

OFFICE OF THE ATTORNEY GENERAL
STATE OF GEORGIA

IN THE MATTER OF THE CHANGE OF
CONTROL OF UNIVERSITY HEALTH, INC.
TO PIEDMONT HEALTHCARE, INC.

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NO. AG 2022-01

REPORT OF FINDINGS

I.

BACKGROUND

University Health, Inc., operating as University Health Care System (“University”), is a Georgia nonprofit corporation based in Augusta, Georgia. University serves as the controlling entity of an integrated hospital system serving the healthcare needs of residents primarily in Richmond, Columbia, and McDuffie Counties.¹ University, through its controlled affiliates, University Health Services, Inc. (“UHS”) and University McDuffie County Regional Medical Center, Inc. (“UHM”), operates two (2) general acute-care hospitals: (1) University Hospital with two campuses located in Augusta, Georgia, and (2) University Hospital McDuffie located in Thomson, Georgia (collectively, the “Hospitals”). University Hospital’s main campus is a 581 bed tertiary care hospital located at 1350 Walton Way, Augusta, Georgia and the Summerville campus is a 231 bed tertiary care hospital located at 2260 Wrightsboro Road, Augusta, Georgia. University Hospital McDuffie is a 25 bed acute care hospital located in Thomson, Georgia. Both hospitals provide inpatient, outpatient, urgent care, and emergency services. UHS leases substantially all of its assets from the Richmond County Hospital Authority (“Hospital Authority”).

In addition to UHS and UHM, University includes the following controlled affiliates and subsidiaries: University Extended Care, Inc.; University Health Resources, Inc.; University Health Care Physicians, LLC.; University Hospital Aiken, Inc.; Walton Way Indemnity, SPC.;

¹ Additionally, the Hospitals service Burke, Bulloch, Columbia, Emanuel, Glascock, Greene, Hancock, Jefferson, Jenkins, Johnson, Lincoln, Screven, Taliaferro, Warren, Washington, and Wilkes counties in Georgia and Aiken, Allendale, Bamberg, Barnwell, Edgefield, McCormick, and Saluda counties in South Carolina.

University Health Care Foundation, Inc.; University Medical Group, LLC; and University Cardiology Associates, LLC. This matter presents a proposed transaction for the transfer of control of University to Piedmont Healthcare, Inc. (“Piedmont”), a Georgia nonprofit corporation.

THE DISPOSITION PROCESS

The University Board of Trustees (the “Board”) began discussing the possibility of partnering with a larger organization as early as 2012, and in March 2018, the Board hired Navigant as a strategic advisor. Navigant assessed University's strategic and financial situation to determine the viability of staying independent versus joining a larger system. Navigant concluded that trying to remain independent was a risky strategy. In late 2019, the Board engaged Kaufman Hall as its strategic advisor to outline national and statewide healthcare market trends, strategic options to achieve its mission, and to develop a strategic plan. Throughout the process, the Board evaluated both staying independent and finding an affiliation partner. Mr. Hugh Hamilton, Chairman of the Board, testified at the Public Hearing that the Board found that staying independent would put the long term viability of the hospital in question, and therefore, the Board determined to move forward with an affiliation with a larger healthcare system. (Transcript, p. 8).

In February 2020, the Board, with Kauffman Hall’s assistance, developed a list of thirteen (13) partnership goals and objectives to evaluate potential partners, which included: (1) preserve and improve the long-term financial stability of University so that it can continue to serve the community; (2) maintain or enhance the current quality of care; (3) maintain and recruit key talent, primarily nurses, doctors, and IT staff; (4) expand the platform for healthcare services; (5) position the system to take advantage of value-based reimbursement from payors and financial risk-taking opportunities; (6) obtain access to business intelligence capabilities; (7) grow service offerings; (8) value local community in decision-making; (9) geographic footprint of the service area; (10) strong financial profile; (11) good clinical reputation; (12) governance structure; and (13) a track record of successful prior partnerships.

