

OFFICE OF THE ATTORNEY GENERAL
STATE OF GEORGIA

IN THE MATTER OF THE CHANGE OF *
CONTROL OF AU HEALTH SYSTEM, * NO. AG 2023-01
INC. TO WELLSTAR HEALTH *
SYSTEM, INC. *

REPORT OF FINDINGS

I.

BACKGROUND

This matter presents a proposed transaction for the transfer of control of AU Health System, Inc. (“AUHS”), whose principal place of business is in Richmond County. AUHS, a Georgia nonprofit corporation and certain other affiliated entities, proposes to enter into a transaction with Wellstar Health System, Inc. (“Wellstar”), which will involve the change of control of AUHS. AUHS operates AU Medical Center (“AUMC”), its main hospital located in Augusta, Georgia, as well as, other related healthcare and ancillary medical facilities and services in and around Richmond County, Georgia. AUMC is a 632-bed acute care hospital serving a 16-county service area. Additionally, 154 of its beds are designated as pediatric beds and operated as the Children’s Hospital of Georgia. AUHS is also the sole member of Roosevelt Warm Springs Rehabilitation & Specialty Hospitals, Inc. (“RWSH”) in Warm Springs, Georgia. RWSH operates Roosevelt Warm Springs LTAC Hospital (“RWSH LTAC”), a 32-bed long-term acute care hospital, and Roosevelt Warm Springs Rehabilitation Hospital (“RWSH IRF”), a 52-bed inpatient rehabilitation hospital (collectively the “Hospitals”). Furthermore, AUHS, in partnership with the Medical College of Georgia (“MCG”), educates many of Georgia’s medical students and graduates. AUMC also holds a Certificate of Need (“CON”) for a hospital to be built in Columbia County, Georgia (“Columbia County Hospital”).

The proposed transaction does not involve a sale or lease of AUHS or the Hospitals. However, under the transaction, Wellstar will become the sole controlling member of AUHS. After completion of the transaction, AUHS will continue in existence as a Georgia nonprofit corporation, but it will be controlled by Wellstar. Wellstar has committed to provide a number of benefits to the communities served in exchange for obtaining control of AUHS. The benefits include a total capital commitment of at least \$797 million to be expended over 10 years. The

capital commitment includes: (i) construction of a new hospital in Columbia County along with an adjacent medical office building and relocation of the Surgery Center; (ii) implementation of an Epic electronic health record system; and (iii) \$62 million in expenditures at AUMC, located in Richmond County, within the first 2 years following closing, and \$139 million in years 3 through 10, which commitment is not subject to a performance contingency. Wellstar has also committed to continue to provide the services currently provided by AUHS and the Hospitals for at least 10 years, and is not permitted to terminate services or key programs, subject to certain force majeure, exigent or extenuating financial or operational circumstances, or as approved by the Board of Regents.

THE DISPOSITION PROCESS

In 2019, AUHS created a Mergers, Acquisitions, and Partnership (“MAP”) Committee to explore various strategic options for the health system. The main objective for the MAP Committee was to explore mergers, acquisitions, partnerships, joint ventures, contracts, or any other strategic business arrangement that would be in the best interest of Augusta University and AUHS in achievement of their education, research and healthcare missions.

Subsequently, in May of 2019, AUHS engaged Ponder & Co. (“Ponder”) as an independent financial advisor to assist AUHS in the partnership process and in any potential partial or complete sale of AUHS. Ponder identified and contacted 18 health systems with 14 ultimately receiving an Instruction Letter (“IL”) and Confidential Information Memorandum (“CIM”). The IL included a formal invitation to potential partners to participate in the process with Augusta University and AUHS, a definition and evaluation process, a review of the fundamental goals and objectives of the partnership process, and a request to respond to each systems position on commitments to: (i) affiliation structure; (ii) commitment to academic support; (iii) capital; (iv) employees; (v) physicians; (vi) governance representation; (vii) commitment to the Medical College of Georgia; (viii) information technology; (ix) services; and (x) quality. Dr. Brooks Keel, acting CEO of AUHS, testified at the public hearing that the objectives of the partnership process was to “support and enhance a commitment to the provisions of high quality health care services locally and throughout the state of Georgia and better provide health care services to underserved populations; expand the clinical platform, including a new state of the art hospital in Columbia County using the newest technology and equipment to prepare future health care professionals to practice in the changing health care

environment; share the mission of the Medical College of Georgia, allowing it to carry out the health science education, missions and objections; and provide resources to enhance Augusta University's recognition as a best in class research university." (Transcript, p. 14).

