

OFFICE OF THE ATTORNEY GENERAL  
STATE OF GEORGIA

IN THE MATTER OF THE SALE  
OF MURRAY MEDICAL CENTER  
TO ADVENTIST HEALTH SYSTEM  
GEORGIA, INC.

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NO. AG 2020-01

**REPORT OF FINDINGS**

**I.**

**BACKGROUND**

**MURRAY MEDICAL CENTER**

AdventHealth Murray, formerly Murray Medical Center, (“Hospital”) is a general acute care hospital located in Chatsworth, Georgia in Murray County. The Hospital’s primary service area is Murray County, which includes the cities of Cisco, Chatsworth, Crandall, Eton, and Tennega. The Hospital operates an emergency room twenty-four hours per day and has two operating rooms. It is licensed for forty-two beds, but it currently operates only twenty-one in-patient rooms. The Hospital currently provides emergency and urgent care, orthopedic care, primary care, imaging, surgical services, woman’s care, men’s care, senior care, and lab services.

In 2015, the Hospital Authority of Murray County (“Authority”) leased the Hospital to Adventist Health System of Georgia (“Adventist”), a Georgia nonprofit corporation, pursuant to a Lease and Transfer Agreement (“Lease”). The Lease provided Adventist an option to purchase the Hospital and its assets for an amount equal to (i) the greater of the fair market value or the then outstanding balance of the Revenue Anticipation Certificates (“RAC”) to be repaid by the Authority; and (ii) the balance of the account payable incurred by the Authority as of May 1, 2015. The underlying lease transaction was previously reviewed and approved by the Office of the Attorney General in 2014.<sup>1</sup>

As proposed, Adventist now seeks to exercise the option under the Lease and purchase the Hospital and its assets, which includes a professional office building and vacant land lots

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<sup>1</sup> The option to purchase was not part of our review of the transaction in 2014. Rather, the parties were put on notice that they should contact the Office of the Attorney General prior to the exercise of the option. *See* Report of Findings No. AG 2014-02.

owned by the Hospital for \$3,180,000 and any other amounts payable as set forth in the Agreement. This amount represents the outstanding balance of the RAC.

### **THE DISPOSITION PROCESS**

Prior to 2015, the Hospital encountered many difficulties over the years due to a variety of factors. The Hospital is an aging facility that was constructed in 1975 and, with the exception of the emergency department that was completed in 2007, there have been no major renovations. The Lease, entered into in 2015 between the Authority and Adventist, granted Adventist the right to manage the operations of the Hospital for a period of five years, renewable for an additional five year term. The Lease also included provisions for capital expenditures, management services, and a conditional forgiveness of debt. The record indicates that since entering into the Lease, Adventist has put in a number of investments. These investments include needed furniture, fixtures and equipment, structural improvements to the Hospital, recruitment of physicians, and the introduction of new services. These investments have led to more County residents seeking care at the Hospital and an increase in patient admissions and surgeries.

At the expiration of the initial term, Adventist informed the Authority of its intention to exercise the option under the Lease. While there was no formal disposition process, the proposed transaction derived from the terms of the Lease. Mr. Nathan Leonard, Chairman of the Hospital Authority Board, testified that at the time it entered into the Lease, there were no other bidders that planned to maintain the Hospital as an acute care facility. (Transcript, p. 8). Mr. Leonard testified that the Authority's main goal was to ensure healthcare would be available to the residents of Murray County and that the proposed transaction appears to be its only option to meet that long-term goal. (Transcript, p. 12). Furthermore, Mr. Leonard testified that over the past five years Adventist has exceeded the Authority's expectations. (Transcript, p. 9).

### **THE PROPOSED TRANSACTION**

Pursuant to a Real Estate and Personal Property Purchase Agreement ("Agreement"), Adventist proposes to purchase the real estate and personal property assets owned by the Authority and used in the Hospital's operations. The assets broadly include: (i) real property, including a professional office building, vacant land lots, and hospital real property; (ii) equipment; (iii) financial, patient, medical staff contracts and personnel records related to the Hospital; (iv) trade names, trademarks and services marks associated with the Hospital; and (v) and any all rights or interests in licenses, permits and approvals, including certificate of need

approvals. The consideration for the sale is based upon the terms of the Lease, as the amount equal to (i) the greater of the fair market value, or the outstanding balance of the debt and the Revenue Anticipation Certificates (“RAC”) to be repaid by the Authority; and (ii) the balance of the accounts payable incurred by the Authority as of May 1, 2015.