After identifying these objectives, the Board created a subcommittee (the “Subcommittee”) to focus on the partner selection process; the subcommittee consisted of members of the Board and members of the Richmond County Hospital Authority (the “Authority”). The Subcommittee, with the help of Kauffman Hall, developed a list of twelve

potential partners that matched the criteria created by the Board. Those 12 entities were scored by individual members of the Subcommittee based on matrix created by Kaufman Hall. The individual scores were compared and the Subcommittee narrowed the list to five potential partners. In October 2020, those five potential partners were invited to participate in a screening process. One entity declined to participate. The four remaining potential partners were all non-profit entities. After interviews with the four entities, the Subcommittee requested proposals from three entities and received two. The Subcommittee again went through a scoring process with Kaufman Hall, conducted interviews with the entities' leadership, considered publically available information about the entities, and sought input from senior management of University. The Subcommittee recommended Piedmont to the Board based on its long-term vision alignment with University, its mission continuity, its financial sustainability and access to capital, and its cultural compatibility with University. The Board unanimously voted to accept the recommendation and began preliminary partnership discussions with Piedmont.

THE PROPOSED TRANSACTION

University proposes to enter into an Affiliation Agreement (the "Agreement") with Piedmont whereby University will merge into UHS, then Piedmont will become the sole and controlling member through amendments and restatements of the Articles of Incorporation and Bylaws of UHS. Additionally, UHM will amend and restate its articles of incorporation and bylaws to designate Piedmont as the sole controlling member. As a result, UHS and UHM will continue in existence as Georgia nonprofit corporations, but they will be controlled by Piedmont. Additionally, the lease between UHS and the Authority has been extended forty years after the closing of the transaction, ending in 2062.

Under the terms of the Agreement, Piedmont will provide a capital commitment of \$990 million to be spent over ten (10) years towards maintaining and enhancing health care services within the service areas, as described more fully herein. Specifically, \$125 million shall be spent by or for the benefit of University per year for the first six years and an additional \$60 million shall be spent per year for the next four years. The capital commitment includes expenditures for new equipment, equipment replacement, facility renovations, new facilities, medical office space, development of new clinical services or expansion of existing clinical services, information systems, and other expenditures. These expenditures may be accelerated by Piedmont, but all expenditures must be mutually agreed upon by the UHS Board and Piedmont.

Mr. James Davis, Chief Executive Officer of University, testified that the capital expenditures may include funding for a facility master plan created in 2020, which includes a central utility plant, a three story vertical addition to the Heart and Vascular Institute building, and retrofitting rooms in the main building. (Transcript, p. 14). Furthermore, the capital commitment specifically excludes any costs associated with health record conversions or the implementation of new information technology platforms as these costs will be assumed by Piedmont and are distinct and separate from Piedmont's capital commitment.

Under the Agreement, Piedmont has also made a number of other commitments including: (a) ensuring University meets its current bond and other debt obligations; (b) continuing to operate both hospitals as full service acute-care hospitals with 24-hour emergency departments; (c) continuing or increasing current service lines and programs at the same level of care at both hospitals for at least five years; (d) maintaining core services, including breast health, cardiology, critical care, emergency services, general surgery, neurosurgery, obstetrics and gynecology, orthopedics, urology, and vascular services for a period of no less than ten years; (e) maintaining University's current level of charity and indigent care in perpetuity; (f) maintaining and supporting University's current community benefit and community education programs and services for at least three years; (g) ensuring that the annual operating budget includes at least \$2 million per year for at least ten years to support initiatives responsive to the needs identified in University's community health needs assessment; (h) retaining all employees in good standing for a minimum of eighteen months; (i) providing that UHS' Board shall consist of thirteen members, which will be comprised of ten community members, including three from the Authority, University's CEO, and two people appointed by Piedmont; (j) providing that UHM's Board of Directors shall consist of five members in compliance with the asset purchase agreement between UHM and the Hospital Authority of McDuffie County, subject to the approval of Piedmont; and (k) appointing two UHS community directors to Piedmont's Board of Directors.

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 nonprofit 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.”

