

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil Action No. C94-1023
	)	
vs.	)	Hon. Michael J. Melloy
	)	
MERCY HEALTH SERVICES and	)	<b>UNITED STATES' FIRST REQUEST</b>
FINLEY TRI-STATES HEALTH	)	<b>FOR DOCUMENT PRODUCTION AND</b>
GROUP, INC.,	)	<b>SECOND REQUEST FOR ANSWERS</b>
	)	<b>TO INTERROGATORIES</b>
Defendants.	)	

**UNITED STATES' FIRST REQUEST FOR DOCUMENT PRODUCTION  
AND SECOND REQUEST FOR ANSWERS TO INTERROGATORIES**

Pursuant to Rules 26, 33, and 34, Fed. R. Civ. P., and the Order for Expedited Discovery in this matter, the United States requests that Defendants, Mercy Health Services and Finley Tri-States Health Group, Inc., answer the following interrogatories and produce the following documents.

Pursuant to the Order for Expedited Discovery, Defendants' written responses to this Request for Document Production, and all documents responsive to this Request, to the extent not objected to, are to be produced within 10 days after service of this Request. Defendants' answers, and objections, if any, to this Request for Answers to Interrogatories are to be served within 20 days after service of this Request. All written responses, answers and documents shall be sent to Mary Beth McGee, Antitrust Division, United States Department of Justice, 555 Fourth Street, N.W., Room 9421, Washington, D.C. 20001.

## I. DEFINITIONS

1. "Agreement" means any contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons.

2. "Any" means one or more.

3. "All documents" means all documents that can be located by a reasonably diligent search of places you reasonably believe to contain such documents.

4. "Communication" means any disclosure, transfer, or exchange of information or opinion, formal or informal, however made.

5. "Document" means any written, recorded, or graphic material, whether prepared by you or any other person, that is in your possession, custody, or control, including: memoranda, reports, letters, telegrams, electronic correspondence, and other communications recorded in any form or medium; notes, minutes, and transcripts of conferences, meetings, and telephone or other communications; contracts and other agreements; statements, ledgers, and other records of financial matters or commercial transactions; notebooks and diaries; diagrams, graphs, charts, and other drawings; plans and specifications; publications; photographs; photocopies, microfilm, and other copies or reproductions; tape, disk, and other electronic recordings; and computer printouts. The term includes all drafts of a document; the original document (or a copy thereof if the original is not available); and all copies that differ in any way from the original (including as to any notations, underlinings, or other markings). The term also includes information stored in, or accessible through, computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations.

6. "Finley" means, for purposes of the Documents Requested, Finley Hospital, each of

its predecessors, successors, divisions, parents, subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and all present and former trustees, directors, officers, employees, agents, consultants, or other persons acting for or on behalf of any of them. "Finley" means, for purposes of the Interrogatories, The Finley Hospital in Dubuque, Iowa.

7. "Hospital" means any health care facility that provides, among other services, inpatient medical or surgical care.

8. "Identify" or "identity" means to state or a statement of:

- (a) in the case of a person other than a natural person, its name and principal address and telephone number.
- (b) in the case of a natural person, his or her name, employer, and business address, telephone number, and title or position; and
- (c) in the case of a communication, its date, type (e.g., telephone conversation, letter, or meeting), the place where it occurred, the identity of each person who received the communication or who was present when it was made, and the subject matter discussed.

9. "Including" means including but not limited to.

10. "Managed care plan" means a third-party payer, such as a Preferred Provider Organization (PPO) or Health Maintenance Organization (HMO), which operates as a group purchaser of health services, including acute care inpatient hospital services.

11. "Mercy" means, for purposes of the Documents Requested, Mercy Health Center, each of its predecessors, successors, divisions, parents/subsidiaries, and affiliates, each other person

directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and all present and former trustees, directors, officers, employees, agents, consultants, or other persons acting for or on behalf of any of them. "Mercy" means, for purposes of the Interrogatories, the Mercy Health Center located in Dubuque and Dyersville, Iowa.

12. "Person" means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, governmental unit, or other legal entity.

13. "Relating to" means discussing, describing, referring to, reflecting, containing, analyzing, studying, reporting on, commenting on, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

14. "Relevant time period" means the time period stated in paragraph 1 of the instructions.

