



III.

Discovery sought in a proceeding before the Commission must be "reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defense of any respondent." 16 C.F.R. § 3.31(c)(1); *Federal Trade Commission v. Anderson*

631 F.2d 741, 745 (D.C. Cir. 1979). However, discovery may be limited if the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive, or if the burden and expense of the discovery

The scope of the subpoena is limited to demand production only from Humana Health

of Texas, Inc. and its subsidiaries and employees

### 3. Confidential documents are discoverable

Humana asserts that the subpoena requests production of documents containing confidential and commercially sensitive information, including competitively sensitive pricing

information and Humana's proprietary analyses and trade secrets.

"The fact that discovery might result in the disclosure of competitively sensitive

produced in compliance with this Order may be designated "Confidential" or "Restricted Confidential, Attorney Eyes Only," pursuant to the Protective Order entered in this case.

In addition, [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Humana asserts that this request calls for irrelevant materials. Humana further asserts that it has already produced documents responsive to this request to the FTC. Respondent replies that a subpoena may not be avoided merely by saying the information sought is available from

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Pursuant to Commission Rule 3.31(c)(1), discovery may be limited if it is obtainable from another source that is more convenient. 16 C.F.R. § 3.31(c)(1)(i). It is more convenient for a party, Complaint Counsel, to produce documents already obtained from Humana than to request production, a second time, from Humana, a non-party.

To the extent that documents responsive to this request are relevant, Respondent may request them from Complaint Counsel. The issue presented here is distinguishable from other orders addressing whether the Commission, as a repository of documents obtained from non-parties, should be compelled to produce documents obtained from non-parties. *Cf. In re Scharina Plough Corp.* Docket 0207 (Order on American Home Products Corporation's and

which. Respondent asserts. Humana has already assembled. Respondent further asserts that

~~Humana misrepresents the statute governing information gathered by the Texas Attorney General~~

The statute governing information gathered by the Texas Attorney General in the course

of an investigation, cited by Humana, only prevents the Texas Attorney General from producing



Request Number 7: Documents concerning or relating to comparisons of the cost of physician services, hospital care, pharmacy cost, or cost of health insurance in the State of

**Texas.**

Humana asserts that this request calls for irrelevant information, specifically, it calls for comparisons relating to hospital and pharmacy costs that do not appear to be related in any way to this proceeding. In addition, Humana asserts the burden of gathering these materials

outweighs any probative value gained by NTSP. In addition, Humana asserts that the request calls for commercially sensitive business information.



Humana's request to limit Document Number 0 is granted. Humana shall produce only

sample contracts for the provision of physician services and need not produce amendments,