

STATE OF NORTH CAROLINA
BUNCOMBE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21CVS003276-100

WILLIAM ALAN DAVIS;
JONATHAN POWELL; FAITH C.
COOK, Psy.D.; KATHERINE
BUTTON; and BRUNK AUCTIONS,
INC.; on their own behalf and on
behalf of all others similar situated,

Plaintiffs,

v.

HCA HEALTHCARE, INC.; HCA
MANAGEMENT SERVICES, LP;
HCA, INC.; MH MASTER
HOLDINGS, LLLP; MH HOSPITAL
MANAGER, LLC; MH MISSION
HOSPITAL, LLLP; ANC
HEALTHCARE, INC. F/K/A
MISSION HEALTH SYSTEM, INC.;
and MISSION HOSPITAL, INC.;

Defendants.

**ORDER ON MOTION FOR
RECONSIDERATION**

THIS MATTER is before the Court on Defendants HCA Healthcare, Inc.; HCA Management Services, LP; HCA, Inc.; MH Master Holdings, LLLP; MH Hospital Manager, LLC; and MH Mission Hospital, LLLP's (collectively, the "HCA Defendants") Motion for Reconsideration and Stay ("Motion for Reconsideration" or the "Motion," ECF No. 227).

INTRODUCTION

1. In the present Motion, the current owners and operators of a private for-profit hospital ask the Court to reconsider its previous order denying their requests to seal the entirety of their managed care contracts with various commercial health insurance providers.

FACTUAL AND PROCEDURAL BACKGROUND

2. A more thorough recitation of the factual and legal issues previously addressed by the Court in this case can be found in its Order and Opinion on Defendants' Motion to Dismiss (ECF No. 55) and Order and Opinion on Defendants' Motion to Dismiss First Amended Class Action Complaint (ECF No. 87). *See Davis v. HCA Healthcare, Inc.*, 2022 NCBC LEXIS 108 (N.C. Super. Ct. Sept. 19, 2022); *Davis v. HCA Healthcare, Inc.*, 2023 NCBC LEXIS 63 (N.C. Super. Ct. Apr. 27, 2023).

3. In a nutshell, this putative class action lawsuit has been brought by a number of North Carolina residents alleging that Defendants ANC Healthcare, Inc. and Mission Hospital, Inc. (collectively, the "ANC Defendants," and together with the HCA Defendants, "Defendants")—through their past ownership and operation of Mission Hospital—and the HCA Defendants—through their current ownership and operation of Mission Hospital—have violated various provisions of Chapter 75 of the North Carolina General Statutes by engaging in anticompetitive acts regarding the provision of inpatient and outpatient services in western North Carolina.

4. The procedural background of this case is somewhat complex. However, the Court will endeavor to succinctly summarize the events that have culminated in the present Motion.

5. On 15 August 2025, Defendants filed an early Motion for Summary Judgment in which they contended that none of the anticompetitive terms alleged in the Second Amended Complaint are actually contained in their managed care contracts with commercial health insurance providers. (ECF No. 167.)

6. In support of their Motion for Summary Judgment, Defendants filed the following documents under provisional seal:

- a. Defendants' Memorandum of Law in Support of their Motion for Summary Judgment (ECF No.170 [sealed]);
- b. Exhibits C-Aetna-1 through C-Aetna-15 (ECF Nos. 171.1–171.17 [sealed]), which are comprised of various agreements and communications between Defendants and Aetna;
- c. Exhibits C-BCBS-1 through C-BCBS-31 (ECF Nos. 172.1–172.30, 175.1 [sealed]), Exhibits C-BCBS-33 through C-BCBS-34 (ECF Nos. 175.2–175.3 [sealed]), and Exhibits C-BCBS-36 through C-BCBS-43 (ECF Nos. 175.4–175.11 [sealed]), which are comprised of various agreements and communications between Defendants and Blue Cross Blue Shield of North Carolina;
- d. Exhibits C-Cigna-1 through C-Cigna-12 (ECF Nos. 175.12–175.23 [sealed]), which are comprised of various agreements and communications between Defendants and Cigna;
- e. Exhibits C-MedCost-1 through C-MedCost-42 (ECF Nos. 175.24–175.65 [sealed]), which are comprised of various agreements between Defendants and MedCost;
- f. Exhibits C-UHC-1 through C-UHC-41 (ECF Nos. 175.66–175.89, 176.1–176.17 [sealed]), which are comprised of various agreements between Defendants and United Healthcare; and

g. Exhibit D-1 (ECF No. 176.18 [sealed]), Exhibit D-5 (ECF No. 176.19 [sealed]), and Exhibits D-8 through D-17 (ECF Nos. 176.20–176.29 [sealed]), which are comprised of excerpts of deposition transcripts that reference the various agreements between Defendants and the various insurance providers listed above.

