OFFICE OF THE ATTORNEY GENERAL
STATE OF GEORGIA

IN THE MATTER OF THE SALE OF MEADOWS REGIONAL MEDICAL CENTER, BY MEADOWS HEALTHCARE ALLIANCE, INC. AS SELLER, TO VIDALIA HEALTH SERVICES, LLC, AN AFFILIATE OF HCA HEALTHCARE INC., AS PURCHASER	* * * * * * * * *	NO. AG 2021-01

REPORT OF FINDINGS

I.

BACKGROUND

MEADOWS REGIONAL MEDCIAL CENTER

Meadows Regional Medical Center (hereinafter the "Hospital") is a 57-bed licensed acute care hospital in Vidalia, Georgia. The Hospital is operated by Meadows Regional Medical Center, Inc., (hereinafter "MRMC") a Georgia nonprofit corporation. MRMC is also the sole member of Meadows Sleep Center, LLC, Meadows Regional Cancer Center, LLC, and Meadows Advance Wound Care Center, LLC. The sole member of MRMC is Meadows Healthcare Alliance, Inc. (hereinafter "MHA"), also a Georgia nonprofit corporation. The Hospital is located at 1 Meadows Parkway, Vidalia, Georgia. The Hospital provides outpatient and inpatient medical/surgical services, including 24-hour emergency department services, obstetrics, inpatient and outpatient surgery, radiation and medical oncology, critical care services, and cardiac services. The Hospital's primary service area includes Toombs, Montgomery, Emanuel, Wheeler, Jeff Davis, Candler, Treutlen, Appling, Tattnall, and Laurens Counties.

MHA also operates Alliance Home Medical, a durable medical equipment provider, and is also the sole member of Meadows Healthcare Resources, Inc. and Southeast Regional Primary Care Corporation, Inc. In addition, Southeast Regional Primary Care Corporation is the sole member of several physician practices.

THE DISPOSITION PROCESS

In early 2018, the Boards of MRMC and MHA (collectively "the Boards") concluded that it would be difficult for the Hospital to continue operating as a standalone entity because revenues were decreasing and costs were increasing. Revenues for the Hospital had been declining for several years. From 2015 to 2019, net revenue declined by $22 million and net operating income declined by $2.5 million. Since that time, operating losses have also continued to increase, partly due to the COVID-19 pandemic. The Hospital's operating losses were $12.9 million for the 2020 fiscal year and $9.5 million for the first eight months of the 2021 fiscal year. Additionally, the Boards attended annual trustee conferences sponsored by the Georgia Hospital Association where they learned of a trend for small, rural hospitals to close unless they affiliated with or sold to a larger, regional hospital network. The Boards felt that their experience was consistent with other independent hospitals in Georgia as they were facing reducing volumes, increased reimbursement pressure from commercial payers, and the ongoing challenge of recruiting and retaining physicians in a rural community.

Based on the financial difficulties facing the Hospital, the Boards retained the counsel of Alston & Bird LLP to advise the Boards of their fiduciary duties in pursuing a potential partnership or transaction, on the requirements under the Hospital Acquisition Act, as well as the need to engage strategic consultants and financial advisors. In order to effectively review and negotiate a potential transaction or affiliation, the Boards created the Building and Grounds Committee (the "Committee"), which consisted of a few members of both boards and three physicians. The Committee's first act was to hire a strategic advisor. After a competitive bidding process, the Committee selected Iain Briggs with Macrogate as its financial advisor to provide an objective valuation of the Hospital's current and projected financial position, outline the Hospital's strategic options, and assist the Committee in negotiations with potential partners. The Committee's advisors also consisted of merger and acquisition and tax exempt foundation attorneys from Baker Donelson, as well as, an independent valuation expert from Stroudwater Associates, Inc.

In November of 2018, Macrogate presented the Committee with its findings. Based on the declining revenues, increased costs, and national trends for rural hospitals.