Ultimately, a total of 5 health systems, 4 nonprofit and 1 for-profit, provided written responses to Ponder and each was provided with an opportunity to meet with representatives of AUHS, Augusta University and MCG. Refined proposals from these 5 health systems were due in late November 2019, but 2 health systems notified Ponder that they were no longer interested. As discussions and the narrowing process continued with the remaining health systems, which included Wellstar, the partnership process was paused due the COVID-19 pandemic.

In August of 2021, Ponder was re-engaged by AUHS and distributed an updated IL and CIM to 11 potential partners. This list of potential partners included both local, regional, and national health systems and was informed by the previous partnership search in 2019. Of the 11 potential partners, affirmative responses to the second IL and CIM were received from 3 health systems, including Wellstar. In December of 2021, a second IL was issued with all 3 potential partners responding. All potential partners were invited to present to the AUHS Board and were engaged in calls and meetings with leadership from AUHS. In February 2022, Wellstar and one other potential partner presented to the AUHS Board of Directors, while the third potential partner declined to present but continued to engage in discussions. By March 2022, all 3 potential partners submitted letters of intent ("LOI") which Ponder summarized and presented to the AUHS Board of Directors. Subsequently, 2 of the 3 potential partners decided not to proceed leaving Wellstar as the only candidate remaining.

In the following months, AUHS and representatives of MCG, Augusta University, and their advisors continued to negotiate an LOI with Wellstar. In December 2022, AUHS and Wellstar executed a LOI to move forward with negotiations and the drafting of a Member Substitution Agreement, Master Affiliation Agreement, and other supporting transaction documents.

Dr. Brooks Keel testified at the public hearing that throughout the selection process, "the leadership of Wellstar and AU Health System shared common visions and interest in the proactive delivery of health care for the patients and communities we serve. The board is confident in the conclusion that we reached and confident that the proposed transaction is good for the community, the state of Georgia and AU Health System." (Transcript, p. 18).

THE PROPOSED TRANSACTION

As described above, the transaction provides for the transfer of control of AUHS through a proposed Member Substitution Agreement (“Agreement”) whereby Wellstar will be the sole controlling member of AUHS. After completion of the transaction, AUHS will continue in existence as a Georgia nonprofit corporation, but will be controlled by Wellstar. Pursuant to the Agreement, Wellstar has committed to provide a number of benefits to the communities served in exchange for obtaining control of AUHS. The benefits are both financial and operational. Financially, the Agreement provides that Wellstar will support AUHS by making a capital commitment of at least \$797 million to be expended at AUHS over 10 years. This capital commitment includes: (i) construction of a 100-bed acute care hospital in Columbia County along with an adjacent medical office building and relocation of the Surgery Center; (ii) \$62 million in expenditures at AUMC, located in Richmond County, within the first 2 years post transaction; (iii) \$139 million for capital projects at AUMC in years 3 through 10; (iv) up to \$201 million of capital commitments which are subject to a performance contingency that allows Wellstar to defer such capital expenditures if AUHS’ performance does not meet a 2% operating margin threshold; and (v) implementation of the Epic electronic health record system throughout AUHS. Additionally, Wellstar will ensure AUHS does not violate their debt obligations and to cure any such violations.¹

In addition to the financial commitments, Wellstar has made several operational commitments as well. The Agreement provides that Wellstar will: (i) maintain and continue to operate the Hospitals as fully licensed and accredited acute care hospitals and participate in Medicare/Medicaid programs for a period of no less than 10 years; (ii) continue to provide Clinical Core Services at the Hospitals during the initial 10 year period subject to certain force majeure, exigent or extenuating financial or operational circumstances, or as approved by the Board of Regents²; (iii) maintain AUMC as an academic medical center and the continuation of

¹ As of March 31, 2023, AUHS’ outstanding debt amount is approximately \$234 million.