7. That same day, Defendants filed their Motion to Seal (ECF No. 174) requesting that the fully unredacted copies of their brief and 165 of the 187 total exhibits filed in support of their Motion for Summary Judgment be kept under permanent seal.

8. Shortly thereafter, non-parties Henderson County Hospital Corporation and Blue Ridge Healthcare System, Inc.; Fletcher Hospital Incorporated d/b/a Advent Health Hendersonville; Cigna HealthCare of North Carolina, Inc.; Aetna Health, Inc.; Blue Cross Blue Shield of North Carolina; and The Charlotte-Mecklenburg Hospital Authority each filed briefs in support of Defendants’ Motion to Seal. (*See* ECF Nos. 178–183, 185.)

9. On 15 September 2025, Plaintiffs William Alan Davis, Jonathan Powell, Faith C. Cook, Katherine Button, and Brunk Auctions, Inc. (collectively, “Plaintiffs”) filed the following documents under provisional seal in response to Defendants’ Motion for Summary Judgment:

a. Plaintiffs’ Memorandum of Law in Opposition to Defendants’ Motion for Summary Judgment (ECF No. 193 [sealed]);

- b. Exhibit 1 (ECF No. 191.1 [sealed]) and Exhibit 16 (ECF No. 191.16 [sealed]), which are comprised of affidavits and other materials submitted by Plaintiffs' two putative expert witnesses;
- c. Exhibit 4 (ECF No. 191.4 [sealed]); Exhibit 8 (ECF No. 191.8 [sealed]); Exhibit 11 (ECF No. 191.11 [sealed]); Exhibit 15 (ECF No. 191.15 [sealed]); Exhibit 17 (ECF No. 191.17 [sealed]); Exhibits 19 through 20 (ECF Nos. 191.19–191.20 [sealed]); Exhibits 22 through 31 (ECF Nos. 191.22–191.31 [sealed]); and Exhibits 34 through 37 (ECF Nos. 191.34–191.37 [sealed]), which are comprised of excerpts from various deposition transcripts;
- d. Exhibit 2 (ECF No. 191.2 [sealed]); Exhibit 5 (ECF No. 191.5 [sealed]); Exhibit 9 (ECF No. 191.9 [sealed]); Exhibit 18 (ECF No. 191.18 [sealed]); Exhibits 38 through 39 (ECF Nos. 191.38–191.39 [sealed]); Exhibits 41 through 47 (ECF Nos. 191.41–191.47 [sealed]); Exhibits 49 through 50 (ECF Nos. 191.49–191.50 [sealed]); Exhibits 53 through 54 (ECF Nos. 192.3–192.4 [sealed]); Exhibits 58 through 65 (ECF Nos. 192.8–192.15 [sealed]); and Exhibits 69 through 78 (ECF No. 192.19–192.28 [sealed]), which contain various communications, contracts, and other documents relevant to Plaintiffs' claims against the ANC Defendants;
- e. Exhibit 3 (ECF No. 191.3 [sealed]); Exhibits 6 through 7 (ECF Nos. 191.6–191.7 [sealed]); Exhibit 10 (ECF No. 191.10 [sealed]);

Exhibits 12 through 14 (ECF Nos. 191.12–191.14 [sealed]); Exhibit 40 (ECF No. 191.40 [sealed]); Exhibit 48 (ECF No. 191.48 [sealed]); Exhibits 51 through 52 (ECF No. 192.1–192.2 [sealed]); Exhibits 55 through 57 (ECF Nos. 192.5–192.47 [sealed]); Exhibits 66 through 68 (ECF No. 192.16–192.18 [sealed]); and Exhibits 80 through 99 (ECF No. 192.30–192.48 [sealed]), which contain various communications, contracts, and other documents relevant to Plaintiffs’ claims against the HCA Defendants; and

f. Exhibits 100 through 105 (ECF Nos. 192.50–192.55 [sealed]), which contain various documents relevant to Defendants’ contracts with United Healthcare, Cigna, and Blue Cross Blue Shield of North Carolina.

10. At the same time, Plaintiffs filed their Motion for Leave to File Materials Under Seal (ECF No. 194), representing that Defendants and the interested non-parties had designated information contained in their brief and in 101 of the 106 total exhibits filed in response to Defendants’ Motion for Summary Judgment as confidential and requested that such information be kept under permanent seal.

11. Shortly thereafter, non-parties Fletcher Hospital Incorporated d/b/a Advent Health Hendersonville; Cigna HealthCare of North Carolina, Inc.; Aetna Health, Inc.; and Blue Cross Blue Shield of North Carolina each filed briefs in support of Plaintiffs’ Motion for Leave to File Materials Under Seal. (*See* ECF Nos. 202–203, 205–206.)