Macrogate concluded that the Hospital could remain independent for a few years, but that it would be difficult to do so. Macrogate also presented the Hospital with several options, including affiliation with a hospital network. The Committee concluded that an affiliation was the best option for the Hospital and recommended that the Boards pursue such action. Each Board approved the Committees recommendation and, in December 2019, Macrogate approached three potential transaction partners and distributed a request for proposals ("RFP") to the two potential regional partners who expressed an interest in a transaction with Meadows.

The Committee received two responses to the RFP. The Hospital had discussions with both bidders, a non-profit healthcare network and Vidalia Health Services, LLC, a for-profit Delaware limited liability company and an affiliate of HCA Healthcare, Inc. (hereinafter, "HCA"). In early 2019, both bidders received preliminary due diligence documents and invitations for on-site tours. Subsequently, both bidders submitted formal affiliation proposals to the Boards and made a formal presentation to the Committee. In May 2019, the non-profit healthcare network informed the Committee that it was no longer interested in a partnership or affiliation, so the Committee continued discussions with HCA only. After negotiations, HCA and Meadows signed a Letter of Intent. Subsequently, HCA continued its due diligence process and both parties began negotiating an Asset Purchase Agreement ("APA"). The negotiations were paused for several months in 2020 due to the COVID-19 pandemic, but resumed later that year.

THE PROPOSED TRANSACTION

Substantially all of the real property used by the Hospital is owned by the Toombs County Hospital Authority (hereinafter the "Authority") and leased to MRMC or MHA (collectively "Meadows"). Therefore, this transaction will close in two simultaneous transfers. In the first transfer, the real and personal property owned by the Authority will be transferred to Meadows for nominal consideration. In the second transfer, pursuant to the APA, Meadows will convey substantially all property associated with the operations of the Hospital, including the property acquired from the Authority, to HCA.

As outlined in the APA, HCA shall assume and pay certain liabilities of Meadows, which will be part of the basis of the consideration for the proposed transaction. The aggregate consideration of the proposed transaction is approximately $73 million, plus or minus working capital.

Under the APA, Meadows' assets include the Hospital and its related healthcare businesses, buildings, equipment, supplies and inventory used in the operation of the Hospital, all tangible personal property, real property to be transferred from the Authority, leases, leasehold interests, certain contractual or property rights related to the operation of the Hospital, accounts receivable, deposits, rights to payments, rights to all assignable state, federal, special or local licenses or permits, intellectual property, prepaid expenses, and other assets outlined in the APA. In exchange for these assets, HCA agrees to assume certain of the Hospital's and the Authority's liabilities as designated under the APA. Specifically, HCA will assume a $63 million Housing and Urban Development loan. The loan was undertaken by Meadows to build a new facility, which opened in 2012.

Pursuant to the APA, HCA has committed to maintain and operate the Hospital as a general acute care hospital, including the emergency department and other core services[1] for a period of ten (10) years following the transaction closing date,[2] subject to certain reasonable exceptions. The APA also includes a 10-year right of refusal in favor of Meadows New Foundation.[3] Additionally, the APA also includes a commitment by HCA to spend $10 Million in capital expenditures over the 5 years immediately following the close of the transaction; a 5-year commitment to maintain medical education programs for third-year medical students and Certified Registered Nurse Anesthetist students supported by the Hospital; a 5-year commitment to community contributions of no less than $50,000 annually; and a 3-year commitment to continue to sponsor certain community outreach programs. HCA has also committed to hiring substantially all of the Hospital's employees as well as implementing a physician recruitment plan. HCA will implement its own Charity Care Policy. Furthermore, HCA

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[1] In addition to the emergency department, the core services include interventional cardiology, medical and radiation oncology, and obstetrics services.
[2] This transaction is anticipated to close on or around April 30, 2021, and no later than June 2, 2021.

will appoint and maintain an advisory board for the Hospital consisting of six members, three selected by the Meadows New Foundation and three selected by HCA.

