

OFFICE OF THE ATTORNEY GENERAL
STATE OF GEORGIA

IN THE MATTER OF THE LEASE OF *
DORMINY MEDICAL CENTER FROM *
HOSPITAL AUTHORITY OF BEN HILL *
COUNTY TO PHOEBE DORMINY MEDICAL *
CENTER, INC. *
*
*

AG No. 2011-01

REPORT OF FINDINGS

I.

BACKGROUND

DORMINY MEDICAL CENTER

Dorminy Medical Center (the "Hospital") is a 75-bed, multi-specialty, general medical and surgical hospital located in Fitzgerald, Ben Hill County, Georgia. The Hospital is owned and currently operated by the Hospital Authority of Ben Hill County ("the Authority" or "Lessor"), a hospital authority organized under the laws of Georgia. The Hospital is a general acute care hospital with a primary service area of Ben Hill County and surrounding areas. The Hospital provides general medical care, obstetrics and gynecology, general surgery, basic orthopaedic, sleep center, cardiopulmonary, podiatry, nephrology, otolaryngology and ophthalmology services. The Hospital draws 40% of its patients from Ben Hill County with the remainder from Irwin, Wilcox, Dodge, Telfair, Coffee, Atkinson, Berrien, Tift, Turner and Crisp counties.

THE DISPOSITION PROCESS

The Hospital has suffered financial losses over the past several years. In 2009, the Hospital suffered a loss of \$1,000,000. In 2010, the Hospital's loss increased to \$2,800,000. Over the past couple of years, the Seller has evaluated pursuing a partnership or other arrangement to provide the Hospital with some support. The Hospital has suffered the losses

outlined above and has substantial indebtedness due to a bond issue and ongoing borrowing on a bank line of credit.

The Chief Executive Officer determined that the Hospital needed to evaluate a partnership or other combination with another hospital and made initial contacts with Coffee Regional Medical Center in Douglas, Georgia (“Coffee”) and with Tift Medical Center in Tifton, Georgia (“Tift”). The discussions with Coffee did not proceed beyond the stage of initial discussion. The Hospital had more detailed conversations with Tift and began working toward a more detailed relationship with Tift. At the suggestion of a Ben Hill County Commissioner and the mayor of Fitzgerald, the Chief Executive Officer began pursuing a conversation with Phoebe Putney Health System (“Phoebe”). The conversation with Phoebe focused on a lease transaction similar to an existing transaction between Phoebe and the Sumter County Hospital Authority in Americus, Georgia. The governing board of the Authority approved a letter of intent to affiliate with Phoebe and to lease the Hospital to Phoebe on September 21, 2010. The governing board of the Authority approved the lease agreement, subject to review by the Attorney General, at a meeting on January 25, 2011.

THE PROPOSED TRANSACTION

The Authority proposes to lease the Hospital assets to Phoebe Dorminy Medical Center, Inc. (the “Lessee” or “Phoebe Dorminy”), with its principal place of business located at 417 Third Avenue, Albany, Georgia 31702, for an initial term of ten years. The Lessee is a subsidiary of Phoebe. Phoebe will guarantee the obligations of Phoebe Dorminy under the lease agreement.

During the term of the lease, Phoebe Dorminy will assume the Authority’s debt obligations in full and pay \$20,000 in cash in the first year and up to \$50,000 in cash each year thereafter to the Authority to offset its expenses.¹ Phoebe Dorminy will also be responsible for all aspects of the ongoing maintenance and operation of the Hospital including covering any

¹ As disclosed in the record, the Authority’s debt obligations can be summarized to include: 1.) a promissory note to Phoebe for \$700,000; 2.) a promissory note to Jerry W. Dixon for \$221,000.00; 3.) a loan from Community Banking Company of Fitzgerald for \$125,524.84; 4.) a loan from Community Banking Company of Fitzgerald for \$281,287.77; 5.) a line of credit agreement with Community Banking Company of Fitzgerald for \$1,500,035.00; and 6.) Series 2007 Hospital Authority of Ben Hill County Revenue Anticipation Certificates for \$9,900,000.

ongoing losses. Phoebe Dorminy will maintain the existing services at the Hospital, including charitable care, and staff the emergency room twenty-four hours per day, seven days a week.