12. On 29 September 2025, Defendants filed the following documents in further support of their Motion for Summary Judgment under provisional seal:

- a. HCA Defendants' Reply Memorandum in Support of Defendants' Motion for Summary Judgment (ECF No. 210.2 [sealed]);
- b. ANC Defendants' Reply Memorandum in Support of Defendants' Motion for Summary Judgment (ECF No. 217 [sealed]); and
- c. Exhibits D-18 through D-21 (ECF Nos. 218, 219, 210.5, 210.7 [sealed]), which contain excerpts of the deposition transcripts of the corporate representatives of Blue Cross Blue Shield of North Carolina and United Healthcare.

13. That same day, the HCA Defendants filed their Motion for Leave to File Under Seal (ECF No. 210), and the ANC Defendants filed their Motion for Leave to File Under Seal ANC's Reply Memorandum and Supporting Exhibits (ECF No. 213), requesting that the fully unredacted copies of their respective reply briefs and 4 of the 5 total exhibits filed in support of their reply briefs be kept under permanent seal.¹

14. In the Motions to Seal, Defendants and the various non-parties have asked that the fully unredacted copies of 274 of the 302 total documents filed in support of or in opposition to Defendants' Motion for Summary Judgment be kept under permanent seal in some capacity. Of those 274 documents sought to be sealed,

¹ Throughout this Order, the Court will collectively refer to the four motions to seal referenced above (ECF Nos. 174, 194, 210, 213) as the "Motions to Seal."

Defendants and the interested non-parties have requested that 213 of them be kept under permanent seal in their entirety.

15. On 16 October 2025, the Court entered its original Order on Motions to Seal (“16 October Sealing Order,” ECF No. 226), which stated in relevant part as follows:

In each of the briefs filed in support of the Motions to Seal, the parties and non-parties primarily rely on N.C.G.S. §§ 131E-97.3 and -99—which exempt certain health care information from disclosure under North Carolina’s Public Records Act. *See* N.C.G.S. § 131E-97.3 (stating that “[c]ompetitive health care information shall be confidential and not a public record under Chapter 132 of the General Statutes”); N.C.G.S. § 131E-99 (stating that “the financial terms and other competitive health care information . . . in a health [care] services contract . . . is confidential and not a public record under Chapter 132 of the General Statutes”).

This Court has previously addressed similar arguments concerning the application of §§ 131E-97.3 and -99 raised in support of motions to seal in *Frye Regional Medical Center, Inc. v. Blue Cross Blue Shield of North Carolina, Inc.* 2020 NCBC LEXIS 53 (N.C. Super. Ct. Apr. 17, 2020).

...

The Court agrees with the reasoning in *Frye*[] and notes that much of the information the parties seek to seal in this case is generalized and not related to specific financial terms.

...

Accordingly, based on the Court’s thorough review of the record and the parties’ arguments, the Court believes that it would be appropriate to defer ruling on the present Motions to Seal to allow each of the parties and non-parties to further confer to limit the number of documents sought to be sealed and to propose specific narrowly tailored redactions.

(ECF No. 226, at 12–17.)

16. Subsequently, on 4 November 2025, the HCA Defendants filed the present Motion requesting that the Court stay enforcement of—and reconsider—the 16 October Sealing Order.

17. The next day, on 5 November 2025, the Court entered an Order staying the deadlines contained in the 16 October Sealing Order. (ECF No. 231.)

18. On 24 November 2025, non-parties Henderson County Hospital Corporation and Blue Ridge Healthcare System, Inc.; Fletcher Hospital Incorporated d/b/a Advent Health Hendersonville; and Blue Cross Blue Shield of North Carolina filed briefs in support of the Motion for Reconsideration. (See ECF Nos. 234–236.)

19. That same day, non-parties NCHA, Inc. d/b/a North Carolina Healthcare Association and North Carolina Chamber Legal Institute filed their Motion for Leave to File an Amicus Brief in Support of the Non-Parties Responses to Defendants’ Motions [*sic*] for Reconsideration of the Order on Motions to Seal. (ECF No. 238.)

20. The Court entered an Order (ECF No. 241) on 11 December 2025 granting NCHA, Inc. d/b/a North Carolina Healthcare Association and North Carolina Chamber Legal Institute leave to file a brief as *amicus curiae*, which they subsequently filed that same day (ECF No. 242).

21. The Court held a hearing on the Motion for Reconsideration via Webex on 16 January 2026 at which the parties, interested non-parties, and *amicus curiae* were all represented by counsel.

22. Having been fully briefed, the Motion is now ripe for resolution.

LEGAL STANDARD

23. Under Rule 54(b) of the North Carolina Rules of Civil Procedure, any “order or other form of decision is subject to revision at any time before the entry of

judgment adjudicating all the claims and the rights and liability of all the parties.” N.C. R. Civ. P. 54(b). As such, “Rule 54(b) is the source of authority for what litigants typically refer to as ‘motions to reconsider.’” *Tetra Tech Tesoro, Inc. v. JAAAT Tech. Servs., LLC*, 250 N.C. App. 791, 798 (2016) (cleaned up).

