OFFICE OF THE ATTORNEY GENERAL
STATE OF GEORGIA

IN THE MATTER OF THE COMPLETE INTEGRATION OF HENRY MEDICAL CENTER, INC. INTO PIEDMONT HEALTHCARE, INC.	* * * * * * *	NO. AG 2011-04

REPORT OF FINDINGS

I.

BACKGROUND

HENRY MEDICAL CENTER

Henry Medical Center, Inc. ("HMC") leases Henry Medical Center (the "Hospital"), licensed as a 215-bed acute care hospital located at 1133 Eagle's Landing Parkway, Stockbridge, Georgia 30281, in Henry County from the Hospital Authority of Henry County ("HAHC"). The Hospital provides a variety of general acute medical services, including critical care, emergency services, diagnostic imaging and lab services, rehabilitation services, education, respiratory and EEG services and wound healing services. The Hospital also engages in a number of other specialty services including, but not limited to, operating a women's health program. The Hospital has approximately 1200 full-time equivalent employees and a medical staff of approximately 500 physicians. The Hospital's primary service area encompasses Henry County and surrounding areas.

HMC proposes to completely integrate into Piedmont Healthcare, Inc., a Georgia nonprofit corporation ("Piedmont") pursuant to a transaction in which HMC will amend its bylaws and articles of incorporation to provide that Piedmont will become the sole member of HMC. At the closing of the transaction, the current members of the board of directors of HMC will resign. After the closing, at least one member of the board of directors of HMC shall also be a member of HAHC and the bylaws of HMC shall not prohibit additional members of HAHC from serving on the board of HMC. In addition to the member that is also a member of HAHC, the board of directors will include eleven other directors including the President/Chief Executive Officer of HMC and the Executive Vice-President/Chief Operating Officer of Piedmont who shall serve ex-officio with a vote. The Piedmont board of directors shall appoint the remainder of the boar d of HMC subject to the requirement that "[a]t all times . . . a majority of the Board (including the President/CEO of Henry Medical Center) shall consist of persons who are residents of, or have significant business interests in, the Corporation's service area (defined as those counties whose residents constituted at least ninety percent (90%) of Henry Medical Center's inpatients in the most recent year for which data is available." (Affiliation Agreement, Sections 2.5 and 3). At closing, HMC will also enter into an amendment of the existing lease with HAHC which will include a 40-year lease term from closing with a termination in the year 2051.

THE DISPOSITION PROCESS

HMC has considered various possibilities for affiliations with other hospitals and hospital systems over the years. After a management change in 2006, HMC considered affiliation with a number of different hospital systems, including Southern Regional Medical Center, Emory Healthcare and Piedmont as well as several for-profit systems. In June of 2010, the boards of HAHC and HMC determined to pursue a formal approach to selecting an affiliation partner and determining the proper type of transaction to carry out an affiliation. Navigant Consulting was retained to assist with the affiliation process. An affiliation steering committee worked with a physicians advisory council to establish a thirty-six (36) factor weighted scoring system for the selection of a potential affiliation partner. The thirty-six (36) factors were broken down into six categories consisting of people, finance, growth, quality, culture, and infrastructure. In September of 2010, HMC issued a request to eleven potential affiliation partners and received seven responses. The responding parties were Community Health Systems, DeKalb Medical, Emory Healthcare, Health Management Associates, LifePoint Hospitals, Tenet Healthcare and Piedmont. After the responses to the request were weighed, the proposals for Piedmont and Emory Healthcare were significantly higher than the remaining six. After a second phase of evaluation, including various presentations by Emory Healthcare and Piedmont, recommendations were made to the boards of HMC and HAHC that an affiliation be pursued with Piedmont. After the recommendations, each of the boards voted to pursue an affiliation with Piedmont by way of a "substitution of member" transaction under which HMC will become a subsidiary of Piedmont and continue to lease the Hospital from HAHC.