VALUATION ANALYSIS

The Authority retained Pershing Yoakley & Associates, PA (“PYA”) to perform an independent fair market value assessment on behalf of Dorminy as of February 28, 2011. PYA performed this assessment as well as an analysis of the proposed ten-year lease arrangement between Dorminy and Phoebe Putney. PYA employed a standard of fair market value, defined as:

[T]he price at which the property or service would change hands between a willing buyer and a willing seller, neither being under a compulsion to buy or sell and both having reasonable knowledge of the relevant facts.²

There are typically three approaches considered in valuation; the market approach, income approach and asset approach. Under the market approach, value is derived through a comparison of the transaction prices of similar assets trading in the marketplace. The income approach is based on the concept that value of a business is the present worth of the expected future economic benefits to be derived by the business’s owners. In the asset based approach, value is estimated based on the value of all of the subject business’s underlying assets, both tangible and intangible.

PYA considered all three approaches to value, and utilized the asset and income approaches to arrive at its determination of the market value of the Hospital’s assets. David McMillan, a Shareholder at PYA, testified at the public hearing.³ Under the income approach, PYA used the discounted cash flow method, “which derives an indication of value based upon the present value of anticipated future net cash flows.” Through the discounted cash flow method, PYA concluded that the future cash flows attributed to the Hospital are negative because

² PYA quoted Estate Tax Reg. 20.2031.1-1(b); Revenue Ruling 59.60, 1959-1, C.B. 237.

³ In its report, PYA stated that it did not apply the market approach because no comparable transactions existed. After reviewing transaction data from Irving Levin Associates, Inc.’s The Healthcare Acquisition Report, Sixteenth Edition 2010, PYA only found two potentially comparable transactions, but ultimately found that the transactions were not comparable due to the age of the transactions, the entities’ financial performance and the differences in facility size.

the Hospital lacked the volume necessary to support the costs associated with operating the Hospital. Thereby, PYA opined that the indication of value under the income approach is zero.

Under the asset approach, PYA employed the net asset value method and concluded that the fair market value of the Hospital as of the valuation date was approximately \$6,100,000. PYA also performed an analysis of the proposed ten-year lease Agreement. Included within PYA's analysis is the fact that the lease requires Phoebe Dorminy to return to the Authority net assets at the conclusion of the lease that are equal or greater in value to that transferred at the beginning of the lease. Thus, the lease requires that assets of no less than \$6.1 million be transferred back to the Authority at the conclusion of the lease. Assuming a ten-year lease, PYA concluded a present value of such assets of \$3.2 million. Therefore, PYA concluded that based on the proposed terms of the Agreement, including the present value of the payments to be made by Phoebe Putney, the terms of the Agreement are reasonable when compared to the fair market value of Dorminy.⁴

The Attorney General was assisted by the firm of Ernst and Young, LLP ("EY") in the review of PYA's determination of market value. The Attorney General engaged EY to provide valuation advisory services, but not to provide a separate valuation or a fairness opinion. Bridget Bourgeois, a Partner at EY, testified at the public hearing. Regarding PYA's analysis under the market approach, EY noted that transactions in the same region, but outside of the subject state, can be considered in a valuation analysis as long as the transactions include sufficiently comparable businesses. After researching similar transactions outside of the state, EY concluded that the valuation multiples implied by PYA's valuation of Dorminy are near the median observations and well within the range of valuation multiples for hospital transactions in the regional market place.

