

JOSH STEIN  
ATTORNEY GENERAL



February 25, 2020

Greg Lowe  
President, North Carolina Division  
HCA Healthcare  
509 Biltmore Avenue  
Asheville, NC 28801

Re: HCA / Mission Health

Dear Mr. Lowe:

We appreciate the continued dialogue between our office and HCA concerning Mission Health. We write today to express our concern about four issues:

- A surge in complaints about quality of care.
- The lack of a Sexual Assault Nurse Examiner at Angel Hospital.
- How Mission Health implements its charity care and uninsured patient policies.
- How HCA discloses to patients the charges that they must pay.

Details follow about each of these concerns.

### **Complaints about quality of care**

The meetings held by the Independent Monitor over the last month have been a constructive opportunity for HCA customers to publicly raise their concerns about Mission Health. Our office has asked concerned members of the public not only to contact the Independent Monitor, but also to file complaints with our office by visiting [ncdoj.gov/file-a-complaint/](http://ncdoj.gov/file-a-complaint/). We have received 30 written complaints about Mission since January 1.

Many of the complaints raise concerns about quality of care. These complaints frequently raise concerns about the impact of staffing cuts, especially for nurses. Some of the stories in these complaints are harrowing to read, and we are taking all of them seriously.

The testimonies provided in these complaints align with a recent change in one statistical score measuring patients' satisfaction with quality of care. HCA's facilities have generally maintained their star ratings from the U.S. Centers for Medicare & Medicaid Services, which measures patient care. However, the Mission Asheville hospital has declined in the Leapfrog Hospital Safety Grades. Leapfrog's Fall 2019 score for the Mission Asheville hospital was a "C." This is part of a trend of decline; the Asheville facility scored "B" grades in Spring 2019 and Fall 2018, and it scored an "A" grade in Spring 2018, Spring 2017, Fall 2016, and Spring 2016.

We plan to respond to these complaints in three ways.

- We will provide HCA with copies of the complaints and ask for HCA's response.
- We are sharing complaints about quality of care with the regulators at the Department of Health and Human Services who investigate hospital quality-of-care concerns.
- We will evaluate all the complaints we receive, taken together, to determine whether HCA is failing to provide any services that it promised to provide under the Asset Purchase Agreement. We will share this information with the Independent Monitor and Dogwood Health Trust.

Sections 7.13(a) and 7.13(b) of the Asset Purchase Agreement, together with Schedules 7.13(a) and 7.13(b), require HCA to provide until January 2029 many defined services, such as "general medicine services" at the Asheville facility. Widespread quality of care issues at Mission facilities would raise real questions about whether HCA is providing the services that it guaranteed.

### **Sexual Assault Nurse Examiner (SANE) staffing at Angel Hospital**

We have been told that Angel Hospital no longer has a Sexual Assault Nurse Examiner on staff. These nurses are trained to provide specialized support in emergency rooms to survivors of sexual assault.

In the Asset Purchase Agreement, Section 7.13(b) and Schedule 7.13(b) provide that HCA "shall not discontinue" at Angel any "Emergency Services" or "Acute Medicine Services." SANE nurses' support to sexual assault survivors, in an emergency or acute medicine setting, is time-sensitive and of critical importance.

We ask that HCA look into this issue and provide further information to this office by March 4, 2020.

## **Charity care**

Mission promised that it will provide unable-to-pay patients with at least the assistance described in Exhibit C to the Asset Purchase Agreement. As we have discussed, we have several concerns with the way in which HCA's charity care and uninsured patient policies appear to have been implemented.

First, the charity care policy is not transparent about what services are covered. We understand that HCA interprets the policy as covering only emergent care. HCA also extends the policy on an *ad hoc* basis to certain necessary care outside the emergency room. There is no list available of what procedures meet these criteria, and we have heard from patients and physicians that they are confused about whether particular treatments are eligible under the policies.

Second, it is not easy for physicians or patients to learn how the charity care policy will be applied to their specific circumstances. HCA has chosen to have the Chief Medical Officer personally make the decisions about whether to extend coverage. He is clearly approaching these duties in a principled and thoughtful way, but his busy schedule makes it impossible for physicians to easily contact him.

Third, HCA's decision to focus on emergent care appears inconsistent with the Asset Purchase Agreement. Exhibit C to the APA, the model Charity Financial Assistance Policy, provides that the patient may be eligible if she "incurred emergent, non-elective services." The working understanding of this policy at HCA seems to eliminate the word "non-elective" from the sentence.

Fourth, the descriptions of the uninsured patient and charity care policies on Mission Health's website do not match the policy attached to the APA. The Mission Health page on charity care represents that the policy covers "non-elective services" that a patient received.

In calls with our office, HCA has mentioned that HCA is providing greater financial assistance to low income patients than Mission Health System previously provided. As mentioned on our most recent call, the total amount of care is an important measure of whether Mission patients are — as a practical matter — able to access the charity care benefits HCA promised to provide in the Asset Purchase Agreement.

In order to help us assess the situation, we request the following information for the twelve months before and the twelve months after HCA's acquisition of Mission. Please provide this information on a system-wide basis for all the facilities in the Mission system.

1. Utilization rates for financial assistance policies in the Mission Health System under Mission Health System, Inc.'s ownership and under HCA's ownership.
2. Dollar value of financial assistance provided under Mission Health System Inc.'s ownership and under HCA's ownership.
3. Dollar value of all write-offs or write-downs of patient bills provided under Mission Health System Inc.'s ownership and under HCA's ownership.
4. The overall percentage increase or decrease in charges for medical services since the consummation of the sale of Mission Health System.
5. The overall change in gross revenues from medical services since the consummation of the sale of Mission Health System.
6. A list of every individual involved in making coverage decisions for HCA's financial assistance policies at Mission Health System, by name and title.
7. The average number of cases per week that are considered in the weekly charity care appeal process Dr. Hathaway described.
8. Mission Health's policies and practices with respect to requiring payment in advance for services delivered in the hospital as they existed before the transaction and as they exist today.
9. A copy of the one-page description of HCA's financial assistance policies that was distributed to doctors with admitting privileges in the 2019 third quarter meeting.

We suggest you use the twelve months before and the twelve months after the transaction, but if the available data does not fit neatly into those time frames, we will accept different comparable periods. We understand that some of this information may represent confidential health care information; we ask you to mark information as confidential only as absolutely necessary. We ask that you respond to this portion of our letter by March 11, 2020.

### **Billing issues**

Finally, some billing issues have been raised with our office. Patients raised concerns about an "outpatient" fee that HCA may be charging to patients of Mission-affiliated primary care providers, even if the patients never set foot in Mission hospitals.

We ask that Mission provide our office with all disclosures that it made to customers about this outpatient fee. Please respond to this portion of our letter by March 11, 2020.

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We appreciate your attention to the concerns we raise in this letter, and we look forward to your responses. We all agree about the overwhelming importance of Mission Health to the people of Western North Carolina. It is in everyone's interest to resolve the

issues raised in this letter in an efficient and transparent way. Please do not hesitate to contact us with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Josh Stein", with a stylized flourish at the end.

Josh Stein

cc: Ron Winters and Tom Urban, Independent Monitor  
Antony Chiang, Dogwood Health Trust  
Bob Saunders, Brooks Pierce, Counsel for HCA  
Geary Knapp, Department of Health & Human Services