THE PROPOSED TRANSACTION

As described above, the Affiliation Agreement ("Agreement") provides for Piedmont to become the sole member of HMC. HMC proposes to completely integrate into Piedmont pursuant to a transaction in which HMC will amend its bylaws and articles of incorporation to provide that Piedmont will become the sole member of HMC. At the closing of the transaction, the current members of the board of directors of HMC will resign. After the closing, at least one member of the board of directors of HMC shall also be a member of HAHC and the bylaws of HMC shall not prohibit additional members of HAHC from serving on the board of HMC. In addition to the member that is also a member of HAHC, the board of directors will include eleven other directors including the president/chief executive officer of HMC and the Executive Vice-President/Chief Operating Officer of Piedmont, who shall serve ex-officio with a vote. The Piedmont board of directors shall appoint the remainder of the board of HMC subject to the requirement that "[a]t all times . . . a majority of the Board (including the President/CEO of Henry Medical Center) shall consist of persons who are residents of, or have significant business interests in, the Corporation's service area (defined as those counties whose residents constituted at least ninety percent (90%) of Henry Medical Center's inpatients in the most recent year for which data is available)." (Affiliation Agreement, Sections 2.5 and 3).[1] At closing, HMC will also enter into an amendment of the existing lease with HAHC which will include a 40-year lease term from closing with a termination in the year 2051.

FINANCIAL 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

[1] Piedmont has also agreed that, within one year of closing, a member of the reconstituted HMC board who resides in or has substantial business in Henry County will be appointed to the board of Piedmont. (Affiliation Agreement, p. 14).

General to make a determination as to whether the seller "will receive an enforceable commitment for fair and reasonable community benefits for its assets."

HMC engaged Navigant Consulting ("Navigant") to assess the anticipated community benefit resulting from the affiliation of HMC and Piedmont. Navigant reviewed the transaction under O.C.G.A. § 31-7-406(6), which requires that the seller or lessor in a disposition of a nonprofit hospital to another nonprofit corporation "will receive an enforceable commitment for fair and reasonable community benefits for its assets." Navigant was not engaged to render a valuation of HMC through a fairness opinion or a fair market value analysis of HMC. Navigant compared HMC's current condition and likely future state with the benefits expected from the transaction as well as other commitments made by Piedmont.

Navigant identified a number of quantifiable benefits[2] in its report to support its assertion that the affiliation of HMC and Piedmont would provide a community benefit. Kevin Casey Nolan, Managing Director at Navigant, testified at the public hearing. Mr. Nolan testified that he believed there were three key aspects of the affiliation that are the most significant from the community benefit standpoint: (1) Piedmont's assumption of HMC's debt; (2) the relief of Henry County with respect to the one mill tax rate which Piedmont will assume; and (3) Piedmont's commitment to continue to fund and provide indigent and charity care to the citizens of Henry County and those seeking care at HMC. Navigant's report also asserts that the community will receive many benefits that Navigant was unable to quantify in monetary terms.[3]

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[2] The benefits relied upon by Navigant include: (1) assumption of existing debt payments; (2) capital expense contribution by Piedmont over five years; (3) decreased supply costs using Piedmont's purchasing organization over five years; (4) HMC employee wage adjustments; (5) HMC employee benefit adjustments; and (6) release of Henry County from the additional property tax assessment for indigent care.

[3] These benefits include: (1) development of a strategic plan for HMC; (2) access to Piedmont corporate support services; (3) access to and participation in Piedmont's patient satisfaction initiatives; (4) access to and participation in Piedmont's clinical quality protocols and policies; (5) service expansion (chest pain center, stroke center, Locust Grove campus); (6) service enhancement (orthopedics center); (7) continued provision of charity and indigent care at historical levels; (8) potential expansion of Piedmont's partnership with Mercer University to provide for healthcare related offerings using the Mercer campus in the County and the Hospital; (9) support for development of Southern

As part of its analysis, Navigant noted that Piedmont will enter into a Guarantee and Reimbursement Agreement with HAHC under which Piedmont will guarantee the payment from HMC of rent under the Restated Lease in amounts sufficient to pay principal and interest on the bond indebtedness related to HMC. Navigant estimates HMC's total balance of debt to be $108.5 million as of December 31, 2011. To calculate this benefit, Navigant added to the total balance of $108.5 million the estimated remaining interest payments of approximately $77.3 million to get the resulting $185.8 million of community benefit for Piedmont's assumption of HMC's existing debt payments.