24. “Because North Carolina courts have not articulated a standard for reconsideration under Rule 54(b), this Court has regularly sought guidance from analogous federal cases” addressing the similarly worded provisions of Rule 54(b) of the Federal Rules of Civil Procedure.² *Charlotte Student Hous. DST v. Choate Constr. Co.*, 2019 NCBC LEXIS 21, at *10 (N.C. Super. Ct. Mar. 26, 2019) (cleaned up). In doing so, this Court has explained that the decision whether to grant or deny a motion for reconsideration under Rule 54(b) “is within the trial court’s discretion.” *W4 Farms, Inc. v. Tyson Farms, Inc.*, 2017 NCBC LEXIS 99, at *5 (N.C. Super. Ct. Oct. 19, 2017) (cleaned up).

25. Generally, motions for reconsideration will only be granted based on “(1) the discovery of new evidence, (2) an intervening development or change in the controlling law, or (3) the need to correct a clear error or prevent manifest injustice.” *Loray Mill Devs., LLC v. Camden Loray Mill Phase I, LLC*, 2023 NCBC LEXIS 78, at *7–8 (N.C. Super. Ct. June 12, 2023) (cleaned up). However, “[a] motion for reconsideration is not a vehicle to identify facts or legal arguments that could have been, but were not, raised at the time the relevant motion was pending.” *Pender*

² It is well settled that North Carolina courts may consider caselaw from federal courts as persuasive authority. *See, e.g., Sykes v. Network Health Sols., Inc.*, 2018 NCBC LEXIS 29, at *8 (N.C. Super. Ct. Apr. 5, 2018).

Farm Dev., LLC v. NDCO, LLC, 2020 NCBC LEXIS 110, at *5 (N.C. Super. Ct. Sept. 25, 2020) (cleaned up).

26. “The limited use of a motion to reconsider serves to ensure that parties are thorough and accurate in their original pleadings and arguments presented to the Court. To allow motions to reconsider offhandedly or routinely would result in an unending motions practice.” *Rossabi L. PLLC v. Greater Greensboro Ent. Grp., LLC*, 2021 NCBC LEXIS 64, at *8 (N.C. Super. Ct. July 20, 2021) (cleaned up).

ANALYSIS

27. In the Motion for Reconsideration, the HCA Defendants contend that this Court’s reliance on *Frye Regional Medical Center, Inc. v. Blue Cross Blue Shield of North Carolina, Inc.*, 2020 NCBC LEXIS 53 (N.C. Super. Ct. Apr. 17, 2020), was in error because that case failed to recognize a statutory amendment the General Assembly had made to N.C.G.S. § 131E-97.3 in the aftermath of our Court of Appeals’s decision in *Carter-Hubbard Publishing Co. v. WRMC Hospital Operating Corp.*, 178 N.C. App. 621 (2006), when interpreting the phrase “competitive health care information” contained in the statute. As such, the HCA Defendants contend that the Court’s 16 October Sealing Order should be vacated and the Motions to Seal should instead be granted in full pursuant to N.C.G.S. §§ 131E-97.3.

28. The primary issue raised in the Motion for Reconsideration concerns the Court’s reliance on *Frye* to interpret the meaning of “competitive health care information” under N.C.G.S. § 131E-97.3(a).

29. In *Frye*, this Court stated the following with respect to the meaning of “competitive health care information”:

There is little appellate authority interpreting the meaning of “competitive health care information” as used in the statutes, and only one decision interpreting that term under the current version of the statutes. See *Carter-Hubbard Publ’g Co. v. WRMC Hosp. Operating Corp.*, 178 N.C. App. 621 (2006). In *Carter-Hubbard*, the Court of Appeals considered whether a contract under which a public hospital purchased a private medical practice constituted “competitive health care information” as used in N.C.G.S. §§ 131E-97.3 and 131E-99. Preliminarily, the Court held

“competitive health care information” is not specifically defined in our statute. “Health care” is defined in the American Heritage Dictionary as “[t]he prevention, treatment, and management of illness and the preservation of well-being through the services offered by the medical and allied health professions.” Pursuant to [N.C.G.S.] § 131E-99 “competitive health care information” includes “financial terms” of a contract and any “health care information directly related to financial terms in a contract.” North Carolina General Statutes, Section 131E-99 is the only statute that gives some indication of what the legislature intended by its use of the term “competitive health care information.”

Id. at 625 (internal citations omitted). Interpreting §§ 131E-97.3 and 131E-99 together, the Court concluded that “the contract terms that are not financial nor financially related would not be considered competitive health care information and therefore would not be exempt” from disclosure under the Public Records Act. *Id.* at 627.

