |
|---|---|---|
| In the Matter of | ) | |
| Phoebe Putney Health System, Inc.<br>a corporation, and | ) | |
| Phoebe Putney Memorial Hospital, Inc.<br>a corporation, and | ) | Docket No. 9348 |
| HCA Inc.<br>a corporation, and | ) | |
| Palmyra Park Hospital, Inc.<br>a corporation, and | ) | |
| Hospital Authority of Albany-Dougherty County | ) | |

**DECLARATION OF JOSEPH ECKERT IN SUPPORT OF MOTION TO LIMIT THE SUBPOENA *DUCES TECUM* SERVED ON COVENTRY HEALTH CARE OF GEORGIA, INC.**

I, Joseph Eckert, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, states as follows:

1. I am over twenty-one years of age. The facts set forth in this declaration are within my personal knowledge, and I am competent to testify thereto. I submit this declaration in support of the Motion to Limit the Subpoena *Duces Tecum* served on Coventry Health Care of Georgia, Inc. ("Coventry").

2. I am employed by Coventry as a Vice President of Network Operations. I have served in this capacity for Coventry since November, 2008. I have worked for Coventry for approximately 4.5 years. My responsibilities for Coventry include contracting, provider relations, and contract implementation for provider networks that provide services to the

company's product offerings in the state of Georgia: commercial group and individual HMO/POS products, Medicare Advantage, Coventry National PPO business, and First Health rental business.

3. I have reviewed the Subpoena *Duces Tecum* dated April 26, 2013 served on Coventry (the "Subpoena") by Respondents Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., and Hospital Authority of Albany-Dougherty County (collectively, "Phoebe"). In connection with my responsibilities, I am familiar with Coventry's business practices and organization and have knowledge regarding the scope of and burden imposed by the Subpoena.

4. The Subpoena is extremely broad and seeks a huge amount of information. The Subpoena, as drafted, would require Coventry to cull from and review tens of thousands of pages of documents across 11 departments or areas at Coventry, including Network Operations, Underwriting, Actuarial, Medical Management, Marketing, Finance, Sales, Product Development, Information Technology, and Medical Economics. The Network Operations department alone has at least 20 employees whose files would need to be searched. The enormous amount of information sought for a five-year time period would impose an extraordinary financial and operational burden on Coventry's resources.

5. For example, Document Request No. 10 requests that Coventry produce:

> All documents relating to the basis upon which (i) employers select or are perceived to select among payors or health plans, (ii) enrollees select or are perceived to select among payors or health plans, or (iii) Your Company or any other payor offers different reimbursement rates to health care facilities based on the quality of care provided at that facility.

6. This request is extremely subjective and seeks production of *all documents* in Coventry's possession that relate in any way to how employers and enrollees select or are

perceived to select among payors or health plans, and how Coventry or any other payor offers different reimbursement rates to health care facilities in the entire Geographic Area. Coventry does not track this information in a systematic or comprehensive manner and, thus, the effort required to compile this information would be immense.

7. Even more burdensome, Document Request No. 13 seeks:

> All documents relating to whether [Coventry] passes on, would pass on, or has passed on, increases or reductions in hospital reimbursement rates, including by Phoebe or Palmyra, to health plan members and/or subscribers.

8. This request is extremely broad and seeks production of *all documents* in Coventry's possession relating to expansive subject matter, including pricing exercises and analyses regarding trends, unit costs, utilization, and discounts. It also encompasses any change Coventry makes to any of its benefit plans. This request seeks documents from custodians in numerous departments such as Network Operations, Actuarial, Underwriting, and Marketing, among others.

9. Document Request No. 1 is similarly broad, seeking all contracts with any health care facility in the State of Georgia, and any document relating to any such contract or negotiations. Every document in our Network Operations department, among other departments, would be potentially responsive.

10. Document Request No. 9 seeks "all proposals . . . that discuss any health care facility or hospital located in the Geographic Area." Responding fully to this request as drafted would require collecting, reviewing, and producing any formal or informal proposals submitted to any potential client. To illustrate the volume of data, our Commercial group's Sales department issues 1800 quotes each month.

11. These 4 requests are illustrative of the burden imposed by all 19 of Phoebe's document requests. Making matters worse, the Subpoena demands production of all responsive documents within three weeks of receipt. I understand that Phoebe has extended that deadline to May 28, 2013. Even with the extension, given the volume and nature of the information requested, it would be all but impossible for Coventry to collect, review, and produce all of the documents requested within this time frame.