² Clinical Core Services for AUMC include, but are not limited to, emergency room services, obstetrics and gynecology services, Level 1 adult trauma services, Level II pediatric trauma services, Level IV Neonatal Intensive Care Unit services, and Children’s Hospital of Georgia. With respect to RWSH LTAC and RWSH IRF, Clinical Core Services includes long term acute care services and inpatient rehabilitation services, respectively.

residency and fellowship programs as they exist as of the closing date³; (iv) for a period of one year, maintain AUHS' indigent and charity care policies after which the policies will be consistent with Wellstar's current indigent and charity care policies; and (v) place certain members of the AUHS Board of Directors to the Wellstar Board of Trustees.⁴

Although not a direct party to the underlying transaction, the Board of Regents of the University System of Georgia ("Board of Regents") is the public body of the State of Georgia vested with governance, control, and management of the university system in Georgia, including Augusta University and the Medical College of Georgia. The Board of Regents serves a pivotal role in the relationship between AUHS and Wellstar. The real property and facilities of AUMC, RWSH LTAC, and RWSH IRF are currently leased from the Board of Regents. Under the terms of the proposed transaction, the Board of Regents will continue to be the lessor pursuant to an amended 40-year lease. Additionally, upon completion of the Columbia County Hospital and the implementation of the CON, AUMC, pursuant to a proposed Development Agreement, will convey to Board of the Regents the real property and facilities comprised of the Columbia County Hospital, which will then be leased back to AUMC, consistent with all other real properties related to AUMC. To facilitate the bond financing related to the development, construction, and equipping of the Columbia County Hospital through the Columbia County Hospital Authority, AUMC will sublease Columbia County Hospital to the Columbia County Hospital Authority who will in return sub-sublease it back to AUMC. After the bonds have been fully paid, the sublease and sub-sublease will terminate and AUMC will continue to lease Columbia County Hospital from Board of Regents. Ultimately, AUMC will continue to operate and control Columbia County Hospital.⁵

Additionally, the Board of Regents and Wellstar, upon closing, will enter into a Master Affiliation Agreement ("MAA") which sets forth the operational, clinical, and educational

³ Wellstar intends to provide for residency and fellowship programs at the newly constructed Columbia County Hospital.

⁴ Board of Regents will nominate two individuals, who are members of the AUHS Board of Directors, to serve on the Wellstar Board of Trustees, one of which shall serve for a two-year period. The Dean of MCG and the President of Augusta University shall always serve as ex-officio non-voting members of the AUHS Board. Additionally, Wellstar shall name two executive officers of Wellstar to serve on the AUHS Board of Directors. (MAA, p. 17).

⁵ The proposed restructuring of the real property and facilities comprised of the Columbia County Hospital will not necessitate further review under the Hospital Acquisition Act.

relationship between the parties. Pursuant to the MAA, which has a 40-year term, AUMC and the Columbia County Hospital shall serve as the principal teaching hospitals for MCG, and MCG shall serve as the principle medical school affiliated with Wellstar. (MAA, p. 14). Furthermore, the MAA provides, among other things: (i) support and enhancement to the academic mission of the Augusta University and MCG including the establishment of an Atlanta regional campus on or near Wellstar Kennestone Regional Medical Center; (ii) stability and assurances to MCG faculty; and (iii) memorializes the capital and operational commitments of the proposed transaction providing the Board of Regents an enforceable commitment. (MAA, p. 19-26).

BENEFITS ANALYSIS

Under O.C.G.A. § 31-7-406(6), a transaction involving the acquisition or disposition of the assets of a nonprofit hospital to an acquiring entity requires the Attorney General to make a determination as to whether the seller “will receive an enforceable commitment for fair and reasonable community benefits for its assets.”

PYA, P.C. (“PYA”) was engaged by Arnall Golden Gregory LLP (“AGG”) on behalf of AUHS to provide certain valuation and related consulting services regarding the proposed transaction. Specifically, PYA performed a fair market value analysis of AUHS and an assessment of the community benefit anticipated from the proposed transaction as of September 30, 2022 (“Valuation Date”), consistent with the provisions of the Georgia Hospital Acquisition Act. PYA’s analysis ultimately determined the fair market value of AUHS’s invested capital to be within a range of \$538.5 to \$595.1 million as of the Valuation Date, and the fair market value of AUHS’s equity to be between \$336.8 to \$393.5 million. Jim Lloyd, Principal at PYA, testified at the public hearing held on June 27, 2023.