Finally, the Court of Appeals rejected the defendants’ argument for a broader definition of “competitive health care information,” holding as follows:

Defendants cite contract terms such as price, assets and liabilities, future obligations (e.g. performance bonuses) and other financial information as “competitive health care information.” Defendants claim disclosure of such information would place the hospital at a future competitive disadvantage, impair the ability to acquire future confidential information and is a type of information that would not customarily be released between two nonpublic entities. Defendants argue that the public may be

outraged at learning the purchase price without understanding future profit implications.

We decline defendant's offer to more broadly define the term "competitive health care information." Defendant's definition is based on competitive business aspects of public hospital operations, aspects which, unless they involve trade secret information, are also likely subject to disclosure. We do not think the legislature intended such business dealings—which do not involve trade secret information nor competitive price lists—to be kept confidential. We do not read N.C.G.S. § 131E-97.3 nor 131E-99 separately or in *para materia* to require such secrecy.

Id. at 627–28.

The Court finds the decision in *Carter-Hubbard* to be helpful guidance. The "financial terms" and competitive health care information directly related to the "financial terms" likely constitute highly confidential business information or trade secrets that should be protected from disclosure to the public. Unfortunately, in this case, the parties broadly claim that the entirety of the NPA should be sealed, but do not explain why specific, non-financial information contained in the NPA should be sealed.

Frye Reg. Med. Ctr., Inc., 2020 NCBC LEXIS 53, at *9–12.

30. In their Motion for Reconsideration, the HCA Defendants contend that *Frye* failed to recognize that the Court of Appeals case on which it primarily relied (*Carter-Hubbard*) had been legislatively superseded by virtue of the enactment of 2007 N.C. Sess. Laws 508, which amended N.C.G.S. § 131E-97.3(a) to include a broad definition of "competitive health care information."

31. The HCA Defendants are correct that the discussion of N.C.G.S. §§ 131E-97.3 and -99 in *Frye* relied upon the decision in *Carter-Hubbard* to interpret the meaning of "competitive health care information."

32. As the HCA Defendants note, the decision in *Carter-Hubbard* restricting the application of N.C.G.S. § 131E-97.3 to the " 'financial terms' of a contract and any

‘health care information directly related to financial terms in a contract[]’” was based on the absence of a statutory definition of “competitive health care information.”

33. However, as noted above, following our Supreme Court’s affirmance of the *Carter-Hubbard* decision, our General Assembly enacted 2007 N.C. Sess. Laws 508, which amended the language of N.C.G.S. § 131E-97.3 in relevant part as follows:

(a) *For the purposes of this section, competitive health care information means information relating to competitive health care activities by or on behalf of hospitals and public hospital authorities. Competitive health care information does not include any of the information hospitals and ambulatory surgical facilities are required to report under G.S. 131E-214.12. Competitive health care information shall be confidential and not a public record under Chapter 132 of the General Statutes; provided that any contract entered into by or on behalf of a public hospital or public hospital authority, as defined in G.S. 159-39, shall be a public record unless otherwise exempted by law, or the contract contains competitive health care information, the determination of which shall be as provided in subsection (b) of this section.*

(b) If a public hospital or public hospital authority is requested to disclose any contract which the hospital or hospital authority believes in good faith contains or constitutes competitive health care information, the hospital or hospital authority may either redact the portions of the contract believed to constitute competitive health care information prior to disclosure, or if the entire contract constitutes competitive health care information, refuse disclosure of the contract. The person requesting disclosure of the contract may institute an action pursuant to G.S. 132-9 to compel disclosure of the contract or any redacted portion thereof. In any action brought under this subsection, the issue for decision by the court shall be whether the contract, or portions of the contract withheld, constitutes competitive health care information, and in making its determination, the court shall be guided by the procedures and standards applicable to protective orders requested under Rule 26(c)(7) of the Rules of Civil Procedure. For the purposes of this section, competitive health care information includes, but is not limited to, contracts entered into by or on behalf of a public hospital or public hospital authority to purchase a medical practice. Before rendering a decision, the court shall review the contract in camera and hear arguments from the parties. If the court finds that the contract constitutes or contains competitive health care information, the

court may either deny disclosure or may make such other appropriate orders as are permitted under Rule 26(c) of the Rules of Civil Procedure.

N.C.G.S. §§ 131E-97.3(a)–(b) (emphasis added).³

34. Because the *Frye* decision—on which this Court relied—interpreted the meaning of “competitive health care information” without addressing this legislative change to N.C.G.S. § 131E-97.3, the Court, in the exercise of its discretion, concludes that the HCA Defendants’ Motion for Reconsideration should be **GRANTED** and the Court’s 16 October Order on the Motions to Seal should be **VACATED**.

35. The Court will now proceed to consider the Motions to Seal anew.

36. As an initial matter, each of the filings that the parties have requested that the Court maintain under seal primarily concern (or at least reference) managed care contracts between commercial health insurance providers and hospitals (or hospital authorities).

37. The HCA Defendants assert that the Motions to Seal should be granted in full—meaning that the unredacted copies of the 274 documents filed in support of or opposition to Defendants’ Motion for Summary Judgment should remain under permanent seal.⁴ In support of this contention, they essentially make two arguments.