12. Notwithstanding the burden placed on Coventry by the Subpoena, Coventry has agreed to collect, review, and produce a more narrow set of responsive documents. In response to Request No. 1, Coventry has agreed to produce the working contract files for Phoebe Putney Memorial Hospital and Palmyra Park Hospital maintained by the Coventry representative responsible for contracting with these hospitals (Jerry Welch, Director, Network Development).

13. In response to Request Nos. 2, 5, and 12 Coventry will produce Primary Care Assessment Tool ("PCAT") reports from 2008 to 2012. These documents are directly responsive because the PCAT is an economic modeling tool used by Coventry to determine the cost impact of contract reimbursement changes at a particular hospital. They are most often used to evaluate the impact of proposed reimbursement changes to existing rates for a particular hospital. Coventry sometimes compares rates of two competing hospitals in order to determine the cost position of each. For example, claims incurred at one hospital will be modeled against a competing hospital in order to try to determine a relative cost difference between the two facilities.

14. Coventry has also agreed to produce Medical Expense Review ("MER") Reports from 2008 to 2012, which are responsive to Request Nos. 6 and 12. Coventry produces MER Reports on an annual, and sometimes quarterly, basis. The reports are directly responsive to the

Subpoena because they track year-over-year unit cost and utilization trends by a number of medical cost categories, including facility, physician, ancillary providers, and pharmacy. The company uses these reports to highlight outlier changes in unit cost or utilization.

15. In response to Request No. 11, Coventry has agreed to produce individual claim level information for inpatient and outpatient treatment episodes from 2011 to the present for its commercial HMO/POS members.

16. In response to Request No. 16, Coventry has agreed to produce all contracts which include or included a most-favored-nation clause within the time frame specified in the Subpoena.

17. Lastly, in response to Request No. 19, Coventry has agreed to produce its HMO/POS commercial group, insured and ASO, and individual membership, and Medicare membership information for the counties in Georgia within the "Geographic Area" in the Subpoena.

18. In addition to the documents Coventry has agreed to produce as described above, Coventry produced documents to the FTC in response to a February 2011 Civil Investigative Demand in this matter. Those documents include:

a. Coventry's contracts with hospitals in the Albany, Georgia market since January 1, 2004;

b. Documents used to develop or negotiate rates in the Albany market;

c. Individual claim level information for inpatient and outpatient treatment episodes for each year from 2007 to 2010 for Coventry's commercial members in hospitals in the "relevant area" in the CID, which encompasses numerous counties in Georgia;

d. HMO/POS plan designs offered to customers, counties in which the plan designs were offered, and a summary of preferred providers;

e. Membership by county, product type, and year; and

f. Documents used to set rates and area factors.

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

Executed on May 17, 2013.

Joseph Eckert

# EXHIBIT F

To Motion to Quash Subpoena *Duces Tecum*

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

| | | |
|---|---|---|
| In the Matter of | ) | |
| Phoebe Putney Health System, Inc.<br>a corporation, and | ) | |
| Phoebe Putney Memorial Hospital, Inc.<br>a corporation, and | ) | Docket No. 9348 |
| HCA Inc.<br>a corporation, and | ) | |
| Palmyra Park Hospital, Inc.<br>a corporation, and | ) | |
| Hospital Authority of Albany-Dougherty County | ) | |

**DECLARATION OF ANTHONY J. DENNIS IN SUPPORT OF MOTION TO LIMIT THE SUBPOENA *DUCES TECUM* SERVED ON AETNA INC.**

I, Anthony J. Dennis, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, do hereby state as follows:

1. I am over twenty-one years of age. The facts set forth in this declaration are within my personal knowledge, and I am competent to testify thereto. I submit this declaration in support of the Motion to Limit the Subpoena *Duces Tecum* dated April 26, 2013 ("Subpoena") served on Aetna Inc. ("Aetna") by Respondents Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., and Hospital Authority of Albany-Dougherty County (collectively, "Phoebe").

2. I am employed by Aetna as Counsel in the Law & Regulatory Affairs department. I have served in this capacity for Aetna since December 4, 1989. I have worked for Aetna's Law

& Regulatory Affairs department for over twenty-three years. My responsibilities for Aetna include antitrust legal counseling to all areas of Aetna. I have served as Aetna's sole in-house antitrust lawyer since approximately 1993.

