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June 20, 2011

Glen A. Reed, Esq.
Thomas H. Hawk, III, Esq.
King & Spalding LLP
1180 Peachtree Street, N.E.
Atlanta, GA 30309-3521

RE: Proposed "Affiliation Agreement" between Henry Medical Center, Inc. and Piedmont Healthcare, Inc.

Dear Mr. Reed and Mr. Hawk:

This responds to your inquiry regarding the application of the Hospital Acquisition Act to an "Affiliation Agreement" between Henry Medical Center, Inc. ("HMC") and Piedmont Healthcare, Inc. ("PHC"). From the information you have provided, HMC is a nonprofit Georgia corporation that operates Henry Medical Center (the "Hospital") in Stockbridge, Henry County, Georgia. HMC operates the Hospital pursuant to a lease agreement with the Henry County Hospital Authority (the "Authority"). You have advised this Office that HMC and the Authority first entered into the lease agreement prior to October 31, 1997.

The proposed transaction that you have described will be accomplished through an "Affiliation Agreement." The primary change to the current structure that is relevant to the analysis of the Act's application is that HMC will amend its bylaws and its articles of incorporation to provide that PHC, a Georgia nonprofit corporation, will become the sole member of HMC and have the right to appoint a majority of the board of directors of HMC. As part of PHC becoming the sole member of HMC, HMC will enter into an amended lease with the Authority, which will extend the lease term out to forty (40) years.

LEGAL DISCUSSION

The Hospital Acquisition Act, O.C.G.A. §§ 31-7-400 through 31-7-412, was enacted to protect the public's interest in the assets of a nonprofit hospital when such assets are transferred. By requiring review of the sale of nonprofit hospitals by the Attorney General under the Act, the General Assembly "clearly intended to provide: . . . oversight by the public and Attorney General

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of disposition of the proceeds collected by the nonprofit corporation; and assurance of continued access to healthcare for the community including the needy.” *Turpen v. Rabun Cnty. Bd. of Comm’rs*, 245 Ga. App. 190, 197 (2000) (Hospital Acquisition Act applies to Rabun County’s purchase of a nonprofit hospital’s assets). In light of this remedial purpose, exceptions to the law should be narrowly construed. *See Dalton Brick & Tile Co. v. Huiet*, 102 Ga. App. 221 (1960). The remedial purpose of the Act must be considered in analyzing the relevant provisions of the Act related to the proposed transaction that you have described.

First, consideration has to be given to the definitions in the Act. The Act specifically defines the terms “acquisition” and “disposition.” The term “acquisition” is defined as follows in O.C.G.A. § 31-7-400(2):

(2) “Acquisition” means a *purchase or lease* by an acquiring entity of the assets of a hospital which is owned, controlled, or operated by a nonprofit corporation and which meets one or more of the following conditions:

(A) Constitutes a *purchase or lease of 50 percent or more of the assets of a hospital* having a permit under this chapter; or

(B) Constitutes a *purchase or lease which, when combined with one or more transfers between the same or related parties occurring within a five-year period, constitutes a purchase or lease of 50 percent or more of the assets of a hospital* having a permit under this chapter;

provided, however, *that an acquisition does not include the restructuring of a hospital owned by a hospital authority involving a lease of assets to any not for profit or for profit entity which has a principal place of business located in the same county where the main campus of the hospital in question is located and which is not owned, in whole or in part, or controlled by any other for profit or not for profit entity whose principal place of business is located outside such county*; provided, further, that an acquisition does not include a restructuring of a nonprofit health system involving the purchase or lease of the assets of a hospital controlled as of March 1, 1999, by the health system’s

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nonprofit parent corporation by another nonprofit entity which is both exempt from federal income taxation and controlled by the same nonprofit parent corporation.

(Emphasis added.) O.C.G.A. § 31-7-400(5) provides a corresponding definition of “disposition” that mirrors the definition of “acquisition.”¹

The definition of an “acquisition” specifically refers to a “purchase or lease” of a hospital and the definition of a “disposition” specifically refers to a “sale or lease” of a hospital. The proposed transaction that you have described does not involve any specific exchange of consideration and is not styled as a “purchase or lease.” Instead, HMC proposes to amend its bylaws and articles of incorporation to provide that PHC will become the sole member of HMC and have the right to appoint a majority of the board of directors of HMC.²

The Act provides an express exception from the definitions of “acquisition” or “disposition” where the transaction involves the leasing of a hospital by a hospital authority to a not-for-profit corporation having its principal office in the same county where the hospital is located and which is not owned, in whole or in part, or controlled by another entity which is located outside the county in which the hospital is located. The outcome of the proposed “affiliation” here does not fit, and is directly contrary, to the exception set forth in O.C.G.A. § 31-7-400(2).