³ The HCA Defendants also seek to rely on N.C.G.S. § 131E-99, which states in relevant part that “the financial terms and other competitive health care information directly related to the financial terms in a health care services contract between a hospital . . . and a managed care organization, insurance company, . . . , or other payer is confidential and not a public record under Chapter 132 of the General Statutes.”

⁴ In making this argument, the HCA Defendants are joined by certain interested non-parties, who—as noted above—have been permitted to submit briefs on this issue. *See* BCR 5.2(c).

38. First, the HCA Defendants take the position that each and every word of the 213 documents that they have requested be sealed in their entirety “relat[e] to competitive health care activities” and thus constitutes “competitive health care information” under N.C.G.S. § 131E-97.3(a).

39. Second, they contend that at least some of the information contained in the various documents that are the subject of the Motions to Seal relate to their proprietary trade secrets, which would cause them competitive harm if disclosed publicly.

40. The Court will address each of these arguments in turn.

41. In their first argument, the HCA Defendants assert that *any* information in the documents at issue that reference their managed care contracts “relate to competitive health care activities.” The Court, however, disagrees.

42. Although our General Assembly expanded the definition of “competitive health care information” in response to the *Carter-Hubbard* decision, N.C.G.S. § 131E-97.3 does not provide that the *entirety* of managed care contracts between hospitals and insurance providers or any information concerning such contracts must always be treated as confidential. Indeed, to the contrary, subpart (b) of N.C.G.S. § 131E-97.3 (as quoted above) contains language expressly contemplating that some contracts within the scope of the statute will contain competitive health care information in their entirety while others may only contain certain portions in which such information is present. *See* N.C.G.S. § 131E-97.3(b).

43. The statutory phrase “relate[s] to competitive health care activities” indicates that there must be some logical and demonstrable connection between the specific information and the competitive aspects of the hospital’s (or hospital authority’s) marketplace activities. *See Relate*, *Black’s Law Dictionary* (12th ed. 2024) (defining relate as: “[t]o have some connection to; to stand in relation to”); *Relate*, *Merriam-Webster’s Online Dictionary* (2026) (defining relate as: “to show or establish logical or causal connection between” or “[t]o have a relationship or connection”); *see also Morris Communs. Corp. v. City of Bessemer*, 365 N.C. 152, 158 (2011) (“To ascertain the ordinary meaning of undefined and ambiguous terms, courts may appropriately consult dictionaries.” (cleaned up)).

44. The Court notes that many of the documents that the parties have requested that the Court seal appear to contain—at least in part—generalized information, information that otherwise has little to no “competitive” value, and information that is publicly ascertainable. For example, it is not presently clear to the Court how provisions relating to the purpose of the agreements; the meaning of defined terms used throughout the agreements; the parties’ respective responsibilities to maintain and permit the inspection of certain records; the obligation of the parties to submit to site reviews and general factual representations and acknowledgments; and various other “miscellaneous” provisions including, *inter*

alia, those relating to confidentiality, enforceability, waiver, and dispute resolution sufficiently “relate” to competitive health care information.⁵

45. Furthermore, this Court has recognized that “competitively valuable information may grow stale over time.” *Addison Whitney, LLC v. Cashion*, 2020 NCBC LEXIS 74, at *5 (N.C. Super. Ct. June 10, 2020) (cleaned up); *see also State ex rel. Jackson v. TikTok, Inc.*, 2025 NCBC LEXIS 106, at *5 (N.C. Super. Ct. Aug. 19, 2025) (“[E]ven if [the information] had some competitive value, all or nearly all of the data is years old and, thus, quite stale in an industry that seems to change by the day.” (cleaned up)); *Howard v. IOMAXIS, LLC*, 2023 NCBC LEXIS 134, at *11 (N.C. Super. Ct. Oct. 30, 2023) (concluding that “the chance that [the defendant] could be harmed competitively by the public disclosure of th[e] information, if such a harm exists at all, is far less now than it would have been in [the past]”).

46. Here, some of the documents that the HCA Defendants claim should be sealed concern managed care contracts that pre-date significant legislative changes, such as the 2010 enactment of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18001, *et seq.* Accordingly, even if—as the HCA Defendants suggest—some of the facially innocuous terms of their managed care contracts originally possessed competitive value, such value would not last indefinitely.

47. Moreover, there is a broader problem with the HCA Defendants’ argument. The HCA Defendants appear to assume that if a document is not subject

⁵ Indeed, the parties do not appear to dispute the fact that such provisions are commonly—if not universally—used in the healthcare industry when healthcare providers enter into managed care contracts with commercial health insurers.

to North Carolina's Public Records Act then it must *automatically* be sealed. However, this position is not supported by North Carolina law and ignores both constitutional and statutory provisions providing for public access to court records.