VALUATION ANALYSIS

Stroudwater & Associates ("Stroudwater") was retained by Meadows' counsel to perform a financial analysis to determine the fair market value of the Hospital's assets and operations on a going-concern basis for the proposed purchase of the Hospital by HCA. The scope of Stroudwater's engagement was a calculation of the fair market value for the Hospital and certain community benefits ("Ongoing Community Benefits") related to the Transaction. In its report, Stroudwater determined that the fair market value of the operations of the Hospital was $64.5 million and the Ongoing Community Benefits from the transaction to be $30 million. Ms. Opal Greenway testified for Stroudwater at the public hearing held on March 25, 2021.

In its calculation of the fair market value for the Hospital, Stroudwater calculated the value of the Hospital assets and operations. There are three traditional approaches considered to determine value. The three approaches are: (1) the Income Approach, (2) the Market Approach, and (3) the Cost or Net Asset Value Approach. The Income Approach is based on the concept that the value of a business is the present worth of the expected future economic benefits to be derived by the owners of the business. Under the Market Approach, value is derived through a comparison of the transaction prices of similar assets and business interests trading in the marketplace. In the Cost (net asset value) Approach, value is estimated based on the value of (or cost to replace) all of the subject business's underlying assets, both tangible and intangible.

Stroudwater considered all three approaches, then reconciled and synthesized the indicated values according to industry standards to reach a final estimate of value. Under the Income Approach, Stroudwater applied a Discounted Cash Flow ("DCF") method, which provides an indication of value based on the entity's ability to generate future net cash flow. This projected net cash flow is then discounted to present value using an appropriate risk-adjusted discount rate. For purposes of the analysis, projections for the

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[3] Meadows New Foundation is a newly organized nonprofit organization that will receive the net proceeds of the transaction to be used for services and activities designed to ensure and improve access to health care in the community service area.

revenues, earnings, capital expenditures, and working capital of the Hospital's assets and operations were provided by the Meadows and analyzed by Stroudwater. Meadows anticipates that its Earnings Before Interest, Taxes, Depreciation and Amortization ("EBITDA") margin will decrease to 8.3% in 2021 from 11.7% in 2020 and continue to decrease until stabilizing at 6.7% EBITDA margin in 2025 and thereafter. The magnitude of the discount rate applied to the projected cash flows is relative to the perceived risk of the investment/asset and current capital costs. The discount rate used by Stroudwater in their analysis is an estimate of the Hospital's weighted-average cost of capital ("WACC"), which represents the return an investor would require if they were to purchase the Hospital and reflects an estimate of the costs of debt and equity weighted by the percentage of debt and equity in the Hospital's target capital structure. When the WACC is applied, it converts the undiscounted free cash flow to present value. Using this methodology, Stroudwater valued the Hospital Assets at $40.8 million.

Under the Market Approach, Stroudwater applied two methods to estimate the Hospital's fair market value: the Guideline Public Company Method and the Guideline Transaction Method. These methods estimate the value of a business, asset, or service by compiling and analyzing data with respect to actual market transactions (i.e. sales and purchases) of similar businesses or business interests. The Guideline Public Company Method considers the reported values and implied market multiples of minority interests in publicly-traded companies in comparable or similar lines of business. Under the Guideline Public Company Method, Stroudwater identified and calculated valuation multiples based on the financial data of publicly-traded comparable companies. Stroudwater utilized a business enterprise value in order to calculate revenue multiples, which ranged from 0.99x to 1.30x with an average of 1.12x and also calculated EBITDA multiples, which ranged from 6.94x to 10.62x with an average of 8.17x. Stroudwater selected the 25th percentile revenue multiple of 0.99x and the 25th percentile EBITDA multiple of 6.94x to value the Hospital. Stroudwater then applied the selected multiples to the Hospital's normalized 2020 revenue and EBITDA in order to arrive at value conclusions. The respective values were then weighted with 40% to the revenue multiple and 60% to the EBITDA multiple to determine a fair market value of the Hospital of $120.4 million.