Based upon the valuation analysis detailed below, the Agreement indicates that in exchange for the Hospital assets, the Authority will receive a purchase consideration of \$3,180,500.00, which is the outstanding balance on the RAC, subject to adjustments for interest charges accruing on the debt at \$399.93 per days beyond September 1, 2020 and payment of any other amounts as set forth in the Agreement. Furthermore, the Agreement provides that the balance of any accounts payable incurred by the Authority has been retired and therefore, not part of the consideration. Under the terms of the Agreement, Adventist has also made a number of other commitments including: (i) ensuring Adventist continues to operate the Hospital as an acute care facility; (ii) continuing to operate the emergency department; (iii) ensuring no current employees working at the Hospital will be terminated in connection with the proposed transaction; and (iv) maintaining the Hospital’s current policies on charity and indigent care.

In addition to the Agreement, Murray County will be committing to provide financial support to Adventist by way of a Support Agreement, attached as Exhibit E to the Agreement. The Support Agreement provides that the County shall provide Adventist with: (i) housing for Ambulance services; (ii) an annual Ambulance fuel subsidy not to exceed \$40,000/year; and (iii) funds for capital improvements and equipment over a six year period.

### **VALUATION 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 a 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.”

Deloitte Transactions and Business Analytics LLP (“Deloitte”) was retained by Adventist to develop an estimate of the fair market value (“FMV”) of the business enterprise value of the Hospital and its assets as of December 31, 2019 (“Valuation Date”). In its report, Deloitte estimated the value of the Hospital’s assets that are included in the proposed transaction at \$900,000 to \$2.4 Million. Mr. Jimmy Peterson of Deloitte testified at the public hearing held on October 15, 2020.

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 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 trading in the marketplace. 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.

Deloitte considered both the Income Approach and the Market Approach, but not the Cost Approach, in its valuation of the Hospital and its assets. Although usually considered in a valuation analysis, the Cost Approach is typically not relied upon in the valuation of a hospital as a going concern. It is, however, utilized in limited circumstances and can be considered to provide a floor (minimum) value. Adventist stated its intent is to continue operating the Hospital as an acute care facility. Additionally, the Authority retains the right of first refusal to purchase certain assets back should Adventist choose to sell within seven years after the date of closing. Therefore, it was reasonable to conclude that a Cost Approach was not applicable in this transaction.

Under the Income Approach, Deloitte applied the Discounted Cash Flow ("DCF") method, which provides an indication of value based on the entity's ability to generate net cash flow going forward. Deloitte utilized a set of nine year projections for 2020 through 2028 with a key assumption that Adventist is operating the hospital at its current aged facility, with the operating margin of the business declining over time. Deloitte converted these future projected cash flows to "today's value" as of the Valuation Date at a discount rate of 11%. The analysis produced an indicated business enterprise value ("BEV") of zero as of December 31, 2019.

Under the Market Approach, Deloitte utilized the Guideline Transactions ("GT") method, which considers the purchase prices paid in recent comparable hospital transactions to determine transaction multiples.<sup>2</sup> In applying the GT method, Deloitte identified and calculated valuation multiples based on seventy-nine comparable hospital transactions that took place between January of 2014 and January of 2019. Deloitte selected a revenue multiple range of 0.35x – 0.4x

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<sup>2</sup> Deloitte did not consider the Guideline Public Companies ("GPC") method under the Market Approach.

and applied these to the Hospital's 2019 revenue, resulting in a value range of \$10.0 to \$11.4 million for the Hospital as of December 31, 2019, before considering a number of adjustments. Ultimately, Deloitte selected a BEV of \$10.0 to \$11.4 million, relying on the Market Approach.

From there, Deloitte made six adjustments to reflect the condition of the Hospital and to align with the structure of the transaction. Deloitte deducted \$2 million from the value for working capital deficiencies, \$6 million for the present value of additional 2020-2024 capital expenditures ("CapEx") that are necessary to address the deferred maintenance on the aged facility, and \$1.1 million for property, plant and equipment ("PP&E") assets that are owned by Adventist and are not part of the transaction. Deloitte also subtracted \$204,000 for long-term debt, and \$51,000 for capital leases on the Hospital's balance sheet that are also not part of the transaction. Finally, Deloitte added \$300,000 for the value of vacant land owned by Authority and included in the transaction. These adjustments yielded an estimated value range of \$900,000 to \$2.4 million for the Hospital's assets included in the proposed transaction.

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 Adventist's execution of the option to purchase the Hospital and its assets. 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 Ernst & Young 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 Deloitte's assessment of the value of the Hospital derived from the proposed transaction. In the course of its engagement, EY analyzed Deloitte's underlying valuation methodologies and assumptions, and performed a number of sensitivity analyses of Deloitte's valuation. In its review, EY confirmed that Deloitte used reasonable valuation methods and techniques in its valuation analysis to support its conclusions.