3. I graduated from Northwestern University School of Law with a J.D. in 1988 and received a B.A., cum laude, in 1985 from Tufts University. I was admitted to the Connecticut bar in the autumn of 1988 and was also subsequently admitted to practice before the U.S. District Court for the District of Connecticut and, in November, 1989 was admitted to the District of Columbia bar. I am presently an inactive member of the District of Columbia bar.

4. During the course of my legal career, I have been a speaker on antitrust healthcare issues at various bar association and trade association events, including speaking in the mid-1990s on antitrust healthcare issues at a National Health Lawyers Association ("NHLA") legal conference in Washington, D.C., and serving as a speaker at The Antitrust Healthcare Forum held annually in Chicago, among other events. I am also the author of twenty-two law review and other legal articles, the vast majority of which are on antitrust healthcare topics, and am co-author of two antitrust legal treatises. Having spent almost my entire legal career working in the health insurance industry, I am highly familiar with how healthcare delivery and healthcare insurance products, services and markets operate and with how antitrust laws, regulations and principles apply to particular features of the healthcare delivery and health insurance marketplace.

5. As part of my job responsibilities as Aetna's antitrust counsel, I am responsible for advising Aetna on this and other antitrust subpoenas, civil investigative demands ("CIDs"), requests for interviews or testimony which Aetna receives every year. I handle approximately

thirty to thirty-five antitrust investigations or matters of this type per year. Almost all of these begin as inquiries or requests for a voluntary telephone interview which we receive from the Federal Trade Commission, U.S. Department of Justice Antitrust Division and/or various state attorneys general. Some of these matters go dormant after one or more telephone interviews. Other inquiries ripen into formal antitrust investigations in which Aetna receives one or more subpoenas and/or CIDs demanding data and documents. And some matters I work on each year actually go to trial as is the present case. Having worked on such antitrust investigations for all of my 23 years as an antitrust lawyer for Aetna, I have a vast amount of past experience and historical knowledge which enables me to assess the reasonableness, burdensomeness and relevancy of particular subpoenas and CIDs and Specifications contained therein.

6. I have reviewed the Subpoena. In my view, the Subpoena is unreasonable, overbroad and burdensome to Aetna (which, as a result of Aetna's recent acquisition, now includes all of Coventry Health Care, Inc.).

7. The Subpoena is extremely broad and seeks a huge amount of information. The vast, multi-state geographic scope of the Subpoena is, in my judgment, unnecessary and irrelevant to the present dispute. Thus, I believe the vast geographic scope of the Subpoena to be unreasonable, burdensome and irrelevant.

8. Almost all of the Specifications in the Subpoena ask for "all documents" as opposed to "documents sufficient to show" which imposes a huge burden upon Aetna since local and regional heads of various departments including Networks, Sales, Underwriting, Actuarial and the various product segment heads each report up to a regional manager, each of whom reports up to a national head of their particular department. As a consequence, an

email and document search would be a vast undertaking involving many Aetna business people at a local, regional and, ultimately, national level within Aetna, and would be both burdensome and unrealistic to achieve within the imposed return date.

9. I contacted Phoebe's counsel, Mr. John Fedele of the law firm Baker & McKenzie, and attempted through multiple conference calls to negotiate in good faith several modifications to the Subpoena. I spoke with Mr. Fedele and proposed several modifications to the Subpoena during telephone conversations, which took place on the following dates and times. All times expressed are Eastern Standard Time: Monday, May 6, 2013 from 2:45-3:30 p.m.; Tuesday, May 7, 2013 from 5-6 p.m.; Wednesday, May 8, 2013 from 9-10 p.m. I apprised Mr. Fedele of my views, the number of different Aetna business managers and staff locally, regionally, and nationally who would need to be involved, and recommended that the Subpoena's definition of "Geographic Area" conform to the FTC's definition as set forth in the FTC's own document requests to Aetna. He rejected any proposed narrowing of the Geographic Area as defined in the Subpoena.

