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STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

January 16, 2019

Via Email and U.S. Mail

Donald R. Esposito, Jr, J.D.
Senior Vice President & General Counsel
Mission Health System
12 Ardmore St.
Asheville, NC 28803

Re: Proposed asset transfer by Mission Health System, Inc. and related charitable corporations to MH Master Holdings, LLLP, an affiliate of HCA Healthcare, Inc.

Dear Mr. Esposito:

You have notified the Attorney General's Office, pursuant to Chapter 55A of the North Carolina General Statutes, of the proposed sale of substantially all the operating assets of Mission Health System, Inc. ("Mission Health") and related charitable corporations (collectively with Mission Health, "Sellers") to MH Master Holdings, LLLP ("Buyer"), an affiliate of HCA Healthcare, Inc. ("HCA").¹ The net assets of Sellers and of Mission Health System Foundation, Inc. will be transferred as quickly as is prudently possible to Dogwood Health Trust ("Dogwood"), a new North Carolina charitable corporation. Mission Health will also transfer funds to Blue Ridge Regional Hospital Foundation, Inc.; Highlands-Cashiers Hospital Foundation, Inc.; McDowell Healthcare Foundation, Inc.; Nantahala Health Foundation; and Transylvania Regional Hospital Foundation (collectively, the "Regional Foundations").

¹ More precisely, the Seller nonprofit corporations are Mission Health System, Inc.; Mission Hospital, Inc.; Mission Medical Associates, Inc.; Blue Ridge Regional Hospital, Inc.; Transylvania Community Hospital Inc.; Angel Medical Center, Inc.; The McDowell Hospital, Inc.; Community CarePartners, Inc.; Highlands-Cashiers Hospital, Inc.; Transylvania Physician Services, Inc.; Transylvania Services, Inc.; Transylvania Hospital Imaging Services, LLC; Highlands-Cashiers Physician Services, Inc.; and The Eckerd Living Center LLC.

We have now completed our review of this transaction. This review involved analysis of thousands of pages of documents, including the answers provided by Mission Health, Dogwood, and HCA to questions issued by this office. We also retained an outside expert to provide us with an opinion about the fairness of the price that HCA will pay for Sellers' assets in this transaction. Finally, as further described below, we engaged in constructive negotiations with Mission Health, Dogwood, and HCA.

The Attorney General does not object to the proposed transaction, upon the following conditions:

I. Changes to the Asset Purchase Agreement. Sellers and Buyer shall execute an amended Asset Purchase Agreement consistent with negotiations with our office (the "Amended APA") on or before the Closing Date. The Amended APA contains the following changes negotiated by our office. (In each case, the list below serves as a summary only, and the terms listed in the Amended APA shall govern.)

A. Services and Hospitals

1. Buyer extended its promise from five years to ten years to provide listed services at Angel Medical Center (Franklin, N.C.), Blue Ridge Regional Hospital (Spruce Pine, N.C.), Highlands-Cashiers Hospital (Highlands, N.C.), Mission Hospital McDowell (Marion, N.C.), and Transylvania Regional Hospital (Brevard, N.C.) (the "Local Hospitals"). *See* Amended APA § 7.13(b).
2. Buyer added greater specificity to the list of services that it is required to maintain at the Local Hospitals. *See* Amended APA § 7.13(b) and Amended APA Schedule 7.13(b).
3. Buyer agreed to have an Independent Monitor review whether it complies with its forward-looking promises. *See* Amended APA § 7.12(c). Buyer must now gain the consent of the Independent Monitor, as well as the Local Advisory Board, for it to exercise an exception to its promises to provide services at the Local Hospitals and to keep the Local Hospitals open. *See* Amended APA §§ 7.13(b), 7.13(c).
4. The "Force Majeure" exception to Buyer's promises is now more constrained. *See* Amended APA § 7.13(k), along with the revised definition of "Force Majeure." As a result of these changes, HCA is limited in its ability to cite government actions or economic downturns as a basis for waiver of HCA's promises. Buyer has now also made a contractual representation that it has no present intent to invoke Force Majeure. *See* Amended APA § 7.13(j)(v).