With respect to PYA's analysis under the asset approach, EY noted that the asset approach is typically not relied upon when valuing a hospital as a going concern. However, EY noted that in limited circumstances such as when an analysis of the entity's cash flows under the

⁴ In analyzing the proposed lease, PYA evaluated the annual support payments and the servicing of the assumed liabilities over the term of the lease and concluded that these payments have a present value of \$5.5 million. During the term of the lease, Phoebe Dorminy assumes responsibility for all debt payments and is required to make annual support payments of \$20,000 in the first year and up to \$50,000 in each year thereafter.

income approach are assumed to be negative, as PYA concluded, the asset approach could be utilized.

To evaluate PYA's valuation of the Hospital under the income approach, EY performed a sensitivity analysis under which EY changed some of the assumptions PYA had employed in its discounted cash flow method. After the adjustments, EY found a range of value indications for a 100.0% equity interest in the Hospital of approximately \$5.5 million to \$12.0 million, which range is inclusive of PYA's conclusion of \$6.1 million.

In its report, EY also performed a sensitivity analysis of PYA's value of the proposed lease consideration and its analysis led to a value range for the debt and capital lease payments for a ten-year term of \$5.5 to \$6.0 million, which is inclusive of PYA's present valuation of \$5.5 million. Therefore, EY concluded that the value of the proposed lease consideration that Dorminy would receive from Phoebe Putney under the proposed lease would approximately equal or more likely exceed the value of the Hospital determined by PYA.⁵

PUBLIC COMMENT

The public hearing was held on Monday, June 6, 2011, at 1:00 p.m. at the Hospital in Fitzgerald, Georgia. Two people made comments at the public hearing--the Mayor of Fitzgerald and the Chairman of the Ben Hill County Commission. Both supported the lease of the Hospital assets by Phoebe Dorminy.

Following the public hearing, the record was held open until 5:00 p.m. on June 8, 2011, for any further public comment but there were no additional comments received. Counsel for the parties were requested to inform the Attorney General in writing on or before 5:00 p.m. on June 8, 2011, as to whether their respective clients would proceed with the proposed transaction as

⁵ EY also considered other components of consideration not directly addressed by PYA. First, EY considered the value of the forecasted capital expenditures during the term of the lease to be \$7.0 million to \$8.0 million using the capital expenditures forecast by PYA. Under the terms of the lease, such capital expenditures may constitute a loan payable by the Authority if the lease is not renewed. However, in the event the lease is renewed, the expenditures are not subject to any repayment obligation. Second, EY considered the benefits conferred by virtue of the Phoebe guarantee of the obligations of Phoebe Dorminy and the resulting savings related to the assumed debt and capital lease payments during the lease term. EY also considered the savings over the term of the lease by virtue of the lower cost of debt available to finance capital expenditures. Taking into consideration the benefits of less expensive borrowing generates value of approximately \$900,000 over the term of the lease. Thus, the two additional components could generate additional consideration of approximately \$7.9 million to \$8.9 million.

structured or modify the proposed transaction in some respect in light of the oral and written public comments, or make any other disposition of the transaction. Counsel sent a joint letter to the undersigned Hearing Officer on June 8, 2011, stating that their clients wished 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.* and *Sparks v. Hosp. Auth. of City of Bremen and Cnty. of Haralson*, 241 Ga. App. 485 (1999) (physical precedent only). The Act requires both a written notice filing (O.C.G.A. § 31-7-401) 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. § 31-7-405(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 or guidelines in determining whether the appropriate steps have been taken by the parties. The thirteen factors are listed in Appendix A to this report.

The thirteen factors set forth in O.C.G.A. § 31-7-406 may 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) valuation of the hospital assets (factors number 6, 7 and 10), (c) conflicts of interest (factors number 5 and 13) and (d) the charitable purpose of the proposed transaction (factors number 9, 11 and 12).

