

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
) Plaintiff,) Civil Action No. C-94-1023
)
vs.) Hon. Michael J. Melloy
)
MERCY HEALTH SERVICES and)
FINLEY TRI-STATES HEALTH)
GROUP, INC.,)
)
Defendants.)

UNITED STATES' SECOND REQUEST
FOR ADMISSIONS/PROPOSED STIPULATIONS

Plaintiff submits the statements that appear in Exhibit A pursuant to Fed. R. Civ. P. 36. Plaintiff requests that defendants admit and stipulate to each of these statements for purposes of this case. To the extent defendants do not unqualifiedly admit any such statement, then as required by Rule 36, defendants "shall specifically . . . set forth in detail the reasons why [you] cannot truthfully admit or deny the matter." The deadline for your response is August 20, 1994.

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Dated: July 22, 1994

EXHIBIT A

Table Of Conventions

DRHS:	The proposed combined entity of Finley and Mercy.
Finley:	The Finley Hospital.
Mercy:	Mercy Health Center.
Third-party payer:	A person or entity that pays for health care services on behalf of consumer- patients, including traditional indemnity health care insurers, managed care plans, the federal Medicare program and the Medicaid programs of the States of Iowa, Illinois, and Wisconsin.
Managed care plan:	A third-party payer, such as Preferred Provider Organizations ("PPOs") and Health Maintenance Organizations ("HMOs"), which operates as a group purchaser of health services, including acute care inpatient hospital services, and which tries to reduce the health care costs of its enrollees through a variety of measures, including utilization review of its enrollees' use of health care services, and through the negotiation of contracts with hospitals to provide the services needed by its enrollees at preferential rates that are less than the stated full charges of the contracting hospitals.
The seven small rural hospitals:	Galena-Stauss Hospital in Galena, Illinois; Southwest Health Center in Platteville, Wisconsin; Lancaster Memorial Hospital in Lancaster, Wisconsin; Delaware County Memorial Hospital in Manchester, Iowa; Jackson County Public Hospital in Maquoketa, Iowa; Guttenberg Memorial Hospital in Guttenberg, Iowa; and Central Community Hospital in Elkader, Iowa.

The proposed combination:

The so-called "partnership" of Mercy and Finley to be formed through creation of DRHS, which is the subject of the Government's antitrust challenge in this lawsuit.

General acute-care inpatient hospital care services:

Services that are needed by patients whose medical conditions require their hospitalization overnight or longer, which include: room and board; medical/surgical services; monitoring and observation; nursing services; and laboratory, x-ray, and other support services.

1. In advertising to the general public, hospitals do not advertise prices for inpatient acute-care services.
2. In advertising to the general public, Mercy has not advertised prices for inpatient acute-care services.
3. In advertising to the general public, Finley has not advertised prices for inpatient acute-care services.
4. Hospitals do not advertise prices for inpatient acute-care services in advertising to the general public because it is difficult to make price information understandable to members of the public.
5. Managed care plan enrollees who are concerned about price compare prices between health care plans, not prices between hospitals.
6. Managed care plan payments as a percentage of Mercy's revenues, including inpatient care revenues, are expected to continue increasing in the future.
7. Managed care plan payments as a percentage of Finley's revenues, including inpatient care revenues, are expected to continue increasing in the future.
8. The percentage of patients admitted to Mercy for inpatient care who are covered by a managed care plan is expected to continue increasing in the future.
9. The percentage of patients admitted to Finley for inpatient care who are covered by a managed care plan is expected to continue increasing in the future.
10. No final decision has been made as to which, if any, clinical programs at Mercy or Finley will be consolidated after the proposed combination occurs.
11. No final decision has been made as to whether the following program at Finley or Mercy

will be consolidated after the proposed combination occurs:

- a. Cardiovascular
 - b. Oncology
 - c. Women's & Child Health
 - d. Emergency/Trauma
 - e. Obstetrics
 - f. Orthopedics/Neurology
 - g. Surgery
 - h. Anesthesiology
 - i. Administration
 - j. Human Resources
 - k. Public Relations/Marketing
 - l. Maintenance/Bio-Med
 - m. Billing
 - n. Magnetic Resonance Imaging Program.
12. At the speed limit under normal driving conditions, the driving time from Dubuque to Central Community Hospital in Elkader, Iowa is at least:
- a. an hour
 - b. 1 hour, 15 minutes
 - c. 1½ hours.
13. At the speed limit under normal driving conditions, the driving time from Dubuque to Delaware County Memorial Hospital in Manchester, Iowa is at least:
- a. 40 minutes

- b. 50 minutes
 - c. 55 minutes
 - d. 60 minutes.
14. At the speed limit under normal driving conditions, the driving time from Dubuque to Galena-Stauss Hospital in Galena, Illinois is at least 15 minutes.
15. At the speed limit under normal driving conditions, the driving time from Dubuque to Guttenberg Municipal Hospital in Guttenberg, Iowa is at least:
- a. 40 minutes
 - b. 45 minutes
 - c. 50 minutes
 - d. 55 minutes.
16. At the speed limit under normal driving conditions, the driving time from Dubuque to Jackson County Public Hospital in Maquoketa, Iowa is at least:
- a. 30 minutes
 - b. 35 minutes.
17. At the speed limit under normal driving conditions, the driving time from Dubuque to Lancaster Memorial Hospital in Lancaster, Wisconsin is at least:
- a. 30 minutes
 - b. 35 minutes
 - c. 40 minutes.
18. At the speed limit under normal driving conditions, the driving time from Dubuque to Southwest Health Center in Platteville, Wisconsin is at least:
- a. 30 minutes
 - b. 35 minutes
 - c. 38 minutes.