Stroudwater was engaged by Baker Donelson Bearman Caldwell & Berkowitz, PC (“Baker Donelson”) on behalf of University to prepare a report detailing the fair market value (“FMV”) analysis of University and a community benefit analysis detailing the estimated community benefit from the proposed Transaction as of June 30, 2021 (“Valuation Date”). In its report, Stroudwater utilized relevant methodologies under the Market, Income, and Cost Approaches to value, ultimately deriving a range of equity value for University of \$721 to \$782 million as of the Valuation Date. Stroudwater also determined the incremental community benefit to be \$767.5 million. Ultimately, Stroudwater concluded that the quantified community benefit from the Transaction exceeded the stand-alone value of University. Opal Greenway of Stroudwater testified at the public hearing held on December 14, 2021.

There are typically three traditional approaches considered to determine value. The three approaches are: (1) the Income Approach; (2) the Market Approach; and (3) the Cost Approach (Net Asset Value). The Income Approach is predicated on the concept that 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 transactions in the marketplace, typically involving transfers of 100% ownership interests, or valuations related to publicly traded guideline companies in a similar line of business. In the Cost (Net Asset Value) Approach, value is estimated based on the value of all of the subject business’s underlying assets, both tangible and intangible, net of liabilities.

Stroudwater initially considered all three of the traditional approaches to valuation in its FMV assessment, namely the Income Approach, the Market Approach, and the Cost Approach, but ultimately indicated that the Income Approach was given the highest weighting as it is generally the best representation of a hospital’s future performance.

Under the Income Approach, Stroudwater utilized the Discounted Cash Flow Method (“DCF”), which requires a development of projected financial information that represents the expected future performances of the subject business and discounting the projected cash flows to the valuation date. Stroudwater utilized a set of five-year projections for University for fiscal years 2022 through 2026 based on input from key management figures. These projections included a number of key assumptions over the five-year projected period: 1) net patient service revenue growth of 3.65%; 2) a decrease in operating margin from 2% to 1.7%; 3) normalized net

working capital level at 12% of revenue; 4) capital expenditures expected to increase from 5.1% of revenue to 7.7% by 2026; 5) a decrease in depreciation expense from 6.8% of revenue to 7.7% by 2026; 6) terminal value after 2026 of \$154.8 million; and 7) a tax rate of 25.5% calculated as a blended state and federal tax. Stroudwater then discounted the cash flows to present value as of the Valuation Date, using a discount rate of 9.6%. Under this analysis, Stroudwater produced an EV of \$287.9 million as of the Valuation Date.

To determine an indication of value under the Cost Approach, Stroudwater considered University's historical balance sheet as of the Valuation Date by separately identifying and valuing all tangible and intangible assets of University, then deducting the fair market value of University's liabilities. Stroudwater's analysis under this approach produced an indicated enterprise value ("EV") of \$285.1 million as of the Valuation Date.

Under the Market Approach, Stroudwater utilized the Guideline Transaction Method ("GTM") to measure value based on what other purchasers paid for businesses or assets that can be considered reasonably similar to the subject business. To develop indications of value for University under the GTM, 309 comparable hospitable transactions were identified by Stroudwater that took place between July 1, 2010, and the Valuation Date. The data from these transactions was distilled to 16 by considering different factors of the transactions, including the size of facility, location, and annual revenue of the acquired hospitals. Stroudwater then made adjustments to the transaction multiples, including adjusting multiples for certain transactions downward by 30% to normalize for differences in transaction structures, removing multiples for financially distressed hospitals, and adjusting the market multiples generated by for-profit transactions downward by 30% to account for differences in transaction structure and target hospitals. Based on its analyses of these transactions, Stroudwater indicated EV ranges between \$329 and \$453.8 million as of the Valuation Date.

Stroudwater further utilized the Guideline Public Companies Method ("GPC") to measure the value based on observed stock pricing of publicly traded companies that can be considered reasonably similar to the subject business. Stroudwater identified four publicly traded hospital operators to develop indications of value for University under this method and analyzed the observed EV trading multiples for these hospital operators using data as of the Valuation Date. Based on this analysis, Stroudwater indicated EV ranges between \$337.3 and \$771.2 million as of the Valuation Date.