15. "The transaction" means the actual or proposed consolidation of Mercy and Finley. The transaction includes the proposal to form, or actual formation of, the entities called Dubuque Area Health Care or Dubuque Regional Health System, or any planned or actual arrangement whereby Mercy and Finley would report to a common Board or Chief Executive Officer, or share or integrate any services or activities.

16. "Year" means either a calendar year or the 12-month period on which your books are based; if the latter is used in answering an interrogatory, specify the 12-month period used. "Part year" means the year 1994 to date.

17. "You" or "your company" means Mercy and Finley.

18. The singular form of a noun or pronoun includes within its meaning the plural form

of the noun or pronoun, and vice versa.

## II. INSTRUCTIONS

1. Unless otherwise specified, this Request calls for interrogatory responses and production of documents prepared, sent, received or in effect at any time after January 1, 1992.

2. You need not produce documents that you have previously produced to the Antitrust Division in response to Civil Investigative Demands in this matter. Non-identical copies of documents, as defined above, are separate documents and should be produced.

3. In responding to this Request, you must produce all documents in your possession or custody or subject to your control or otherwise available to you, regardless of whether the documents are possessed directly by you.

4. If any portion of a document is responsive to this Request, then the entire document must be produced. If any document contains privileged material, produce the entire document with the privileged material deleted. If any document cannot be produced in full for a reason other than a claim of privilege, produce the document to the extent possible and specify why you cannot produce the remainder of the document and provide any information, knowledge or belief you have concerning the unproduced portion.

5. Any document or any part of a document withheld under a claim of privilege must be preserved. For each document or part of a document that is withheld under a claim of privilege, submit a sworn or certified statement from you, your attorney or a duly authorized officer of your company in which you:

- (a) identify the document and any attachments or appendices;
- (b) identify all persons to whom copies were sent or distributed and all other persons to

whom the document or its contents were disclosed in whole or in part;

- (c) state the document's current location and the name of its current custodian;
- (d) state the basis on which privilege is claimed; and
- (e) state the number of the Request to which the document is responsive.

6. If you refuse to answer an interrogatory pursuant to a privilege, state the nature and the basis of the privilege claimed. If you are unable to answer an interrogatory fully for reasons other than a claim of privilege, submit as much information as possible and explain why your answer is incomplete.

7. Documents produced pursuant to this Request shall be produced in the order in which they appear in your files, and shall not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together shall not be separated. Documents that are in file folders or enclosures shall be produced in the original folders or enclosures. Indicate the office or division and person from whose files each document was produced. Place all documents requested by this Request in separate file folders or other enclosures bearing the name of the defendant.

8. Identify each document produced with the initials of the defendant and number each page of each document consecutively, beginning with a number series that succeeds the last series used in stamping your documents previously produced to the Antitrust Division in response to Civil Investigative Demands in this matter. These markings should appear in the lower right-hand corner of each page of each document but must not obscure the contents of any page.

9. All agreements, understandings or stipulations modifying, limiting or in any way altering your obligations under this Request must be confirmed or acknowledged in writing by the Department of Justice or one of its duly authorized representatives.

10. All questions relating to interpretations of, or compliance with this Request should be directed to Mary Beth McGee (202/307-1037) or Jesse M. Caplan (202/514-9734) at the following address: United States Department of Justice, Antitrust Division, 555 Fourth Street, N.W., Room 9421, Washington, D.C. 20001.

### III. INTERROGATORIES

1. With respect to the statement in paragraph 1 of your Answer that "Mercy and Finley compete with at least fifteen other hospitals for patients . . .," give the name of each of those fifteen hospitals and any other hospitals you contend compete with Mercy and Finley for patients.

**Answer:**

2. With respect to the statement in paragraph 2 of your Answer that "DRHS was formed specifically at the direction of the businesses who are the major purchasers of health care from Mercy and Finley," give (i) the names of the businesses, and the persons at those businesses, who so directed, and (ii) the names of the other major purchasers of health care from Mercy and Finley.

**Answer:**

3. With respect to the efficiencies and cost savings claimed in paragraphs 2 and A of your Answer, provide the most complete accounting and explanation you can to support those claims.

**Answer:**

4. With respect to the statement in paragraph 2 of your Answer that "the expected savings from DRHS . . . will substantially exceed any risk of anticompetitive harm from the formation of the partnership," give your best estimate or quantification, and the basis for your best

estimate or quantification, of the amount of anticompetitive harm resulting from the formation of the partnership.