48. In addressing a motion to seal, the Court is required to carefully balance the parties' interests in keeping information secret against the public's right to open access to court records. *See Doe v. Doe*, 263 N.C. App. 68, 86 (2018) ("When presented with a sealing request, . . . [the] court [must] first determine the source of the right of access with respect to each document, because only then can it accurately weigh the competing interests at stake." (cleaned up)).

49. The public's right to access court records exists under Article I, Section 18 of the North Carolina Constitution and also potentially implicates First Amendment concerns under the United States Constitution. With respect to these constitutional rights, our Supreme Court has held as follows:

We now hold that the open courts provision of Article I, Section 18 of the North Carolina Constitution guarantees a *qualified* constitutional right on the part of the public to attend civil court proceedings. . . .

The qualified public right of access to civil court proceedings guaranteed by Article I, Section 18 is not absolute and is subject to reasonable limitations imposed in the interest of the fair administration of justice or for other compelling public purposes. *Cf. In re Belk*, 107 N.C. App. 448 (concluding that neither the United States Constitution nor the North Carolina Constitution creates a constitutional right of the public to attend civil commitment proceedings), *appeal dismissed and disc. rev. denied*, 333 N.C. 168 (1992); *State v. Lemons*, 348 N.C. 335, 349 (1998) (rights in criminal cases); *State v. Burney*, 302 N.C. 529, 538 (1981) (same). Thus, although the public has a qualified right of access to civil court proceedings *and records*, the trial court may limit this right when there is a compelling countervailing public interest and closure of the court proceedings *or sealing of documents* is required to protect such countervailing public interest. In performing this analysis, the trial court must consider alternatives to closure. Unless such an overriding

interest exists, the civil court proceedings and records will be open to the public. Where the trial court closes proceedings *or seals records* and documents, it must make findings of fact which are specific enough to allow appellate review to determine whether the proceedings or records were required to be open to the public by virtue of the constitutional presumption of access.

...

Although the Supreme Court has never decided the question of whether the public has a First Amendment right to attend civil court proceedings or to view civil court records, the Court has noted that civil trials historically have been presumptively open to the public. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 n.17 (1980) (plurality opinion); *Gannett Co. v. DePasquale*, 443 U.S. 368, 386 n.15 (1979). Several lower federal courts have held that certain civil proceedings are presumptively open under the First Amendment. *See, e.g., Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 178, 180–81 (4th Cir. 1988) (record in civil case); *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1070–71 (3d Cir. 1984) (hearing on motions for preliminary injunctions); *In re Cont'l Ill. Sec. Litig.*, 732 F.2d 1302, 1308–16 (7th Cir. 1984) (hearing on motion to terminate shareholder derivative claims). Although these lower courts have emphasized the strength of the First Amendment presumption of access, they have refused to define this right of access as absolute. For example, one court has stated, “Where the First Amendment guarantees access, . . . access may be denied only on the basis of a compelling governmental interest, and only if the denial is narrowly tailored to serve that interest.” *Stone*, 855 F.2d at 180 (applying First Amendment access standard for criminal trials from *Press-Enterprise I* to a district court order sealing the court record of a wrongful discharge action brought by a medical school professor).

Virmani v. Presbyterian Health Servs. Corp., 350 N.C. 449, 476–77, 480–81 (1999)

(emphasis added).

50. Furthermore, the Public Records Act is not the only statutory source of the public’s right of access. The public’s right of access to court records is also codified at N.C.G.S. § 7A-109, which states in relevant part as follows:

Each clerk shall maintain such records, files, dockets and indexes as are prescribed by rules of the Director of the Administrative Office of the Courts. Except as prohibited by law, these records shall be open to the

inspection of the public during regular office hours, and shall include civil actions, special proceedings, estates, criminal actions, juvenile actions, minutes of the court, judgments, liens, lis pendens, and all other records required by law to be maintained.

N.C.G.S. § 7A-109(a) (emphasis added); *see also Virmani*, 350 N.C. at 462–63 (holding that while “[a]ccess to public records in North Carolina is governed generally by our Public Records Act . . . [t]he public’s right of access to court records is [also] provided by N.C.G.S. § 7A-109(a), which specifically grants the public the right to inspect court records in criminal and civil proceedings[]” (cleaned up)); *LexisNexis Risk Data Mgmt. Inc. v. N.C. Admin. Off. of the Courts*, 368 N.C. 180, 185–86 (2015) (concluding that because N.C.G.S. § 7A-109 is a “separate statute applicable to court records[,]” it provides standards for access that are “not identical” to the Public Records Act).