Stroudwater's analysis under the Asset, Market, and Income Approach yielded 6 indications of EV for operations for University. Stroudwater then applied weightings of 15%, 25%, and 60%, respectively, to each indication, producing a weighted average EV of \$307.8 million. Stroudwater then varied the weighted indication of EV by a margin of 10% and adjusted the EV to derive the invested capital value by adding cash and investments and assets limited as to use, resulting in a value range of \$741.6 million to \$803.2 million. Interest-bearing debt was subtracted from this value range to derive an equity value range of \$721.1 million to \$782.6 million. At the public hearing held on December 14, 2021, Ms. Greenway testified that Stroudwater performed an additional analysis that utilized University's recent financials as of September 30, 2021, in order to understand the overall impact of any changes to University since the Valuation Date from a market perspective. Stroudwater found that salary inflation from increased competition for staffing in the healthcare industry was not accounted for in its initial analysis and that University's value of operations would decrease by approximately \$40 million when accounting for these developments.

Finally, Stroudwater conducted a Community Benefit analysis which analyzed a number of community benefits expected from University's proposed partnership with Piedmont. Specifically, Stroudwater analyzed ten critical elements of community benefit and then calculated a present value amount for specified elements of Piedmont's commitments, including capital commitment, technology integration, employee benefit and compensation, charity and indigent care, community initiatives, and community education programs. After analyzing these elements, Stroudwater determined the total incremental community benefit to be \$767.5 million, derived using present value discounting techniques under the Income Approach.

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 University and Piedmont. 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, benchmarking and sensitivity analyses to review the conclusions contained in Stroudwater's valuation and community benefit analysis. In the course of its engagement, EY analyzed Stroudwater's

underlying valuation methodologies and assumptions, and performed a number of sensitivity analyses of Stroudwater's valuations. In its review, EY ultimately confirmed that Stroudwater used reasonable valuation methods in its valuation analysis to support its conclusions.

EY's sensitivity analyses included a number of adjustments to Stroudwater's valuation based on EY's interviews with Management and observations on Stroudwater's assumptions detailed in their report. The combined sensitivity analysis resulted in a calculated invested capital range of approximately \$687 million to \$700 million. Subtracting University's interest-bearing debt, net of board designated funds for its repayment, resulted in a calculated equity range of \$685 million to \$695 million, as compared to Stroudwater's concluded equity of \$721 million to \$783 million.

Similarly, EY performed a sensitivity analysis that included adjustments to Stroudwater's community benefit calculation. The combined sensitivity analyses resulted in a calculated community benefit range of approximately \$660 million to \$700 million, as compared to Stroudwater's calculated community benefit value of \$768 million and as compared to the calculated equity of University in the preceding sensitivity analysis of \$685 million to \$695 million.

Further, EY conducted market research and analyzed multiples observed for hospital transactions and U.S. publicly traded hospitals, comparing the identified benchmarks to the valuation multiples implied from Stroudwater's valuation of University. Based on its limited market research, EY determined that the valuation multiples implied by Stroudwater's valuation analysis for University are generally within the range of the market data and, in instances where the implied multiples fall outside the observed benchmark ranges, the implied multiples reflect the relative financial performance and future growth expectations of University as a stand-alone system compared to the guideline companies and target businesses included in the guideline transactions.

In totality, EY concluded that Stroudwater used reasonable valuation methods and techniques in its valuation analysis and community benefit analysis to support its conclusions.

PUBLIC COMMENT

The public hearing was held on December 14, 2021 at 1:00 p.m. at the Levi Hill III Auditorium at University Hospital in Augusta, Georgia. Notice of the proposed transaction and

the public hearing was provided as required by O.C.G.A. § 31-7-404.² The public hearing location is appropriate in Richmond County because that is the location of the “main campus” of University’s hospital system within the meaning of O.C.G.A. § 31-7-405. The public comments received during the public hearing were all in favor of the proposed transaction. Following the public hearing, the record was held open until the close of business on Thursday, December 16, 2021 at 5:00 p.m., for any further public comment. This Office received nine written comments from citizens and local senators and representatives, all in support of the proposed transaction. Counsel for the parties 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 University and Piedmont have written a joint letter stating that their clients wish to proceed with the transaction as proposed.