The due diligence factors number 3 and 4 require review of the process employed by the Authority "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). Warren Manley, the Chief Executive Officer of Dorminy Medical Center, testified about the discussions the Hospital Authority of Ben Hill County had with Coffee Regional Medical Center, Tift

Regional Medical Center and Phoebe Putney Health System, Inc. Lawton Tinley, the Chairman of the Hospital Authority provided similar testimony. Mr. Tinley testified that his belief is that conversations with other parties regarding a transaction would not have yielded a more favorable transaction than that under consideration.

The Authority did not conduct a formal request for proposal process, which would have been ideal and is preferred. However, the Authority presented an adequate amount of testimony regarding a process of discussions held with area medical centers regarding possible affiliations. The Authority held detailed discussions with Coffee, Tift and Phoebe. The Authority also conducted a site visit to the hospital operated by a subsidiary of Phoebe Putney Health System, Inc. in Sumter County pursuant to a lease similar to that proposed in the transaction under consideration. In addition, the Authority obtained a valuation analysis to ensure that the consideration offered to lease the Hospital is fair and provides "an enforceable commitment for fair and reasonable community benefits." O.C.G.A. § 31-7-406(6).⁶

With respect to factor number 1, the disposition of the Hospital by way of a lease is authorized by applicable law. O.C.G.A. § 31-7-75(6). Factor number 8 requires that any management or services contract negotiated in conjunction with the transaction must be reasonable. The Authority and Phoebe entered into a management agreement as of November 1, 2010 pursuant to which the Authority pays Phoebe a monthly fee of \$2,000 and reimburses Phoebe for the expenses of compensation for the executive officers of the Hospital. The Authority also reimburses Phoebe for certain other expenses incurred under the management agreement. As the agreement primarily involves the reimbursement of expenses incurred directly by Phoebe in managing the Hospital with only a monthly fee to Phoebe of \$2,000, the Agreement is reasonable within the meaning of the Act.⁷

Related to factor number 2, there is no donor who has contributed to the Hospital or the Authority in excess of \$100,000. There is a disclosed trust under which The Dorminy Medical Center Foundation, Inc. is the trustee and remainder beneficiary of an amount expected to

⁶ While no formal process was utilized, the Authority did engage professional legal and financial advisors. See O.C.G.A. § 31-7-406(4).

⁷ In this matter, the proposed lease to Phoebe Dorminy is separate and apart from the current management agreement with Phoebe and the management agreement will not remain in place as part of the lease transaction.

ultimately be in excess of \$100,000.⁸ The Foundation and its assets are not part of the transaction under consideration. Therefore, the trust that benefits the Foundation will not be impacted.

Factor number 5 requires analysis of 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. 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 Hospital, and by the expert consultant. Among the certifications provided, the chief executive officer, board members and expert consultant provided specific certifications regarding any personal interest in the leasing of the Hospital to Phoebe Dorminy. Warren Manley, the Chief Executive Officer of the Hospital, provided a certification which certifies that while he is currently an employee of Phoebe, he “shall not profit or receive any other forms of remuneration in exchange for the lease of the Hospital.”⁹

Charlene Lankford, a member of the board of the Authority, provided a certification that she “will not derive any compensation or benefits, directly, or indirectly, from the Purchaser or from any person related to the Purchaser in connection with or as a result of the disposition of the assets.” Jennifer Turner, a member of the board of the Authority, provided a certification that she “will not derive any compensation or benefits, directly, or indirectly, from the Purchaser or from any person related to the Purchaser in connection with or as a result of the disposition of the assets.” Joe Worthington, a member of the board of the Authority, provided a certification that he “will not derive any compensation or benefits, directly, or indirectly, from the Purchaser or from any person related to the Purchaser in connection with or as a result of the disposition of the assets.” Lawton Tinley, a member of the board of the Authority, provided a certification that he “will not derive any compensation or benefits, directly, or indirectly, from the Purchaser or from any person related to the Purchaser in connection with or as a result of the disposition of the

⁸ The articles of incorporation of Dorminy Medical Center Foundation, Inc. appear in the record.