5. Buyer agreed that not only Dogwood, but also the Regional Foundations, shall have the right to bid on Local Hospitals if they would be sold or closed. *See* Amended APA § 7.20.
6. Buyer has made contractual representations that:
 - a) It has no intent, within the next ten years, to discontinue any service at any hospital. *See* Amended APA § 7.13(j)(ii).
 - b) It has no intent, within the next ten years, to sell or close any Local Hospital, the Mission Hospital Campus Facility in Asheville, Mission Children's Hospital, or the Community CarePartners facilities. *See* Amended APA § 7.13(j)(iv).

B. Facilities

1. HCA agreed to build the replacement for Angel Medical Center consistent with the pre-existing Certificate of Need that Mission Health obtained for that facility. *See* Amended APA § 7.14(e)(ii).
2. HCA agreed to build a 120-bed inpatient behavioral health hospital in Asheville, and it may not reduce the scale of that project to construct fewer than that number of beds. *See* Amended APA § 7.14(e)(iii).

C. Support for Community Benefit Programs

1. HCA made a contractual representation that it has no present intent to discontinue its support for community service programs that benefit the community, except for retail pharmacies and the Sellers' adult care and expanded bereavement programs. *See* Amended APA § 7.13(j)(i).
2. HCA agreed to spend at least \$14.28 million for community service programs: \$7.5 million over the next ten years along with \$6.78 million in the next year to support certain named programs. *See* Amended APA § 7.13(g),(i).
3. HCA committed to at least one year of full financial support for EMS in Madison, Mitchell, and Yancey Counties. *See* Amended APA § 7.13(i) and Amended APA Schedule 7.13(i).

D. Other Forward-Looking Commitments

1. HCA agreed to continue providing graduate medical education at current levels or better for at least 10 years, as long as present funding remains available. *See* Amended APA § 7.18.
2. HCA agreed to participate in present Medicare and Medicaid for at least 10 years. In the managed care transition, HCA has agreed to use commercially reasonable efforts to negotiate a participation agreement with one or more managed care organizations on mutually acceptable terms. *See* Amended APA § 7.13(h).
3. Buyer agreed that employees transferred from Mission Health to Buyer will, if they are let go within a year after closing, receive information on HCA job openings across the country. If those employees are rehired within one year, they will keep their seniority. *See* Amended APA § 7.1(b)(iv).
4. Buyer agreed to make its pilot student loan payment program available to all transferred employees as quickly as is reasonably possible. *See* Amended APA § 7.1(b)(iv).

E. Enforcement

1. The Independent Monitor will receive information, as detailed in the Amended APA, to allow it to review key HCA forward-looking promises. *See* Amended APA §§ 7.12(c), 7.13(b), 7.13(c), 7.14(f), 7.15, and 7.17(a).
2. HCA and Mission Health agreed that key HCA forward-looking promises can be enforced by the Attorney General. *See* Amended APA § 13.13(b).
3. HCA and Mission Health agreed that North Carolina law will apply to key HCA forward-looking promises in the event of a legal dispute. *See* Amended APA § 13.2(a)(i).
4. HCA and Mission Health agreed that if there is legal conflict over these key promises, the case will go to North Carolina Business Court instead of going to arbitration. *See* Amended APA § 13.2(a)(ii).

F. Charity Care Policy

1. Buyer now must gain the consent of the Independent Monitor, as well as an Advisory Board or Local Advisory Board, for Buyer to exercise an exception to its promises about charity care. *See* Amended APA § 7.15. These promises are:

- a) To maintain for at least ten years the improved charity care policy negotiated by Mission and HCA; then, thereafter,
- b) To at least provide care for persons beneath or at 200% of the federal poverty line and to maintain a charity care policy at least as good as the policy maintained by the then-largest North Carolina nonprofit health system.