While the terms “acquisition” and “disposition” are defined in the Act, the terms “purchase” and “lease,” which are integral parts of those definitions, are not specifically defined in the Act. The Act does not specifically define the terms “purchase” or “lease.” Considering the lack of definition of these terms and the broad goal of protecting the public’s interest in charitable assets, technical actions to avoid the terms of the Act are not favored. *Turpen*, 245 Ga. App. at 195-96 (“allowing a nonprofit corporation to escape application of the Act by relinquishing its hospital permit after it has entered into an agreement covered by the Act would be inconsistent with the legislative intent.”). Therefore, in light of the remedial purpose of the Act and the Georgia Court

¹ The Act applies to the sale or lease of nonprofit hospitals and hospitals owned by hospital authorities. O.C.G.A. § 31-7-400 (2) & (5). The purpose of the Act is to “protect the public’s interest in the charitable assets of nonprofit hospitals by rigorously enforcing charitable trust laws.” Kevin F. Donohue, *Crossroads in Hospital Conversions—A Survey of Nonprofit Hospital Conversion Legislation*, 8 Ann. Health L. 39, *51 (1999).

² A Georgia not-for-profit corporation such as HMC is required to have bylaws and is specifically empowered “[t]o make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for regulating and managing the affairs of the corporation.” O.C.G.A. §§ 14-3-206 & 14-3-302(3).

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of Appeals' rejection of a technical application of the Act in *Turpen*, consideration of the Act's application to transactions has to extend beyond whether the transaction involves consideration or is specifically styled as a sale or lease. The General Assembly created a remedial Act which is to be broadly construed and provided an express exception to its applicability. If the General Assembly intended a restrictive reading of the words "acquisition" and "disposition," there would have been little reason to create the statutory exception. If the General Assembly had intended to exempt other transactions from the Act, it could have easily done so by utilizing different language in the exception. For example, it could simply have allowed hospital authorities to contract with any not-for-profit corporations regardless of location of the principal office of the corporations or their parent corporations.

Where a transaction will involve the transfer of control of a nonprofit hospital and the restructuring exception is not satisfied, the transaction will be generally subject to the Act.³ We therefore conclude that the transaction you have described in your letter requires review and approval by the Attorney General under the Hospital Acquisition Act.

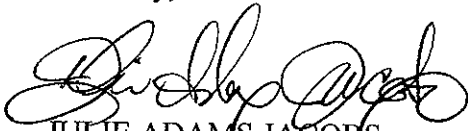
Please note that in reaching this conclusion, we relied solely on the facts you presented; we did not perform a separate factual investigation. In addition, we have considered only whether the Act applies under the particular facts and circumstances you presented. We have not addressed other issues that may exist or the application of any other laws, rules or regulations to the transaction and have not anticipated any possible factual changes.

³ It is worth noting that, in *Turpen*, the Court of Appeals broadly construed the term "acquiring entity" to include counties, although not expressly listed in O.C.G.A. § 31-7-400(1). 245 Ga. App. at 193. In addition, in *Sparks v. Hosp. Auth. of the City of Bremen & Cnty. of Haralson*, the Court of Appeals also took a broad view of the powers of the Attorney General under the Act and rejected a trial court interpretation that it concluded "allows the parties to a transaction to circumvent any meaningful public input about the transaction." 241 Ga. App. 485, 487 (1999). The Court also stated that "the Act clearly contemplates that before any transaction is consummated the Attorney General will hold a public hearing to provide a forum for meaningful public input about the transaction." *Id.* This Office issued a letter in 1999 related to St. Mary's Health Care System, Inc. ("St. Mary's") which concluded that changes to the structure of St. Mary's, which apparently substituted a new member and sponsoring religious congregation, did not trigger the Act because St. Mary's would not be transferring any assets and would continue to operate the hospital. Since we have not analyzed the specific facts of the St. Mary's transaction, this letter should not be read as affecting the conclusion of that letter as it relates to that specific transaction.

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Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Adams Jacobs", written in a cursive style.

JULIE ADAMS JACOBS
Assistant Attorney General