**Answer:**

5. With respect to paragraph 5 of your Answer, do you contend that the Complaint should be dismissed or judgment entered in favor of defendants on the grounds that there is an insufficient effect on interstate commerce? **Answer:** \_\_\_\_\_. Unless your answer is an unqualified "no," meaning that you concede there is sufficient effect on interstate commerce to support the Complaint and a judgment in plaintiff's favor, explain the basis of your contention.

**Answer:**

6. With respect to the statement in paragraph 6 of your Answer "deny[ing] that 'the bulk' of hospital services are inpatient," give your best estimate, and the basis for your estimate (i.e., by revenue and patients or other basis) of the ratio of outpatient to inpatient services provided by Mercy and Finley.

**Answer:**

7. With respect to the statement in paragraph 8 of your Answer that "the major vehicles by which managed care plans are able to reduce costs do not arise from the kinds of preferential discounts described in paragraph 8 [of the Complaint]," do you concede that the preferential discounts obtained by managed care plans from Mercy and Finley result in more than \$2.5 million of annual savings to their enrollees? **Answer:** \_\_\_\_\_.

Unless your answer is an unqualified "yes," explain the basis of your answer and give your best estimate as to the amount of managed care plan enrollee savings such preferential discounts do represent. With respect to the statement in paragraph 8 of your Answer that "the major vehicles by



which managed care plans are able to reduce costs do not arise from the kinds of preferential discounts described in paragraph 8 [of the Complaint]."

**Answer:**

8. With respect to the statement in paragraph 8 of your Answer that "the major vehicles by which managed care plans are able to reduce costs do not arise from the kinds of preferential discounts described in paragraph 8 [of the Complaint], but instead arise through efforts (often cooperative efforts) between managed care plans and providers to reduce utilization and to encourage the most cost effective and high-quality use of hospital resources," provide the following: (i) the names of the managed care plans in the Dubuque area to which you were referring; (ii) your best estimate or quantification, and the basis for that estimate or quantification, of the amount of cost reductions achieved by these managed care plans from efforts "to reduce utilization and to encourage the most cost effective and high-quality use of hospital resources"; and (iii) your best estimate or quantification, and the basis for that estimate or quantification, of the amount of cost reductions achieved by these managed care plans from the kinds of preferential discounts described in paragraph 8 of the Complaint.

**Answer:**

9. With respect to the statement in paragraph 9 of your Answer that "competition among hospitals may under some circumstances reduce rates charged to managed care plans," describe as best you can the "circumstances" to which you were referring.

**Answer:**

10. With respect to the statement in paragraph 11 of your Answer that "hospitals cannot

increase prices for inpatient services without regard to the effect of such actions on the demand for their outpatient services," identify: (i) each instance in which Mercy or Finley has evaluated or analyzed the effect of such actions on the demand for their outpatient services, and (ii) all other instances of which Mercy or Finley is aware of hospitals conducting such an evaluation or analysis.

**Answer:**

11. With respect to the statement in paragraph 13 of your Answer that "[m]ore than 40 Dubuque physicians now travel on a regular basis to outlying hospitals \* \* \* in order to provide regular outpatient clinics," provide the following: (i) the meaning of "regular basis" in your statement; (ii) the names of the physicians; (iii) the names of the hospitals to which they travel; (iv) the number of patients, or your best estimate of the number of patients, they treat at these hospitals; and (v) your best description of the services these physicians provide at these hospitals.

**Answer:**

12. With respect to the statement in paragraph 13 of your Answer that "many physicians will admit patients at hospitals which are at some distance from their offices, if their patients have incentives to utilize such hospitals, and desire their physicians to make themselves available to admit their patients at such hospitals," provide the following: (i) the names of the physicians in the Dubuque area that currently do so and the names of the hospitals at which they admit patients; and (ii) your best estimate as to the number of Dubuque area physicians who currently do so and the number of patients they have admitted at these distant hospitals.

**Answer:**

13. With respect to the statement in paragraph 13 of your Answer that "specialist physicians can work with local physicians at a distant hospital \* \* \* so that the specialist need not

visit the hospital on a daily basis," provide the names of the specialist physicians in the Dubuque area that currently do so and the names of the hospitals at which they do so.

**Answer:**

14. With respect to the statement in paragraph 14 of your Answer that "patients in the tri-state area have shown a strong willingness to travel substantial distances for health care in order to benefit from \* \* \* lower prices, even if this requires treatment by a physician other than their doctor," provide the names of these patients and your best description of how you arrived at this conclusion.