⁹ Mr. Manley’s certification specifically indicates that his “financial relationship with the Purchaser is limited to the compensation set forth by my employment agreement in exchange for my services as CEO and I shall not profit or receive any other forms of remuneration in exchange for the lease of the Hospital.”

assets.” Vanessa Melton, a member of the board of the Authority, provided a certification that she “will not derive any compensation or benefits, directly, or indirectly, from the Purchaser or from any person related to the Purchaser in connection with or as a result of the disposition of the assets.” Susan Hughes, a member of the board of the Authority, provided a certification that she “will not derive any compensation or benefits, directly, or indirectly, from the Purchaser or from any person related to the Purchaser in connection with or as a result of the disposition of the assets.” Carol McDonald, a former member of the board of the Authority, provided a certification that she “will not derive any compensation or benefits, directly, or indirectly, from the Purchaser or from any person related to the Purchaser in connection with or as a result of the disposition of the assets.”¹⁰

David McMillan, the consultant with PYA who was retained by the Authority to prepare a financial and economic analysis of the proposed transaction, provided a certification that:

Neither I, nor any member of my family, nor any business in which I or any member of my family owns a financial interest, hold any financial interest in any business which is owned or operated by the Lessor and Lessee and have not engaged in any financial relationships with either party during the last twelve months. The opinion that I provided is not and has not been influenced by any promise or agreements for future assignments or projects. I am not aware of any future projects wherein myself, my family or my company or colleagues are engaged to provide services to either the Lessor or Lessee. My opinion represents an unbiased review of the value of the assets being leased and is based upon standard industry practices that were not in any way influenced by either the Lessor or Lessee.

¹⁰ Ms. McDonald’s certification further indicates that she resigned as a member of the board of the Authority as of December 31, 2010, and indicates that she acknowledges that she “may become an employee of Lessee, but my financial relationship with the Lessee will be limited to the compensation set forth by my employment agreement in exchange for services, and I shall not profit or receive any other form of remuneration in exchange for the lease of the Hospital.” Based on her resignation date of December 31, 2010, and the relevant minutes of the meetings of the board of the Authority, Ms. McDonald participated in and voted in favor of the unanimous decision of the Authority to sign a letter of intent with Phoebe at its meeting on September 21, 2010. Having previously resigned as a member of the board of the Authority, she did not participate in the Authority’s unanimous decision to sign a lease with Phoebe at its meeting on January 25, 2011.

Mr. McMillan's certification discloses one exception which details services performed by his firm at the request of external legal counsel for Phoebe Putney Memorial Hospital in August of 2010 that totaled \$1,530.00 plus \$34.68 for expenses reimbursed.

The certifications of the chief executive officer, the board members of the Authority, including one former board member, and the financial consultant are satisfactory and do not reveal any conflicts on behalf of board members. One single board member disclosed that she may seek employment with Phoebe. The chief executive is an employee of Phoebe by virtue of the existing management agreement. The financial consultant for the Authority discloses a small amount of work performed during the past year at the request of outside legal counsel for Phoebe's largest hospital. These disclosures do not rise to the level of creating a conflict of interest concern and are disclosed as contemplated by O.C.G.A. § 31-7-403(a) & (b) as well as O.C.G.A. § 31-7-405(b).

The value of the Hospital and the amount of consideration to be paid in the proposed transaction must be weighed under factor number 6. Phoebe Dorminy is a not-for-profit corporation. Factor number 6 requires analysis, in the case of a proposed disposition to a not-for-profit entity, of whether the Authority will receive an enforceable commitment for fair and reasonable community benefits for its assets. *See* O.C.G.A. § 31-7-406(6). Based on the record including the analysis conducted by PYA on behalf of the Authority and the review by EY at the request of the Attorney General as described herein, the Authority will receive an enforceable commitment for fair and reasonable community benefits in exchange for the use of its assets under the terms of the lease as required by the Act.

