



UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

533152
SECRETARY

In the matter of)
)
)

Evanston Northwestern Healthcare)
Corporation,)
a corporation, and)
)

ENH Medical Group, Inc.,)
a corporation.)
)

Docket No. 9315

PUBLIC

GENERAL COMMENTS

integration of operations and improvements that ENH has made at Highland Park in the seven years since consummation of the merger as factors mitigating against the presumptive remedy of divestiture for an unlawful merger. In particular, the Commission expressed concern that certain

improvements mentioned in the earlier comment letters that have been developed and implemented

We have faced a dilemma in formulating and proposing meaningful comments on ENR's

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payments and lower coverage for MCO plan enrollees.

We have therefore evaluated ENH's proposal to determine whether there are any appropriate changes or additions that we could propose or suggest. Our proposals, suggestions

and specific comments are set forth below.

SPECIFIC COMMENTS ON ENH'S PROPOSED ORDER

ENH's proposed order includes a number of definitions and provisions that are

inconsistent with the ordering language and approach used in other Commission healthcare orders,⁵ including ENH's own consent order in this matter that settled the physician price-fixing

allegations in Court III of the Commission's Complaint (hereinafter ENH 2005 consent order) 6

information about transactions in which ENH engages that are not subject to the reporting

submission.

Comments on ENH's proposal are provided with the caveat that "Should ENH's

discount off charges or some other method, is among the terms and provisions that can be subject

to reopening and renegotiation. This is consistent with the concrete contract renegotiation process.

the basis of the total price they may be willing to pay for all of the services they are purchasing.⁸

We therefore propose a broader definition of "contract" that includes "all services provided by a contractor to a customer, whether or not the services are provided under a contract." We are proposing this change to ensure that the definition of "contract" includes all services provided by a contractor to a customer, whether or not the services are provided under a contract.

and extraction services.⁹ This change is intended to accommodate the contracting realities that

provision is consistent with the definition used in *The Maine Health Alliance v. State*

[REDACTED]

also proposed additional definitions for the terms "..." "..." and "..."

[REDACTED]

because it is at odds with general Commission practice in connection with FTC orders. As

proposed by ENH Paragraph Y provides that:

“[a]ny and all disputes between ENH and Devers with respect to Devers’ compliance

with this Order shall be solely and exclusively resolved in accordance with this section.
ENH and the Dever shall first try to settle the dispute by mediation under the Commercial

and/or order enforcement authority to a private entity.¹³ The delegation doctrine is not offended so long as the Commission retains ultimate authority and control over the decision whether or not a respondent is in compliance with an agency order. Paragraph X contains no clear standards to guide a non-agency third party in its determination whether ENH's conduct complies with the Commission's order, nor does it reserve ultimate control and authority to the Commission over this determination. We therefore propose that it be deleted from any final order.

B. Proposed New Paragraph – Prior Notice Requirement

We also propose the addition of a prior notification requirement for any future acquisitions that ENH acquires of hospitals located within the Chicago Metropolitan Area. 11

CONCLUSION

Complaint Council have not been able to identify suitable relief for ENH. 99 10/10/08

relief achievable through divestiture. We have, however, conformed ENH's proposal to the Commission's standard language and approach when issuing final orders.

We accept the Commission's decision to forego divestiture so that ENH can continue to

ATTACHMENT

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Complaint Counsel's proposed changes and additions to ENH's proposed order:

PARAGRAPH I.

Under Paragraph I., add the following definitions and make such conforming changes as are necessary throughout the order:

"Commission" means the Federal Trade Commission

"Hospital" means any human medical care facility licensed as a hospital in the state in which the facility is located

authorized representative to execute and sign Managed Care Contracts negotiated by the

ENH Negotiating Team.

In Paragraph I II, delete ENH's entire definition of "Dues" (4 lines and language) and

PARAGRAPH III.B. AND III.C.

In Paragraph III.B. and III.C., add the language bracketed in **BOLD** and delete the language that is struck out:

B. When Payors request separate negotiations for Inpatient **[Hospital]** Services at Highland

~~and only out-patient services at Highland Park.~~

Evanston and only outpatient services at Highland Park.

C. At the request of any specific Payor, the ENH Negotiating Team shall be permitted to

~~negotiate for all [Hospital] Services at all ENH Hospitals for that specific Payor for all~~

PARAGRAPH VI.D.

In Paragraph VI.D., add the language bracketed in **BOLD**:

- D. Nothing in this Order shall prevent the ENH Negotiating Team from requesting, receiving,

~~the ENH Negotiating Team from requesting, receiving, and~~ **the ENH Negotiating Team from requesting, receiving, and**

Respondent as of the date this Order becomes final, submit a verified written report to the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order;

C. In each such verified written report, include, among other things that are required from time to time, the following:

(i) a full description of the efforts being made to comply with the said Requirement

[REDACTED]

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of the Order including the following: (1) a description of the

~~IT IS FURTHER ORDERED that any and all disputes between ENH and Davona with respect~~

~~to Respondent's compliance with this Order shall be solely and exclusively resolved in~~

accordance with this section. ENH and the Payor shall first try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association

~~(AAA-A22)...~~

PRIOR NOTIFICATION PROVISION

Add the following prior notification provision to ENH's proposed order:

becomes GeoLoad continuing for ten (10) years. Respondent shall not disseminate information

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing document was served by delivering copies to:

Office of the Secretary

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