**Answer:**

15. With respect to the statement in paragraph 14 of your answer that "[m]any hospital patients have traveled ninety (90) miles to Iowa City, or seventy (70) miles from the southwestern Wisconsin area near Dubuque to Madison, Wisconsin, when the same care was available at a much closer location," provide the following: (i) the names of all such patients of which you are aware; (ii) your best estimate of the number of such patients and a description of how you arrived at that estimate; and (iii) your understanding, and the basis for your understanding, of what factors caused these patients to travel these distances for their care.

**Answer:**

16. With respect to paragraph 15 of your Answer, explain how you computed that "seven hospitals closer to Dubuque . . . provide fully adequate care for the services provided to up to seventy (70%) percent of the inpatients treated at Mercy and Finley," and provide the names of those hospitals.

**Answer:**

17. With respect to the statement in paragraph 16 of your Answer that "these physicians have significant alternatives in many of the small local hospitals surrounding Dubuque," provide the following: (i) the names of all such physicians of which you are aware; (ii) your best estimate of the number of such physicians and a description of how you arrived at that estimate; and (iii) the names of the hospitals to which you are referring.

**Answer:**

18. With respect to the statement in paragraph 16 of your Answer that "[m]ost [Dubuque physicians] have not utilized these hospitals to date because Mercy and Finley have been competitive in their pricing, and there has been no need to shift their patients elsewhere," provide the following: (i) the names of all such physicians of which you are aware; (ii) your best estimate of the number of such physicians and a description of how you arrived at that estimate; (iii) your best estimate of the number of physicians who, for other reasons, have not utilized the small local hospitals and a description of how you arrived at that estimate; and (iv) a description of how you determined that Mercy and Finley have been "competitive in their pricing," and with which hospitals.

**Answer:**

19. With respect to the statement in paragraph 16 of your Answer that "many of these physicians do not see Mercy and Finley themselves as comparable alternatives, because of the different services provided at Mercy and Finley," provide the following: (i) the names of all such physicians of whom you are aware; (ii) your best estimate of the number of such physicians and a description of how you arrived at that estimate; and (iii) the quantity and description of the services

Mercy and Finley have, and do not have, in common.

**Answer:**

20. With respect to the statement in paragraph 17 of your Answer that "most residents of the City of Dubuque and its environs . . . have been admitted to Mercy and Finley . . . because the hospitals have provided inpatient care at competitive prices," provide the following: (i) your best estimate or quantification of the number or percentage of such patients; and (ii) a description of how you arrived at that estimate or quantification.

**Answer:**

21. With respect to the statement in paragraph 17 of your Answer that "[i]f these prices were to become uncompetitive, . . . these patients have many alternatives for hospitalization," explain what you mean by the term "uncompetitive," and provide the following: (i) would any degree of "uncompetitiveness" trigger patients to find alternatives or do you contend there is some threshold?; (ii) what is that threshold, and how did you determine it?; and (iii) how could one determine whether DRHS' prices were "uncompetitive," against which other hospitals (by name) would the comparison be made, and for which services would the comparison be made?

**Answer:**

22. With respect to the statement in paragraph 18 of your Answer that "[a] large percentage of purchasers of health care in the Dubuque area," provide your best numerical estimate of that percentage, and describe how you arrived at that estimate.

**Answer:**

23. With respect to the statement in paragraph 18 of your Answer that "[a]t least forty (40%) percent of Mercy's and Finley's commercial insurance admissions are drawn from an area

outside of the Dubuque area," provide the following: (i) the most specific description you can of what areas are included in the "area outside of the Dubuque area"; (ii) an explanation of how you made this calculation; and (iii) a description of the services and procedures that were provided for such admissions.

**Answer:**

24. With respect to paragraph 21 of your Answer, is it your position that DRHS will continue to provide the same preferential discounts which Mercy and Finley currently extend to the managed care plans? **Answer:** \_\_\_\_\_. Unless your answer is an unqualified "yes," such that the managed care plans reasonably might rely on such an assurance, explain what you believe the impact will be of the proposed combination on managed care plans' abilities to obtain such preferential discounts.

**Answer:**

25. With respect to the statement in paragraph 21 of your Answer that "duplicative costs . . . now inflate the cost of healthcare at Mercy and Finley," provide your best quantification of those "duplicative costs" and the extent to which they have inflated the cost of healthcare at Mercy and Finley, and identify which specific costs have been so "inflated".