There are 3 traditional approaches considered to determine value: (i) the Income Approach; (ii) the Market Approach; and (iii) the Cost Approach (Net Asset Value). The Income Approach is predicated on the concept that the value is dependent upon the amount and timing of cash flows generated by the subject asset or business. The Market Approach involves a comparison and correlation to the subject company based on observed multiples in the marketplace involving publicly-traded companies or transactions in similar lines of business, typically involving transfers of 100% ownership interests. Lastly, the Cost Approach is predicated on the concept that the value of an asset should not exceed the cost to reproduce or replace, less any physical, functional, and economic obsolescence. The value is estimated based

on the value of all of the subject business' underlying assets, both tangible and intangible, net of liabilities.

PYA ultimately relied on the Market Approach to derive its fair market value estimate for the invested capital and total equity of AUHS. PYA did consider the Cost Approach when reviewing the accounting book value of AUHS's recorded assets as a corroborative analysis. However, PYA did not consider this value indication in its final conclusions, noting that the Cost Approach was "unlikely to capture the intangible value of the AUHS operations." (EY Report, p. 23). PYA did not utilize techniques under the Income Approach to value AUHS, because it was unable to obtain from management or develop financial projections for AUHS past FY 2023 or "normalize" revenue and expenses to show positive cash flows on a stand-alone basis.

Under the Market Approach, PYA utilized 2 valuation methodologies to derive its fair market value estimate for the invested capital and total equity of AUHS: (i) the Guideline Public Company Method ("GPC"); and (ii) the Guideline Transactions Method ("GTM"). PYA's analysis under this approach yielded an invested capital range of \$538.5 million to \$595.1 million. This indicated invested capital value range was then converted to equity or net assets basis by subtracting the Valuation Date balances of AUHS's interest-bearing debt and other liabilities included in the proposed transaction, which yielded an equity value range for AUHS of \$336.8 million to \$393.5 million. PYA noted that AUHS owned assets related to the proposed Columbia County Hospital had no current impact on the revenue or cash flows of AUHS and were thus considered "non-operating assets." These include the CON for the proposed hospital and several parcels of land where it will be located. While it commented on the fair market of each of these assets, PYA did not include or add them as an additional value element to its concluded fair market value range for the equity of AUHS.

Finally, PYA conducted a Community Benefit analysis which analyzed a number of community benefits expected from the proposed transaction. Specifically, PYA analyzed Wellstar's commitment to spend up to \$797 million in capital expenditures for AUHS over a 10 year period, as well as Wellstar's agreement to not discontinue or materially reduce AUHS's core services, and to maintain the residency and fellowship programs at AUHS, among others. In analyzing and calculating the value of community benefit from the proposed transaction, PYA applied present value discounting techniques under the Income Approach for quantifying the benefit from Wellstar's capital commitments. PYA also noted that the proposed transaction

would have an impact on the growth of Georgia's healthcare workforce statewide, as well as other direct and indirect benefits to AUHS's service area and scope of healthcare services.

PYA concluded that Wellstar's strong financial position and the significant financial commitments for future investment in AUHS would enhance and expand patient access and services within the communities served by AUHS. Having highlighted these benefits quantitatively, PYA also calculated a probability adjusted present value (as of September 30, 2022) of the \$797 million capital commitment, at \$554.9 million to \$613.3 million.

Ernst & Young, LLP ("EY"), in accordance with O.C.G.A. § 31-7-405(b), was retained as an independent financial advisory consultant by the Attorney General to assist in the review of the proposed transaction between AUHS and Wellstar. The Attorney General engaged EY to provide valuation advisory services, but not to provide a separate valuation or a fairness opinion. Ms. Natasha A. Hunerlach, a partner at EY specializing in health care provider valuations, testified at the hearing.

As part of its engagement, EY held discussions with representatives of all the parties involved in the proposed transaction and performed independent research and analyses to review the conclusions contained in PYA's assessment of the fair market value of AUHS and its underlying assets, and the community benefit expected as a result of the proposed transaction. In the course of its engagement, EY analyzed PYA's underlying valuation methodologies and assumptions, and performed a number of sensitivity analyses of PYA's valuation along with limited market research.