51. Here, the public’s qualified right to access materials relating to the HCA Defendants’ managed care contracts is particularly strong considering that the terms contained in those contracts are at the very core of the Plaintiffs’ allegations in this case. *See Lovell v. Chesson*, 2019 NCBC LEXIS 76, at *5 (N.C. Super. Ct. Oct. 28, 2019) (“When . . . information becomes the subject of litigation, the court seals only the secrets, not everything else.” (cleaned up)); *Johnston v. City of Fayetteville*, 2014 U.S. Dist. LEXIS 172229, at *26 (E.D.N.C. Dec. 11, 2014) (denying a motion to seal certain information exempted from the Public Records Act and “discern[ing] a distinct difference between the State’s interest in protecting [] privacy rights . . . in the course of [the public] requesting records, and the State’s interest” when such documents “form the very basis of the lawsuit[]”).

52. To the extent that N.C.G.S. §§ 131E-97.3 and -99 reflect a countervailing state interest in maintaining the confidentiality of a hospital's managed care contracts, the Court does not believe that the requested relief in the Motions to Seal is narrowly tailored to protect the public's qualified right of access.

53. Instead, the Court finds that the HCA Defendants' interests can be protected through partial (rather than complete) sealing of the documents at issue. *See Beroz v. Nuvoelectronics, Inc.*, 2018 NCBC LEXIS 249, at *4 (N.C. Super. Ct. Apr. 3, 2018) (noting that the Court only seals entire documents under "rare circumstance[s]" (cleaned up)).

54. In their second argument, the HCA Defendants assert that their respective managed care contracts constitute proprietary trade secrets, which would cause them competitive harm if disclosed publicly.

55. This Court has previously recognized the need to protect trade secret information from public disclosure. *Vitaform, Inc. v. Aeroflow, Inc.*, 2022 NCBC LEXIS 25, at *5 (N.C. Super. Ct. Apr. 5, 2022) (concluding that "[b]ecause information for which a claimant asserts trade secret protection can lose the benefit of protection if it has been disclosed, publicly released, or publicly filed during litigation, . . . the Court will therefore permit this information to be filed under seal" (cleaned up)); *see also* N.C.G.S. § 66-156 (stating that "[i]n an action under [the Trade Secrets Protection Act], a court shall protect an alleged trade secret by reasonable steps which may include . . . sealing the records of the action subject to further court order").

56. Based on the Court’s review of the various documents that are the subject of the Motions to Seal, it appears that the managed care contracts may *contain* trade secret information. However, because other portions of the information contained in the managed care contracts appear to have no independent economic value or are otherwise publicly ascertainable, the Court disagrees with the HCA Defendants’ assertion that each of the managed care contracts are in-and-of-themselves trade secrets *in their entirety*. See, e.g., *Vitaform, Inc. v. Aeroflow, Inc.*, 2022 NCBC LEXIS 128, at *18–19 (N.C. Super. Ct. Oct. 27, 2022) (concluding that a business model which included “various codes needed to obtain insurance reimbursement” was not a trade secret because the “classification codes used by insurance companies to process the associated reimbursement claims are publicly available on the Centers for Medicare and Medicaid Services’ website”).

CONCLUSION

IT IS THEREFORE ORDERED as follows:

1. The HCA Defendants’ Motion for Reconsideration is **GRANTED** and the Court’s 16 October Order on Motions to Seal is hereby **VACATED**.⁶

⁶ Prior to the hearing on the Motion for Reconsideration, non-party Blue Cross Blue Shield of North Carolina filed a motion for admission *pro hac vice* of James M. Burns of the law firm Williams Mullen. (ECF No. 265.) In the exercise of the Court’s discretion, at the 16 January hearing on the Motion for Reconsideration the Court permitted Mr. Burns to appear and make arguments on Blue Cross Blue Shield of North Carolina’s behalf. Having now resolved the Motion for Reconsideration, his motion for admission *pro hac vice* is **DISMISSED as MOOT**.

2. The Court **DEFERS** the issuance of a new Order on the Motions to Seal and instead **DIRECTS** the parties⁷ to meaningfully confer in an attempt to reach an agreement to limit both (1) the number of documents for which sealing is sought; and (2) the specific portions of those documents for which sealing is appropriate.
3. The parties are **DIRECTED** to file a joint status report by no later than **20 March 2026** containing an index of which filings—and what specific portions thereof—the parties believe should remain under seal.
4. In the event the parties are unable to reach agreement on these issues or if the Court does not believe that the parties have sufficiently narrowed the scope of the sealing requests, the Court reserves the right to appoint a referee pursuant to North Carolina Rule of Civil Procedure 53 to (1) make recommended findings for the Court to consider before issuing a new Order on the Motions to Seal; and (2) provide any additional assistance requested by the Court relating to sealing issues in this case going forward.
5. All orders previously entered by the Court staying the parties' deadlines with respect to motions to seal in this case remain in full force and effect until further notice.

⁷ Nothing herein shall preclude interested non-parties from participating in this process.

SO ORDERED, this the 27th day of February 2026.

/s/ Mark A. Davis

Mark A. Davis

Special Superior Court Judge for
Complex Business Cases