The Guideline Transaction Method is an approach that considers the valuation metric relationships of recent acquisitions of similar companies and applies them to the company being valued. Under the Guideline Transaction Method, Stroudwater identified and calculated valuation multiples based on financial data from 19 publicly reported transactions. Stroudwater selected the median sale price to revenue multiple of 0.49x and the median sales price to EBITDA multiple of 5.55x. Stroudwater then applied the selected multiples to the Hospital's normalized 2020 revenue and EBITDA in order to arrive at a conclusion of value. The respective value indications from each of those multiples were weighted with 40% to the revenue multiple and 60% to the EBITDA multiple to arrive at a value under the guideline transaction method of $79.7 million.

Stroudwater then weighted the Guideline Transaction Method 75% and the Guideline Public Company Method 25%, which yielded a Market Approach value conclusion for the Hospital of $89.9 million.

Under the Cost or Net Asset Value Approach, Stroudwater considered the book value of the Hospital's assets. Because the Hospital is relatively new and has undergone on-going maintenance, Stroudwater relied upon the book value as the fair market value without further analysis. Stroudwater then adjusted the net book values of the Hospital assets for debts, cash, and assets that are limited to use yielding a valuation of $84.5 million under the Cost Approach.

After valuing the Hospital using all three approaches, Stroudwater reconciled and synthesized the values, giving 15% weight to the Cost Approach, 35% weight to the Market Approach, and 50% weight to the Income Approach resulting in a final fair market value range of $61.3 million to $67.7 million with a final fair market value of $64.5 million.

Deloitte Transactions and Business Analytics, LLP ("Deloitte"), 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 sale of the Hospital to HCA. The Attorney General engaged Deloitte to provide valuation advisory services, but not to provide a separate valuation or a fairness opinion. Mr. Jimmy Peterson testified at the hearing on behalf of Deloitte. As part of its engagement, Deloitte 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 Stroudwater's independent assessment of the fair market value of the Hospital and the Ongoing Community Benefits.

In the course of its engagement, Deloitte analyzed Stroudwater's underlying valuation methodologies and assumptions, and performed a number of sensitivity analyses on Stroudwater's assessment of fair market value. Deloitte also performed an independent analysis of the market data utilized in the Guideline Public Company valuation method, and Deloitte concluded that Stroudwater's calculation of the multiples was consistent with industry standards and market data. Deloitte also performed an independent study of guideline transactions from which to calculate multiples, and again concluded that Stroudwater's calculations were consistent with industry standards and market data. Finally, Deloitte performed an independent analysis of Stroudwater's WACC calculation using its own analysis of market data. While Deloitte found Stroudwater's WACC conclusion to be too high and, therefore, the discounted cash flow value to be too low, their sensitivity analysis confirmed that Stroudwater's overall valuation conclusion was consistent with valuation industry norms.

Deloitte confirmed that the Income, Market, and Cost approaches to value considered by Stroudwater are consistent with generally accepted industry standards for valuation analyses and that Stroudwater's reconciliation and synthesis of the three valuation approaches were also consistent with industry norms. At the hearing, Mr. Peterson testified that Stroudwater's analysis supported the consideration being paid.

PUBLIC COMMENT

The public hearing was held on March 25, 2021, at 2:00 p.m. in the Toombs Auditorium at Southeastern Technical College, located at 3001 E. 1st Street, Vidalia, Georgia 30474. Additionally, due to the COVID-19 pandemic, people were invited to attend virtually through a Webex virtual meeting. Pursuant to O.C.G.A. § 31-7-404, notice of the public hearing was published in the *Advance* on February 10, 2021 and

February 17, 2021. The in-person comments at the hearing were all in support of the transaction.[4]

Following the public hearing, the record was held open until the close of business on March 30, 2021, at 5:00 p.m., for any further public comment. Both before and after the public hearing, this Office received written comments in opposition of the proposed transaction.[5] The Hearing Officer considered all of the chat and written comments received in opposition to this transaction to the extent they were relevant to the thirteen (13) factors under the HAA discussed herein. Most of the adverse comments were concerned with reduced staffing affecting patient care and the closure of core services, but HCA has agreed to hire substantially all Meadows Regional employees in good standing and has agreed to maintain core services for a period of ten years.