EY's sensitivity analyses included a number of adjustments to PYA's valuation based on a more recent effective date of June 15, 2023, for market-based inputs and more current AUHS financial data. EY noted that its sensitivity analyses and corroborative calculations that utilized this more current date of June 15, 2023 did not have an impact on the conclusion that the community benefit from the proposed transaction exceeds the stand-alone value of AUHS's assets. EY's limited market research also found that the valuation multiples implied by PYA's valuation analysis for AUHS are generally within the range of the current market data. EY ultimately concluded that PYA used reasonable valuation methods in its analysis to support its conclusion.

PUBLIC COMMENT

The public hearing was held on June 27, 2023, at 1:00 p.m. in Richmond County, Georgia, at the Lansing B. Lee Auditoria Center, 1459 Laney Walker Blvd., Augusta, Georgia 30901. The public was also invited to submit written comments by mail or e-mail to HAA@law.ga.gov. Pursuant to O.C.G.A. § 31-7-404, notice of the public hearing was published in *The Augusta Chronicle* on Wednesday, May 10, 2023, and Wednesday, May 17, 2023. At the hearing, twenty-one individuals made comments in favor of the proposed transaction, including the Chancellor of the University System of Georgia, Sonny Perdue, State Senator Harold Jones, Representative Gloria Frazier, and State Representative Karlton Howard. Two individuals expressed concern regarding the maintenance of current levels of care and services, and indigent and charity care.

Following the public hearing, the record was held open until the close of business on Thursday, June 29, 2023, for any further public comment. This Office received a total of twenty-six written comments regarding the proposed transaction. Approximately twenty written comments were in favor of the proposed transaction and one written comment was in opposition. There were two written comments received expressing concern, one of which was submitted by State Senator Nan Grogan Orrock along with State Representative Kim Schofield, and President of the Atlanta NAACP, Richard Rose. Two written comments were submitted expressing displeasure with the proposed name changes at RWSH.⁶ Lastly, one written comment from United States Senator Raphael Warnock expressed conditional support for the proposed transaction. Senator Warnock requested assurances that Wellstar commit to long-standing investments in AUHS, in addition to specific commitments to ensure the proposed transaction serves the needs of the community and protects the public's interest.

Counsel for AUHS and Wellstar were requested to inform the undersigned in writing before the record closed as to whether their respective clients intended to proceed with the proposed transaction as structured or modify the proposed transaction in some respect. On June 29, 2023, counsel for both parties submitted a joint letter stating that their clients wish to proceed with the transaction as proposed.

⁶ The parties have agreed that RWSH will be branded as Wellstar Warm Springs, affiliated with the Medical College of Georgia.

II.

FINDINGS

The Hospital Acquisition Act (the “Act”) involves a public interest determination in the Attorney General’s review of a proposed disposition and acquisition of hospital assets. *See* O.C.G.A. §§ 31-7-400 through 31-7-412; *Sparks v. Hospital Authority of City of Bremen and County of Haralson*, 241 Ga. App. 485 (1999) (physical precedent only). The Act requires a written notice filing and a public hearing “regarding the proposed transaction in the county in which the main campus of the hospital is located.” O.C.G.A. §§ 31-7-401, 31-7-405(a). The purpose of the public hearing is “to ensure that the public’s interest is protected when the assets of a nonprofit hospital are acquired by an acquiring entity by requiring full disclosure of the purpose and terms of the transaction and providing an opportunity for local public input.” O.C.G.A. § 31-7-406.

Under the Act, disclosure is linked to whether “appropriate steps have been taken to ensure that the transaction is authorized, to safeguard the value of charitable assets, and to ensure that any proceeds of the transaction are used for appropriate charitable health care purposes.” O.C.G.A. § 31-7-406. The Act identifies thirteen factors that are key considerations in determining whether the appropriate steps have been taken by the parties. *Id.* The thirteen factors are listed in Appendix A to this report.

The thirteen factors set forth in O.C.G.A. § 31-7-406 can be grouped into four categories relating to (a) the exercise of due diligence by the seller. (factors number 1, 2, 3, 4 and 8), (b) conflicts of interest (factors number 5 and 13), (c) valuation of the hospital assets (factors number 6, 7 and 10), and (d) the charitable purpose of the proposed transaction (factors number 9, 11 and 12).