G. Freedom from Restrictions on Supporting Health Care Services²

1. Under the Amended APA, Dogwood may use its funds to support any health care services that HCA has chosen not to continue. *See* Amended APA § 7.3(b).
2. The Regional Foundations are not covered by the APA provision that restricts providing health care services in certain areas. *See* Amended APA § 7.3(b), clause (y).

II. Letter Agreement with Dogwood Health Trust. Dogwood has executed and delivered a letter agreement consistent with negotiations with our office (the “Letter Agreement”). The Letter Agreement contains the following provisions negotiated by our office. (In each case, the list below serves as a summary only, and the terms listed in the Letter Agreement shall govern.)

A. Reflecting the Population of Western North Carolina

1. Limiting the concentration of Dogwood board members in any particular county:
 - a) Dogwood received assurances from two of its board members who reside in Buncombe County that they will not seek re-election at the expiration of their current term of office ending December 31, 2019. An additional board member who resides in Buncombe County also intends not to seek re-election at the expiration of that member’s current term ending December 31, 2020. *See* Letter Agreement, p. 2.
 - b) Dogwood agreed that by July 1, 2019, its board will not have more than 50% of its members residing in any one county. *See* Letter Agreement, p. 2.

² Mission Health has agreed to clarify terms in its future grant agreements with the Regional Foundations to ensure (1) that the Regional Foundations will not be prevented from supporting community health services and (2) that nothing in the grant agreements shall restrict the Regional Foundation’s use of funds other than the funds provided by Mission Health pursuant to the grant.

- c) Dogwood committed that by January 1, 2020, its board will include no more than five members from any one county, and by January 1, 2021, its board will include no more than four members from any one county. *See Letter Agreement, p. 2.*
2. Dogwood agreed that its board will fairly reflect the diversity of population of western North Carolina by January 1, 2020. *See Letter Agreement, p. 1.*
3. Expanding membership:
 - a) Dogwood agreed that by January 1, 2020, its board will include at least one member from of the five regions with a Local Hospital. *See Letter Agreement, p. 2.*
 - b) In addition, Dogwood agreed to add a second member from the McDowell Hospital region, consisting of McDowell, Burke, Rutherford, and Polk Counties. *See Letter Agreement, p. 2.*
4. We recognize that the Dogwood board has changed from having no people of color to including, as of the date of this letter, 27% people of color.

B. Transparency

1. Dogwood agreed to conduct a national search for a qualified executive director using a national executive search firm. *See Letter Agreement, p. 3.*
2. Public meetings:
 - a) Dogwood agreed to host three public meetings in 2019 to discuss the needs of the region and to obtain input on the priorities for addressing the social determinants of health in western North Carolina. *See Letter Agreement, p. 3.*
 - b) In addition, Dogwood agreed to hold an annual open meeting with the public each year to receive community input. These meetings will be timed so that Dogwood can take into account any insights it receives from the meeting as Dogwood plans its next grant cycle. *See Letter Agreement, p. 3.*
3. Dogwood committed to provide an annual report to western North Carolina detailing its focus areas, the programs it is funding, the metrics it is using to evaluate programs, and Dogwood's own success. These annual reports will be posted on Dogwood's website. *See Letter Agreement, p. 3.*

4. Dogwood agreed that during 2019, its board will appoint six non-board members chosen from across the region served by Dogwood to serve on the grants-making committee, the covenant compliance committee, and the nominating committee. *See* Letter Agreement, pp. 2-3.

C. Enforcement

1. Dogwood will amend its Articles of Incorporation to provide that, for 10 years after closing, Dogwood will not amend the charitable purpose stated in those Articles of Incorporation without the prior written approval of the Attorney General. *See* Letter Agreement, p. 3.
2. Thereafter, Dogwood will be required to provide the North Carolina Attorney General with 30 days' notice prior to any change in its charitable purpose. *See* Letter Agreement, p. 3.

D. Independence

1. The Dogwood board will not include any member who is an employee of or who has a material business relationship with HCA. *See* Letter Agreement, p. 2.
2. Immediately following the closing of this transaction, the Dogwood board will not include any member who is a member of the Mission board. *See* Letter Agreement, p. 2.