Since the Authority is not financing any portion of the proposed transaction, factor number 7 is not applicable. Factor number 10 also does not apply as this transaction involves a lease under which the Authority will receive the assets back from Phoebe Dorminy at the conclusion of the lease and, with some limited exceptions, the lease prohibits Phoebe Dorminy from assigning or pledging its rights under the lease without the consent of the Authority. (Lease, § 12.08).¹¹

¹¹ It is appropriate to note that Phoebe Dorminy is permitted to sublease any part of the Hospital, but not all or substantially all of the Hospital and such subleases are required to be consistent with and subject to the terms of the lease and in compliance with applicable laws. (Lease, § 8.02). The lease also expressly limits Phoebe Dorminy's ability to incur indebtedness associated with capital assets during the term of the lease. (Lease, §§ 4.04 & 4.18). It is also

Factor number 13 -- “[w]hether 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 conflict of interest in patient referrals” is not in issue in this case as this transaction involves a lease to a not-for-profit corporation. O.C.G.A. § 31-7-406 (13).

The remaining two charitable-purpose factors, factors number 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 record demonstrates that Phoebe Dorminy has agreed to provide indigent and charity care in accordance with the requirements of applicable state or federal statutes or regulations. Phoebe Dorminy is required to operate the Hospital in furtherance of the public health needs of the community and for the benefit of the general public. Phoebe Dorminy will operate the emergency room 24 hours per day, 7 days per week, and will treat emergency medical patients without regard to their ability to pay and will participate in Medicaid. Phoebe Dorminy has specifically contracted in the lease to allocate at least 3% of the gross revenues of the Hospital, less certain deductions, for the purpose of providing charity care and has further agreed not to implement policies that result in the denial of essential medical services or treatment to patients solely because of an immediate inability to pay. (Lease, §§ 4.02 & 4.17). Therefore, the record supports the conclusion that the charitable and indigent care factors of the Act have been satisfied.

Thus, from the record in this case, it appears that sufficient safeguards exist to assure the community of continued access to affordable care and to the range of services historically provided by Dorminy Medical Center. The record as a whole demonstrates that Phoebe Dorminy has made an enforceable commitment to provide health care to the disadvantaged, the

worth noting that under the terms of the lease, certain amounts invested by Phoebe during the term of the lease for capital expenditures are to be considered as loans by Phoebe to the Authority in the event that the lease is terminated before the conclusion of the initial ten-year term or is not renewed at the end of the initial ten year term. (Lease, § 4.01(b)). The same provision requires that Phoebe obtain the approval of the Authority for any single capital investment that exceeds \$100,000 to be invested in a single transaction. The language of the lease and the hearing testimony make clear that amounts that Phoebe invests or otherwise makes available in order to provide operating funds to the Hospital in order to cover ongoing losses do not constitute capital within the meaning of Section 4.01(b) and are not considered a loan.

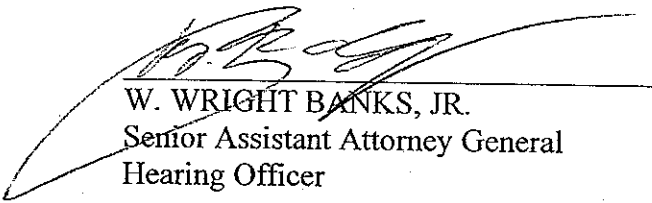
uninsured and the underinsured and to provide benefits to the community to promote improved health care.

III.

CONCLUSION

Upon review of the public record and in accordance with the 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, (c) that any proceeds of the transaction are used for appropriate charitable health purposes, and (d) that the appropriate factors under the Act have been properly addressed.

This 6th day of July, 2011.


W. WRIGHT BANKS, JR.
Senior Assistant Attorney General
Hearing Officer

APPENDIX A

FACTORS TO BE ADDRESSED UNDER O.C.G.A. § 31-7-406

- (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.