Counsel for the Seller and Purchaser were requested to inform this Office 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. Counsel for both parties have written a joint letter stating that their clients wish to proceed with the transaction as proposed.

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 *et seq.*; *Sparks v. Hospital Authority of City of Bremen and County of Haralson*, 241 Ga. App. 485 (1999) (physical precedent only). The Act

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[4] Several WebEx viewers provided discussion on the WebEx chat feature. The Hearing Officer read all of the comments on the chat feature and noted that many of the WebEx Chat Participants were opposed to the transaction because of HCA's alleged treatment of its support staff, specifically nurses, in other hospitals across the country. All participants at the hearing (both in-person and virtual) were invited to submit written comments prior to the close of the record.

[5] It appeared to the Hearing Officer that the majority of these comments were form emails generated by National Nurses United and EveryAction. All comments were reviewed and included in the record.

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 (13) 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 (13) factors set forth in O.C.G.A. § 31-7-406 can be grouped into four (4) 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).

<u>The Exercise of Due Diligence by the Seller</u>

The disposition of the Hospital is authorized by applicable law as provided in factor number 1, and Meadows has taken the appropriate actions to sell the Hospital. O.C.G.A. §§ 14-3-302, 31-7-400 *et seq.* With respect to factor number 2, there have been no donations to the Hospital that exceed $100,000.00. Furthermore, no concerns have been raised by any donors during the public hearing or the review process. 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). In this instance, Meadows exercised appropriate due diligence in its selection process given the deteriorating financial condition of the Hospital and the national trends for independent, rural hospitals. As discussed in detail above, Meadows reached out to several regional health systems and engaged Macrogate, Baker Donelson, and Stroudwater to first decide whether the Hospital could remain independent, and subsequently locate and negotiate with potential partners. It formed a special committee comprised of members from both Boards and current, practicing physicians to ensure a broad range of people were involved in the decision making process. Additionally, because Meadows was not in dire financial strain, it was able to take its time in negotiations and had a strong negotiating position, which it used to its advantage. Therefore, the process employed by Meadows in locating a purchaser demonstrates the exercise of due diligence, consistent with factors number 3 and 4.

Since there is no separate management or services contract negotiated in conjunction with the proposed transaction, factor number 8 is not applicable to the determination of Seller's exercise of due diligence.

Conflicts of Interest

The disclosure of any conflicts 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 Board of MHA and the non-profits that it is the sole member of, the Board of the MRMC and the non-profits that it is the sole member of, the Building and Grounds Committee, members of the Toombs County Hospital Authority who also serve on the Boards, the Chief Executive Officer of the Hospital, and Meadows' financial consultant. Although some exceptions were noted on the certifications, such certifications do not disclose any impermissible or significant conflicting financial interest in the proposed transaction.

With regard to factor number 13, health care providers will not be offered an opportunity to invest or own an interest in the Hospital. Therefore, factor number 13 is not applicable.

Valuation of the Hospital Assets

The value of the Hospital and the amount of consideration to be paid in the proposed transaction must be weighed under factors number 6, 7 and 10. In a sale of hospital assets from a nonprofit corporation to a for-profit corporation, the nonprofit seller should receive "fair value" for its assets. *See* O.C.G.A. § 31-7-406(6).