10. I also confirmed with Mr. Fedele during the course of our Monday, May 6th conference call that Phoebe had received a copy of Aetna's complete and entire data and document production to the FTC in response to the FTC's 2011 CID. In response to the 2011 CID, Aetna produced a large volume of data and documents, which included:

a. Aetna's contracts and associated contract negotiation and correspondence files with hospitals in the Albany, Georgia market and surrounding Georgia counties since January 1, 2004;

b. Documents used to develop or negotiate rates in the Albany, Georgia market and surrounding Georgia counties;

c. Individual claim level information for inpatient and outpatient treatment episodes for each year from 2008 to January, 2011 for Aetna's commercial members in hospitals in the "relevant area" as defined in the FTC's February, 2011 CID, which include the Albany, Georgia market and surrounding counties in Georgia;

d. Health plan designs offered to customers, counties in which the plan designs were offered, and a summary of preferred providers;

e. Membership by county, product type, and year; and

f. Documents used to set rates and area factors.

11. Mr. Fedele confirmed that Phobe had received Aetna's 2011 CID production. I also asked Mr. Fedele if Phoebe had received a copy of Mr. Cary Goldenthal's declaration to the FTC. Mr. Goldenthal is Aetna's network market head for the relevant portions of Georgia in which Respondents operate. Mr. Fedele confirmed that Phoebe had a copy of Mr. Goldenthal's signed declaration which they had received from the FTC. During our conference call on Tuesday, May 7th, Mr. Fedele stated that Phoebe was unwilling to narrow the geographic scope of the Subpoena. I again informed him that Mr. Goldenthal and his team were not responsible for geographic areas outside of southwest Georgia and that the broad nature of the Subpoena would mean the involvement of approximately twenty or more people at Aetna in my estimation and view. This is unrealistic and burdensome, especially given the May 21 deadline.

Mr. Fedele agreed on Wednesday, May 8th to extend the deadline to May 28th. This is still a very tight and unrealistic deadline for such a broad and burdensome document demand.

12. During the course of the above-mentioned conference calls I also informed Mr. Fedele that we would produce to him Aetna's responsive data and documents for Specifications 11 and 19 of the Subpoena which were limited geographically to the State of Georgia in the Subpoena.

13. I reiterated that if he could narrow the geographic scope of the rest of the Subpoena and align the Subpoena as much as possible with the CID and the Subpoena served on Aetna by the FTC on April 25, 2013 (the "FTC Subpoena"), it would be extremely helpful given the deadline imposed. I again confirmed with him that they had a copy of Aetna's complete and entire 2011 CID production to the FTC and also confirmed that Mr. Fedele was aware of the FTC Subpoena. He stated he was aware of Aetna's 2011 CID production and aware of the FTC Subpoena, but that Phoebe needed all the information requested as originally stated in the Subpoena and they would not agree to any modifications. We discussed a designated custodian search, but that ended up being unworkable because of the way in which Aetna divides its functions and areas of responsibility which is segmented in nature thus eliminating the possibility of identifying and designating one or two individuals within Aetna for such a search.

14. These extensive one-on-one negotiations with Mr. Fedele did not yield any progress or reveal any flexibility or reasonableness in the approach Phoebe has taken in issuing this Subpoena. The only concession Aetna was able to obtain was an oral extension of the May 21st due date to May 28th.

15. During the course of the above-mentioned conference calls, I also informed Mr. Fedele that Phoebe would be deposing Mr. Goldenthal on May 16th and thus would have ample opportunity to probe Aetna's perspective concerning this merger. I stated that the deposition of Mr. Goldenthal, along with Aetna's complete and entire production of data and documents in response to the CID and the FTC Subpoena should be sufficient. Mr. Fedele disagreed and reiterated that the Subpoena really needed to remain "as is" without modification.

16. After the closing of Aetna's acquisition of Coventry had taken place, the Aetna and Coventry legal teams got together by phone, and it was decided that Ms. Kerry Mustico of Crowell & Moring and I would ask for one more teleconference with Mr. John Fedele in a last-ditch effort and attempt to see if there was truly no way that the Subpoena issued to Aetna and the identical subpoena issued to Coventry could not be meaningfully narrowed. Ms. Mustico and I spoke to Mr. Fedele at 11 a.m. on Thursday, May 16, 2013. Mr. Fedele said he would debrief with his co-counsel who took Mr. Goldenthal's deposition that day and would contact us by Friday morning to provide Phoebe's final answer to Aetna's and Coventry's requests for modification. During the course of this conference call, Ms. Mustico and I gave Mr. Fedele advance notice that if Phoebe could not reduce in a meaningful way the burden imposed by the Subpoena, Coventry and Aetna would be forced to file a motion to limit on Friday, May 17th.