**Answer:**

26. With respect to the statement in paragraph B of your Answer that "Mercy's and Finley's competitive strengths are overstated by the hospitals' current 'market shares'," provide your best estimate of those market shares and describe how you computed them.

**Answer:**

27. With respect to paragraph D of your Answer, describe as best you can the harm that

Mercy and Finley would incur if you are prevented from creating DRHS between the present and "the near future" as you meant that phrase, explaining what period that phrase was intended to encompass.

**Answer:**

28. With respect to paragraph D of your Answer, is it your contention that there would be absolutely "no difficulty" or cost to the public in "unscrambling" the transaction? **Answer:** \_\_\_\_\_. Unless your answer is an unqualified "yes," identify any difficulties or public costs that might be incurred through such an "unscrambling."

**Answer:**

29. Identify each person who will or may testify as an expert witness in this cause, and with respect to each such person a written report prepared and signed by the witness containing: (i) a complete statement of all opinions to be expressed by the witness and the basis and reasons therefor; (ii) the data or other information considered by the witness in forming the opinions; (iii) any exhibits to be used as a summary of or support for the opinions; (iv) the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; (v) the compensation to be paid for the study and testimony; and (vi) a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

**Answer:**

30. Provide, separately, Mercy's and Finley's annual net inpatient revenues and describe how these were computed.

**Answer:**

31. Provide all interrogatory answers responsive to Civil Investigative Demands Nos.

10483 and 10484 issued to the defendants in this matter that have not yet been submitted to the United States, including any revised, amended or supplemented answers for the period covered by the Civil Investigative Demands and for the period subsequent to the period covered by the Civil Investigative Demands.

**Answer:**

IV. DOCUMENTS REOUESTED

1. All documents responsive to Civil Investigative Demands Nos. 10483, 10484, and 10773, issued to the defendants in this matter that have not yet been produced to the United States, including, but not limited to, the index to the documents that have been withheld under claims of privilege, all documents forming the basis for your estimate of Mercy's contribution margins, and final confirmation that defendants have produced all documents responsive to the aforementioned Civil Investigative Demands.

**Response:**

2. All documents relating to all or any part of the transaction, including, but not limited to, any agreements, minutes, notes, letters, studies, surveys analyses, or reports relating to:

- (a) any cost saving, efficiency, or other advantage, or to any cost increase or other disadvantage connected with the transaction;
- (b) any alternative course of action to such transaction, including any operational or contingency plan if such transaction is not consummated;
- (c) any effect that the transaction may have on actual or possible competition, including competition in or for research, development, patient admissions, negotiating or contracting with any third-party payer, capacity or delivery of any health care



service, or revenue or income derived therefrom;

(d) any change, actual or planned, at Mercy or Finley since the transaction as contemplated, including all studies, reports, or analyses of any such change prepared by or for Mercy and for Finley;

(e) the actual or possible legality or illegality under the antitrust laws, or to any actual or possible economic effect, of such transaction.

**Response:**

3. All documents constituting, containing, or referring to any communication between Mercy or Finley and any other person made in connection with seeking support for the proposed transaction.

**Response:**

4. All documents (excluding reported case decisions) relating to:

(a) the relevant product and geographic markets that you contend apply to the transaction;

(b) price competition in the product and geographic markets that you contend apply to the transaction;

(c) the suitability in the alleged relevant geographic market for the institution and continuation of HMO, PPO, and other selective contracting arrangements;

(d) the effect of increased market concentration generally upon the price of hospital services; and

(e) the correlation, if any, of the Herfindahl-Hirschman Index calculation and actual price effects of increased competition in the alleged markets for hospital services.

**Response:**

5. All documents relating to contracting with any managed care plans.

**Response:**

6. All documents received from any person other than Mercy or Finley in connection with or relating to the transaction or the government's investigation in this matter.

**Response:**

7. All documents, exhibits or visual aids that may be offered or introduced in connection with the testimony of any witness at trial.

**Response:**

8. A copy of all transcripts of trial testimony or depositions, and all affidavits and written reports of any expert witness identified in answer to interrogatory 29 in any case identified in answer to interrogatory 29.(vi).

**Response:**

9. All documents identified in answers to, or the identification of which was requested in, the foregoing interrogatories, or which were used or referred to in answering the interrogatories that have not otherwise been produced.

**Response:**