However, EY noted that Deloitte's concluded value range for the Hospital was as of December 31, 2019, almost a year before the transaction is expected to close. Additionally, EY noted that the \$6 million adjustment for CapEx spending did not capture a corresponding "tax shield" benefit created by the depreciation charge on the CapEx, and that the \$1.1 million adjustment for the value of Adventist' PP&E may be understated as fair market value of PP&E

often exceeds its accounting book value. Ultimately, EY's sensitivity analyses indicated that these and other adjustments in essence offset each other. It also found that a later valuation date of August 31, 2020 did not appear to affect the valuation and, if anything, could lower the value due to negative impacts of the COVID-19 pandemic. EY observed that the totality of its sensitivity analyses – which yielded a calculated range of \$1.3 million to \$2.5 million – supports the value range derived by Deloitte for the Hospital.

Furthermore, EY conducted independent research of valuation multiples for comparable hospital transactions and compared these to the valuation multiples implied by the proposed transaction. EY found that the valuation multiples based on Deloitte's concluded fair market value range of the Hospital are consistent with the financial performance and condition of the Hospital relative to the benchmarks considered. Therefore, ultimately, EY concluded that Deloitte used reasonable valuation methods and techniques in its valuation analysis to support its conclusions, and that the totality of its analyses supports the value range derived by Deloitte for the Hospital, and the resulting overall conclusion that the fair market value of the assets falls below the outstanding RAC balance of \$3.2 million.

#### **PUBLIC COMMENT**

The public hearing was held on October 15, 2020 at 12:00 p.m. in Murray County, Georgia, at Veterans Park Recreation Gym, 651 Hyden-Tyler Road, Chatsworth, Georgia 30705. Notice of the proposed transaction and public hearing was provided as required by O.C.G.A. § 31-7-404.<sup>3</sup> Five persons made comments at the public hearing. All were in favor of the transaction.

Following the public hearing, the record was held open until the close of business on October 20, 2020, for any further public comment. This Office did not receive any written comments after the hearing. Counsel for the Authority and Adventist were requested to inform the undersigned in writing by the close of business on October 20, 2020, as to whether their respective clients intended to proceed with the proposed transaction as structured or modify the proposed transaction in some respect. On October 19, 2020, counsel for both parties submitted a joint letter stating that their clients wish to proceed with the transaction as proposed.

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<sup>3</sup> The proposed transaction is the subject of two notices published in *The Chatsworth Times* on Wednesday, September 2, 2020 and Wednesday, September 9, 2020.

## 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, as the disposition of the Hospital is authorized by applicable law. With regard to factor number 2, there have been no donations to the Hospital which exceeds \$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). The proposed transaction is distinct as it derives from the Lease entered into by the Authority and Adventist in 2015. The underlying lease transaction was previously reviewed and approved by this Office in 2014.<sup>4</sup> In our review in 2014, it was noted that while the Authority did not conduct a formal process for the solicitation and selection of proposals, which is the preferred approach, the Authority did provide detailed testimony regarding its’ efforts, financial distress, and steps taken to protect the interests of the Authority and citizens of Murray County. The proposed transaction is derivative of these efforts. Therefore, the process and considerations employed by the Authority demonstrate the exercise of due diligence, consistent with factors 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 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 the Authority, by the chief executive officer of the Authority, and by James Peterson, Principal, for Deloitte. 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. Pursuant to the terms of the Lease, the Authority should receive: (i) the greater of the fair

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<sup>4</sup> See Report of Findings No. AG 2014-02.



market value or the then outstanding balance of the Revenue Anticipation Certificates (“RAC”) to be repaid by the Authority; and (ii) the balance of the account payable incurred by the Authority as of May 1, 2015. Based on the record, including the analysis conducted by Deloitte and the review by Ernst & Young at the request of the Attorney General as described herein, the Authority will receive fair value for its assets as required by the Act.

The Authority is not providing any financing for the transaction. Therefore, I conclude that factor 7 is inapplicable. As to factor number 10, under the terms of the Agreement, the Authority retains a right of first refusal to purchase Hospital assets for the same or equivalent economic terms and conditions if within seven years after the date of closing, Adventist enters into an agreement to sell the Hospital to a third party. (Agreement, p. 4). 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. Adventist is a nonprofit corporation. The consideration received by the Authority through the Agreement will be used to satisfy the Authority’s outstanding RAC obligations associated with the Hospital. Therefore, the Agreement is not expected to generate any excess proceeds to the Authority. 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.

Adventist has made express contractual commitments in the Agreement to maintain the general acute care hospital license of the Hospital and provide emergency services. Adventist will also maintain its status as a participating provider in Medicare and Medicaid. Adventist has also agreed to continue to provide indigent and charity care to the disadvantaged, uninsured and underinsured and to maintain the broader mission of the Adventist Health System. Thus, factor 10 is satisfied.

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, as well as, fair value for the Hospital assets. The record as a whole demonstrates that the Authority has


obtained from Adventist an enforceable commitment to provide health care to the disadvantaged, the uninsured and the underinsured and to provide benefits to the community to promote improved health 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 16th day of November, 2020.

  
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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.