While the term "fair value" is not defined in the Act, it is reasonable to conclude that fair value means "fair *market* value," since the Act is concerned with the sale or lease of real, personal and intangible property. Likewise, under factor number 13, board members and the chief executive officer of the nonprofit seller corporation must provide a certification "stating that the nonprofit corporation has received fair *market* value for its assets or, in the case of a proposed disposition to a not-for-profit entity or hospital authority, stating that the nonprofit corporation has received an enforceable commitment of fair and reasonable community benefits for its assets." O.C.G.A. § 31-7-403(b)(3). (emphasis added.) The reference to "fair market value" in this separate, but related, provision of the Act suggests that the term "fair value" in factor number 6 should be read as "fair market value," in order to apply the Act's provisions consistently, especially since "fair market value" is the more descriptive and specific term. Thus, when the provisions of the Act are read in *pari materia* and in context, the term "fair value" should be construed to mean "fair market value."

Collectively, the analysis and conclusions developed by Stroudwater in its Fair Market Value Analyses and Community Benefit Report, as reviewed by Deloitte, indicates that the valuation multiples implied by the proposed consideration of $73 million are within the range of valuation multiples observed for comparable hospital transactions in the marketplace. Additionally, Deloitte observed that Stroudwater used reasonable valuation methods and techniques in its analysis of the proposed transaction to support its conclusion. Based on the record, it appears Meadows will receive fair market value for its assets as required by the Act.

Since the Seller is not financing any portion of the proposed transaction, factor number 7 is not applicable. The proposed transaction complies with factor number 10 because the APA provides Meadows New Foundation with a right of first refusal, to be exercised within ten (10) years of closing, to purchase the Hospital and its assets from HCA in the event HCA intends to accept a third-party offer to purchase the Hospital.

Charitable Purpose of the Proposed Transaction

The testimony and documents filed disclose that the Sellers formed a new charitable organization, New Meadows Foundation, whose board members consist of five local community members and which will maintain and apply the Hospital's sales proceeds and restricted reserves to: (i) ensure and improve access to health care for all individuals in the community; (ii) promote health and wellness in the community; (iii) provide health and safety education to the people of the community; (iv) support other social welfare and charitable programs to improve health and wellness in the community, and (v) enforce the Hospital's right of first refusal, if necessary.

The other two charitable purpose factors, factor 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. The Purchaser has made a ten (10) year commitment to operate an acute care hospital and to provide emergency room services. Hugh Tappan, the President of the South Atlantic Division of HCA, testified that Meadows will continue to participate in the federal insurance programs such as Medicare, Medicaid and TRICARE, and will also work with private insurance companies to ensure there is access to affordable care in this community.

In addition, the Purchaser has also made a ten (10) year commitment to continue core services, including emergency, interventional cardiology, medical and radiation oncology, and obstetrics. HCA will implement its own charity care policy, but the Parties testified that HCA's charity care policies either aligned or exceeded the Hospital's current policy. In addition to the consideration purchase price of $73 million, the Purchaser has also made an additional five (5) year commitment of $10 million in capital expenditures. HCA also made a five (5) year commitment to maintain medical education programs for third-year medical students and nursing students supported by the Hospital; five (5) year commitment to community contributions of no less than $50,000 annually; and a three (3) year commitment to continue to sponsor certain community outreach programs.

The Hospital will continue to serve uninsured, underinsured and indigent patients without regard to ability to pay and will continue its community outreach programs. The evidence, taken as a whole, demonstrates an enforceable commitment to improve health care in the community and to assure continued access to affordable care.

III.

CONCLUSION

Upon review of the public record and in accordance with the Hospital Acquisition Act, the Hearing Officer finds that the public record in this matter discloses that the parties have taken appropriate steps to ensure (a) that the transaction is authorized, (b) that the value of the charitable assets is safeguarded and (c) that any proceeds of the transaction are used for appropriate charitable health purposes.

This 26th day of April, 2021.

Brooke Heinz Chaplain

BROOKE HEINZ CHAPLAIN
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.