The Exercise of Due Diligence by the Seller

Factor number 1 is satisfied because the disposition of the Hospital is authorized by applicable law. With regard to factor number 2, the disposition of the Hospital is consistent with respect to major donors. With respect to related entities or foundations, the Augusta University Foundation (“AU Foundation”) supports Augusta University and AUHS and its components. AU Foundation is responsible for investing, managing, and distributing gifts based on donor restrictions. At closing, AU Foundation, Augusta University, Medical College of Georgia Foundation, Wellstar, and Wellstar Foundation, Inc. will execute a Foundation Affiliation

Agreement which will ensure that any funds that have been directed by a donor for the benefit of AUHS prior to the closing date will continue to be maintained and directed pursuant to the donor's intent. Through the review process and during the public hearing, no concerns have been raised by any donors, related entities or foundations. Therefore, the record supports finding that factor number 2 is satisfied.

The due diligence factors number 3 and 4 necessitate review of the process and procedures employed by the Seller "in deciding to dispose of hospital assets, selecting the acquiring entity, and negotiating the terms and conditions of the disposition." O.C.G.A. § 31-7-406(3). As detailed above, AUHS exercised appropriate due diligence in its selection process as it engaged Ponder and formed the MAP Committee to evaluate its strategic and financial options to secure a long-term and stable future. Noting the unique relationship between AUHS and the Board of Regents, including Augusta University and MCG, AUHS exercised appropriate due diligence in engaging Ponder and including the Board of Regents in the strategic considerations and evaluation of the proposed transaction. As it applies to factor number 8, AUHS submitted in its filing to this Office the MAA the following agreements: (i) Amended and Restated Clinical and Administrative Professional Services Agreement ("CAPSA"); (ii) Amended and Restated Research, Education and Professional Services Agreement ("REPSA"); (iii) Amended and Restated Operations and Service Agreement ("OSA"); and (iv) a Purchased Services Agreement. AUHS also engaged AGG and PYA during the process of negotiating and finalizing the proposed transaction, including the development of these related ancillary service agreements. The record supports a finding that AUHS "exercised due diligence in deciding to dispose of hospital assets, selecting the acquiring entity, and negotiating the terms and conditions of the disposition." O.C.G.A. § 31-7-406(3). The record further supports a finding of adequacy regarding "[t]he procedures used by the nonprofit corporation in making its decision to dispose of its assets" and that "appropriate expert assistance was used." O.C.G.A. § 31-7-406(4). Additionally, the record supports that "the terms of any management or services contract negotiated in conjunction with the transaction are reasonable." O.C.G.A. § 31-7-406(8). Therefore, the process employed by AUHS demonstrates the exercise of due diligence, consistent with factors number 3, 4, and 8.

Conflicts of Interest

The disclosure of any conflict of interest involving the Sellers, the Chief Executive Officer of the Hospital and its expert consultant is to be considered under factor number 5. Conflict of interest certifications, as required by the Act and the notice filing requirements of the Attorney General, have been filed by members of the governing board of AUHS, by the acting chief executive officer of AUHS, and by W. James Lloyd, Principal for PYA. Such certifications do not disclose any impermissible conflicting financial interest in the proposed transaction. With regard to factor number 13, the instant transaction involves the transfer of control of a nonprofit hospital to another nonprofit corporation. Health care providers will not be offered an opportunity to invest or own an interest in the Hospital as part of the transaction or after the transaction. Therefore, factor number 13 is not applicable.

Valuation of the Hospital Assets

The factors numbered 6, 7, and 10 involve a determination of the value of the hospital assets. Because this transaction involves the transfer of control of a nonprofit corporation which controls hospital assets subject to the Act to another nonprofit corporation, AUHS should receive an enforceable commitment for fair and reasonable community benefits for the transfer of control of its assets. *See* O.C.G.A. § 31-7-406(6). Based on the record, including the analysis conducted by PYA on behalf of AUHS and the review by EY at the request of the Attorney General as described herein, AUHS will receive an enforceable commitment for fair and reasonable community benefits in exchange for its assets as required by the Act. These commitments are incorporated in the Master Affiliation Agreement and are enforceable by the Board of Regents.