17. As I made clear to Mr. Fedele, Aetna is willing to produce documents responsive to Request Nos. 11 and 19. Phoebe also has the benefit of the large volume of relevant data and documents Aetna produced in response to the CID, as described above. In addition, Phoebe will receive a copy of Aetna's production in response to the FTC Subpoena. In contrast to the Subpoena, the FTC's definition of "relevant area" consists of six counties in Georgia—

Baker, Dougherty, Lee, Mitchell, Terrell and Worth. Aetna finds this geographic definition to be reasonable. Consisting of only seven Specifications, the FTC Subpoena essentially requests an update of previously provided contracts and other materials since January, 2011 to ensure that the FTC (and, therefore, Phoebe) has the latest contract addenda and other relevant materials since the CID production. Aetna and the FTC have agreed to a modified return date of Wednesday, May 22, 2013. Aetna is in the midst of this production to the FTC and a copy will be provided to Phoebe. Lastly, Phoebe has the benefit of Mr. Goldenthal's deposition as discovery from Aetna.

18. At 12:11 a.m. on Friday, May 17, 2013, Ms. Kerry Mustico of Crowell & Moring and I received an email from Mr. Fedele setting forth modifications to the Subpoena which he was willing to offer at this time. While Phoebe was willing to limit a number of the Subpoena Specifications to the geographic area set forth in the FTC's complaint, this was not true for all Specifications thus leaving us with the original problem of having to engage in a burdensome email and document search, retrieval, review, and production across a multi-state region involving managers and employees from a host of departments at the local, regional and national levels of the now-combined Aetna/Coventry organization. Both Aetna and Coventry have a segmented Sales force with different sales heads for specific product lines. Further, both Aetna and Coventry are organized along departmental lines by product and/or function so that there are entirely different staffs involved for areas like Networks, Sales, Underwriting, Actuarial, IT, Medical Economics and so forth. Each of these departments is organized in a reporting chain which runs from the local market to a regional market head to a national head of that department.

19. Mr. Fedele left intact the original scope of Specification 10 of the Subpoena. This would involve having to search the files of our respective Sales operations which are organized by product (i.e., separate Sales person depending upon product) and by department (local Sales reports to regional who reports to national head of Sales for that product).

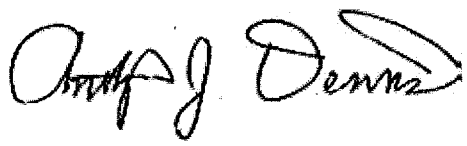
20. Another illustration of Phoebe's unwillingness to narrow in a meaningful way the scope of the Subpoena is the fact that Specifications 1 and 2 of the Subpoena were left intact without proposed modification. Specification 1 asks for production of all health care facilities contracts we have in the State of Georgia. Specification 2 basically asks for production of all the associated contract negotiation emails, records, and files for all of said health care facilities contracts we have in the State of Georgia. Specification 1 is a large production involving several network managers and staff. Specification 2 involves searching the email files and hard copy files of all network managers and staff who negotiated, dealt with, or had any contact with any or all of said health care facilities in the entire State of Georgia.

21. I would also note that Phoebe left Specification 12 of the Subpoena intact without modification. This asks for "[a]ll documents relating to studies, analyses, or comparisons of hospital reimbursement rates in the Geographic Area, including any studies, analyses, or comparisons of the reimbursement rates of hospitals in the Geographic Area to hospitals outside the Geographic Area." The "Geographic Area" is the original multi-state region described in Phoebe's Subpoena, without modification. Specification 12 asks for all such responsive documents existing within this multi-state region as well as all such documents which may exist outside this multi-state geographic region if any comparative hospital analyses were done which compared hospital reimbursement rates of hospitals inside the multi-state

geographic region to any such hospital facility outside the multi-state geographic area. So, Specification 12 is truly unlimited as to geographic scope as it requires a nationwide analysis to confirm whether or not we have any responsive documents involving a comparison of any hospital facility within the Subpoena's multi-state region to any hospital facility outside the Subpoena's multi-state region. This involves a large email search of many employees across parts of our entire organization.

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

Executed this 17th day of May, 2013.



Anthony J. Dennis