E. Other Forward-Looking Commitments

1. Dogwood agreed to spend \$25 million over five years to fund programs and services dedicated to addressing substance use disorder for residents of western North Carolina. This money will be spent in conjunction with programs developed by the North Carolina Department of Health and Human Services. *See* Letter Agreement p. 4.

III. Fair Market Value

A. HCA Will Pay Fair Market Value

1. Two experts—Stout Risius Ross, hired by our office, and Cain Brothers, hired by Mission Health—have concluded that HCA is paying a fair price for the operating assets of Sellers.

B. Ensuring These Assets Continue to Be Used for a Charitable Purpose

Mission Health and Dogwood shall enter into an agreement (the “Mission Health-Dogwood Agreement”) which contains terms consistent with the following two provisions. (In each case, the list below serves as a summary only, and the terms listed in the Mission Health-Dogwood Agreement shall govern.)

1. Mission Health desires to transfer its net assets as early as is prudently possible to Dogwood, and Dogwood desires to accept those proceeds, as part of the orderly wind down of Mission’s operations subsequent to the closing of the Transaction.
2. Mission Health will issue reports on its wind-down and spending to Dogwood.

We understand that the Attorney General’s Office will be able to inspect these reports upon request.

IV. Other Assurances.

We have received executed representations from Mission Health describing the process that produced the proposed transaction. In addition, HCA shall provide an executed representation, consistent with negotiations with our office, on the process. The assurances provided in these representation letters are reflected in the following points. (In each case, the list below serves as a summary only, and the terms listed in each representation letter shall govern.)

A. Fair Process

1. Part of our review is checking to ensure fair process and no negative impact from any conflicts of interest. In areas where we found potential concerns, we required Mission to ensure that appropriate steps were taken to alleviate those concerns. Those steps included making sure that any individuals playing a key role in the transaction did not improperly benefit from it.
2. Mission Health has represented to the Attorney General that—other than (a) members of the management team’s expectation of likely continued employment at similar terms to those they currently enjoy and (b) pre-existing employment benefits—no one on Mission’s board and no one responsible for advising Mission’s board will receive any direct or indirect benefit as a result of the sale of the operating assets of the Mission Nonprofit Entities to HCA.

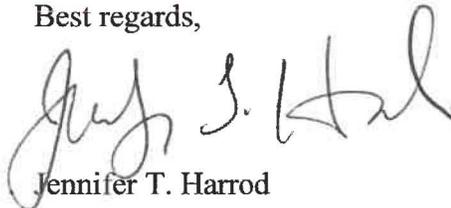
B. Formal Ratification of Transaction

1. On January 8, 2019, Mission Health held a board meeting that detailed all aspects of the process that led to Mission Health's proposed transaction with HCA. The Mission Health board, after this presentation, ratified, confirmed, and approved the proposed transaction.

In addition to the proposed transaction described in this letter, you have made us aware that CarePartners Foundation intends to sell property to an HCA affiliate and Community CarePartners, Inc. intends to reorganize with a new name and charitable mission. The new Community CarePartners, Inc. will provide adult day and bereavement services. We will review this proposed transaction in a separate letter.

This letter is based on the proposed transaction documents as they exist at this time. This letter assumes, and is conditioned upon, those documents being finalized and fully executed in the form that they were last provided to this office. We are aware that ministerial changes may be required before the documents are finalized. For this nonobjection letter to continue to be effective, our office's written consent (including but not limited to electronic mail) must have been provided concerning any changes to the transaction documents that both (1) would affect the issues negotiated with this office and (2) would make the documents, in those respects, inconsistent with the last draft documents provided to this office before issuance of this nonobjection letter.

Best regards,



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Cc: Mr. Chadd Tierney, Vice President – Legal/Development, HCA
Ms. Janice Brumit, Chair of the Board of Directors, Dogwood Health Trust
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