Since AUHS is not providing any financing for the transaction, factor number 7 is not applicable. As to factor number 10, under the terms of the Master Affiliation Agreement between Wellstar and the Board of Regents, the Board of Regents retains a right of first refusal to purchase the assets if Wellstar or AUHS receives or obtains an offer for a change of control of any of the Hospitals to either a (i) for-profit entity; or (ii) organization that maintains its primary corporate headquarters outside of the State of Georgia. The right of first refusal involving AUHS or the Hospitals is for a period of 10 years from the closing of the proposed transaction. Thus, factor 10 is satisfied.

Charitable Purpose of the Proposed Transaction

With respect to the charitable purpose of the proposed transaction, factor number 9 requires that the disposition proceeds be used for charitable health care purposes consistent with the nonprofit's original purpose. Here, the Agreement is not expected to generate any proceeds. Therefore, factor number 9 is not applicable.

The other two charitable purpose factors, numbers 11 and 12, concern the purchaser's commitment to provide (a) continued access to affordable care, (b) the range of services historically provided by the seller, (c) health care to the disadvantaged, the uninsured and the underinsured, and (d) benefits to the community to promote improved health care. Pursuant to the Agreement, Wellstar has made various commitments regarding maintenance of the core healthcare services provided by AUHS. The commitments include, but are not limited to, maintain and continue to operate the Hospitals as fully licensed and accredited acute care hospitals and participate in Medicare/Medicaid programs for a period of no less than 10 years, continue to provide Clinical Core Services at the Hospitals during the initial 10 year period subject to certain force majeure, exigent or extenuating financial or operational circumstances, or as approved by the Board of Regents, maintain AUMC as an academic medical center and the continuation of residency and fellowship programs as they exist as of the closing date, and for a period of 1 year, maintain AUHS' indigent and charity care policies after which the policies will be consistent with Wellstar's current indigent and charity care policies. The obligations provided for in the record, including those described herein, support a finding that factors 11 and 12 are satisfied in this matter.

III.

CONCLUSION

Upon review of the public record and in accordance with the Act, the undersigned Hearing Officer finds that the public record in this matter discloses that the proposed transaction is appropriate in light of the factors set forth in the Act.

This 27th day of July, 2023.



ALKESH B. PATEL
Senior Assistant Attorney General
Hearing Officer

APPENDIX A

- (1) Whether the disposition is permitted under Chapter 3 of Title 14, the Georgia Nonprofit Corporation Code,' and other laws of Georgia governing nonprofit entities, trusts, or charities;
- (2) Whether the disposition is consistent with the directives of major donors who have contributed over \$100,000.00;
- (3) Whether the governing body of the nonprofit corporation exercised due diligence in deciding to dispose of hospital assets, selecting the acquiring entity, and negotiating the terms and conditions of the disposition;
- (4) The procedures used by the nonprofit corporation in making its decision to dispose of its assets, including whether appropriate expert assistance was used;
- (5) Whether any conflict of interest was disclosed, including, but not limited to, conflicts of interest related to directors or officers of the nonprofit corporation and experts retained by the parties to the transaction;
- (6) Whether the seller or lessor will receive fair value for its assets, including an appropriate control premium for any relinquishment of control or, in the case of a proposed disposition to a not-for-profit entity, will receive an enforceable commitment for fair and reasonable community benefits for its assets;
- (7) Whether charitable assets are placed at unreasonable risk if the transaction is financed in part by the seller or lessor;
- (8) Whether the terms of any management or services contract negotiated in conjunction with the transaction are reasonable;
- (9) Whether any disposition proceeds will be used for appropriate charitable health care purposes consistent with the nonprofit corporation's original purpose or for the support and promotion of health care in the affected community;
- (10) Whether a meaningful right of first refusal to repurchase the assets by a successor nonprofit corporation or foundation has been retained if the acquiring entity subsequently proposes to sell, lease, or transfer the hospital to yet another entity;
- (11) Whether sufficient safeguards are included to assure the affected community continued access to affordable care and to the range of services historically provided by the nonprofit corporation;

- (12) Whether the acquiring entity has made an enforceable commitment to provide health care to the disadvantaged, the uninsured, and the underinsured and to provide benefits to the affected community to promote improved health care; and
- (13) Whether health care providers will be offered the opportunity to invest or own an interest in the acquiring entity or a related party, and whether procedures or safeguards are in place to avoid conflicts of interest in patient referrals.