19. DRHS' Board of Directors will be required to sign a conflict of interest agreement in which they will agree to disclose annually any conflicts they may have.
20. DRHS' Board of Directors will be required to agree each year to support and work towards Mercy's goals and values.
21. DRHS' Board of Directors will be required to abstain from a Board vote where they have a conflict of interest.
22. An authorized representative of Mercy has stated that it is speculation to make hospital budget projections beyond three years.
23. An authorized representative of Mercy has stated that it is speculation to make projections about efficiencies from the proposed consolidation beyond a three-year period.
24. Defendants have no present plans to make DRHS into a tertiary care hospital.
25. An authorized representative of Mercy has stated that managed care plans use financial incentives to pressure hospitals to be as efficient as possible.
26. An authorized representative of Mercy has stated that managed care plans leverage Mercy against other hospitals to obtain lower rates for hospital services.
27. Hospitals outside Dubuque are not as convenient as Mercy and Finley for Dubuque residents.
28. An authorized representative of Finley has stated that one significant reason Dubuque residents seek hospital services in Cedar Rapids, Iowa City, or Madison is that they need tertiary or specialized services not available at Finley or Mercy.
29. Mercy's Board of Directors has not changed a price recommendation of Mercy's finance committee in the past three years.
30. Finley has made efforts in the last three years to attract patients away from Mercy.
31. Finley has advertised its advantages over Mercy to try to attract patients away from Mercy.
32. Finley has done a patient origin study which focuses on Mercy and Finley.
33. If Finley's patient origin studies show a shift in patients to Mercy from Finley, then Finley would redirect its public relations and marketing efforts to gain back the patients.

34. An authorized representative of Finley has stated that there is no overcapacity at Finley or Mercy.
35. Of the physicians with active privileges at Finley, the one located furthest away is in East Dubuque, about five miles away.
36. Mercy is Finley's principal rival for patients.
37. Finley and Mercy have made public statements to the effect that travelling to obtain health care is a concern for patients.
38. Finley has given car seats to Obstetrics patients only because Mercy has done the same thing.
39. There are no present plans for the proposed combination to add additional services or upgrade any particular services.
40. No proof has been submitted to Finley's Board that community-based boards of directors control hospital costs better than other types of boards.
41. Competition between hospitals drives down prices charged to managed care plans and other payers.
42. Competition between hospitals creates cost containment.
43. In the last three years, no formal request for an increase in prices charged to payers has been submitted to Finley's Board of Directors.
44. Mercy gives managed care plans discounts to attract greater volume of patients.
45. Under Finley's contracts with non-governmental payers, those payers pay a rate that is greater than Finley's costs and that subsidizes the rate paid by governmental payers. The non-governmental payers pay more than their fair share.
46. Under Finley's contracts with John Deere Heritage, a managed care plan, Deere pays a rate that is greater than Finley's costs and that subsidizes the rate paid by governmental payers. Heritage pays more than its fair share.
47. An authorized representative of Finley has described the Dubuque community as the 15-mile radius around the City of Dubuque.
48. Finley gives discounts on hospital services to managed care plans only if necessary to compete.

49. Finley does better than many hospitals in controlling its costs.
50. Within the past five years, Mercy has transferred money (in some form), not in exchange for goods or services, to an out-of-state entity or entities with which it has some corporate affiliation.
51. Within the past five years, Mercy has transferred money (in some form), not in exchange for goods and services, to Sisters of Mercy Health Corporation.
52. Mercy's transfers of money to Sisters of Mercy Health Corporation in the past five years have exceeded a total of:
 - a. \$5 million
 - b. \$7 million
 - c. \$10 million
 - d. \$12 million
 - e. \$14 million
 - f. \$16 million
 - g. \$20 million
 - h. \$25 million
 - i. \$30 million
 - j. \$35 million
 - k. \$40 million.
53. Sisters of Mercy Health Corporation is a wholly-owned subsidiary of Mercy Health Services. Sisters of Mercy Health Corporation, located in Michigan, operates several hospitals throughout the Midwest.
54. Money Mercy Health Center has saved from routine capital expenditures has been transferred to Sisters of Mercy Health Corporation.
55. Mercy and Finley have claimed in advertisements to the general public that the proposed consolidation would not deprive patients of any choices they had before the consolidation.

56. Mercy and Finley have claimed in advertisements that after the proposed consolidation, patients will still be able to choose to go to either hospital for any service they may need.
57. One of the purposes of creating DRHS is to strengthen the hospitals' position in contracting for managed care.