II. FINDINGS

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(a) & 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 to be considered in determining whether the appropriate steps have been taken by the parties. *Id.* The thirteen factors are listed in Appendix A to this report.

² The proposed transaction is the subject of two notices published in the *Augusta Chronicle* on November, 8, 2021 and November, 15, 2021.

The thirteen factors set forth in O.C.G.A. § 31-7-406 are 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

The transfer of control of University is authorized by applicable law as provided in factor number 1. University has taken the appropriate steps to provide for the transfer of control to Piedmont. O.C.G.A. §§ 14-3-206 and 14-3-302. The proposed transaction is authorized under the Georgia Nonprofit Corporation Code. With regard to factor number 2, it does not appear that the proposed disposition is inconsistent with the directives of any major donors who have contributed over \$100,000.00 and Piedmont has agreed to not take any action to interfere with the intent of any philanthropic gifts. Each of the members of the Board and its Chief Executive Officer have executed certifications that the proposed transaction is consistent with the intent of major donors who have contributed in excess of \$100,000.00 to University. 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). University did not conduct a formal process for the solicitation and selection of proposals which is typically the preferred approach. However, as previously discussed, University conducted a very robust process of evaluation of potential transaction partners including the engagement of professional services from Kaufman Hall during the process of selecting a potential partner, establishing thirteen (13) partnership goals and objectives, and the use of Stroudwater and the law firm of Baker Donelson, during the process of negotiating and finalizing a proposed transaction. The record supports a finding that University “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). The deliberative process employed by University 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 the exercise of due diligence.

Conflicts of Interest

The disclosure of any conflict of interest involving the Sellers, the Chief Executive Officer of University 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 all members of the Board, the Chief Executive Officer of University, and University's 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 System. 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. Since this transaction involves the transfer of control of a nonprofit corporation which controls hospital assets subject to the Act to a nonprofit corporation, University should receive an enforceable commitment for fair and reasonable community benefits for the transfer of control its assets. *See* O.C.G.A. § 31-7-406(6). Based on the record, including the analysis conducted by Stroudwater on behalf of University and the review by EY at the request of the Attorney General as described herein, University will receive an enforceable commitment for fair and reasonable community benefits in exchange for its assets as required by O.C.G.A. § 31-7-406(6). Since University is not providing any financing for the transaction, factor number 7 is inapplicable.

As to factor number 10, under the terms of the Agreement, Piedmont is prohibited from selling, leasing, conveying or otherwise transferring any of the assets of UHS or UHM, whether in a single transaction or in a series of transactions. Additionally, should Piedmont propose to enter into a member substitution agreement or asset sale that encompasses Piedmont operations

as a whole to another non-profit entity, then the purchasing entity would be required to assume the University Piedmont Affiliation Agreement. Should Piedmont propose to enter into a member substitution agreement or asset sale that encompasses Piedmont operations as a whole to a for-profit entity, then Richmond County Hospital Authority retains a right of first refusal for a minimum of ten years or until Piedmont satisfies its capital commitment, whichever is later.

In most transactions, the seller retains a right of first refusal for a limited period of time. Here, there is an absolute prohibition on any sale of University for ten years and there are provisions regarding the sale of Piedmont that ensure University stays true to its charitable mission. Additionally, the Hospital Authority continues to own the assets used for UHS' operations, which also serves as a "meaningful right of first refusal." Therefore, the proposed Agreement is consistent with the purposes of factor number 10.

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 healthcare purposes consistent with the nonprofit's original purpose. There are no proceeds from sale. Therefore, factor number 9 is not applicable.

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) healthcare to the disadvantaged, the uninsured and the underinsured and (d) benefits to the community to promote improved health care. The notice and the testimony provided at the public hearing indicate that both emergency rooms will remain open 24 hours a day, seven days a week. After completion of the transaction, UHS and UHM will continue in existence as part of Piedmont, a Georgia nonprofit corporation. Piedmont has also committed to maintain University's policies for the provision of charity care or adopt other policies and procedures that are at least as favorable to the indigent and uninsured as University's existing policies and procedures. 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 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 13th day of January, 2022.



BROOKE HEINZ CHAPLAIN

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,⁷ 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.