Navigant also calculated Piedmont's capital expense contribution which would result as part of the proposed affiliation. Navigant noted that HMC has spent approximately $10 million on capital expenditures in each of the past three years. However, without an affiliation, in 2012, HMC would only be able to budget $3 million and would likely continue to be limited to $3 million to $4 million annually going forward. Under the proposed transaction, HMC will receive a pro-rata share of Piedmont's capital expenditures budget based on the percentage of its net revenue contribution to the overall Piedmont system over the first five years following the transaction. Navigant concluded that over five years, annual capital spending would yield a total capital expense contribution by Piedmont to HMC of $64 million, which would be approximately $44 million more than HMC would be able to commit without an affiliation.

Navigant determined that with an affiliation with Piedmont, HMC will benefit from participating in the Piedmont group purchasing organization, which Navigant calculated would result in cumulative savings to HMC over a five-year period exceeding $15 million.

Navigant also noted Piedmont's agreement to provide HMC's employees with a wage adjustment equal to 3.0% of their wages on average plus an additional 3% increase one year after closing. Navigant estimated the cumulative community benefit of the wage adjustment for HMC's employees to be approximately $27 million over a five-year

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Crescent Technical College campus in Henry County; (10) physician recruitment assistance; (11) clinical integration; and (12) enhanced readiness for Health Care Reform.

period. Finally, Navigant determined the release of Henry County from the property tax obligation associated with indigent care would result in a benefit of $30 million to the taxpayers of Henry County as a result of Piedmont's commitment to fund the indigent care obligation.

Based on its review, Navigant concluded that the affiliation would yield quantifiable community benefits exceeding $327 million.

The Attorney General was assisted by the firm Ernst & Young, LLP ("EY") in the review of Navigant's determination of community benefits. The Attorney General engaged EY to provide financial and transactional advisory services, but not to provide a separate valuation or a fairness opinion. Bridget Bourgeois, a transaction valuation partner at EY, testified at the public hearing. EY noted that while Navigant's report quantified some community benefits associated with future cash flows that were more easily quantified, Navigant did not perform a valuation analysis to quantify these expected benefits using valuation methods and techniques. Navigant quantified the six community benefits associated with the transaction discussed above by calculating their cumulative dollar value over a five-year time period. However, EY noted that Navigant did not discount to present value[4] the identified future cash flows to establish the six community benefits value as of the date of Navigant's analysis. Instead, Navigant quantifies the future value of the benefits without regard to their risk and timing associated with future cash flows. Because the affiliation with Piedmont has a 40-year term, EY employed a value calculated into perpetuity (on-going) because this calculation yields a very close approximation to a value derived from discretely valuing 40 years of cash flows for the analyses related to decreased supply costs using Piedmont's group purchasing, HMC's employee wage and benefit adjustments, and release of Henry County from the property tax obligation.

While EY did not conduct an independent assessment of the community benefit or a valuation analysis, it did perform limited analyses with a focus in two principal areas:

[4] Discounting is a valuation technique used to address the concept of the time value of money, which means simply that the value of a dollar received today is worth more than the value of a dollar to be received at some future date. This concept is expressed through a required rate of return, or a discount rate, that is used to discount a stream of cash flows to present value.

(1) conducting independent market research and analysis of prevailing market yields on debt instruments similar to the outstanding debt of the Authority; and (2) conducting sensitivity analyses of Navigant's report.

Regarding Navigant's community benefit analysis as it pertains to assumption of existing debt payments, EY noted that according to a presentation delivered by HMC to the Federal Trade Commission on July 27, 2011, HMC is projecting a loss of $10 million in 2011, and as a result HMC anticipates it would break its bond covenant requirements this year and would be in danger of closing within a few years without a partner. EY also stressed that although Piedmont is only contractually committing to guarantee the HAHC payment of the lease, based on discussions with HMC and Piedmont and the testimony of Jeff Mills from HMC and Greg Hurst from Piedmont at the public hearing, Piedmont intends to repay or refinance the HAHC debt using its own capital resources or by raising its own debt financing through the credit of Piedmont. EY identified a comparable current market yield on debt instruments with credit risk similar to the credit risk of Piedmont. EY then used that yield, also referred to as the "required rate of return," to calculate the present value of the assumption of existing debt payments. EY found the estimated required rates of return for the HAHC debt ranged from 2.59% to 3.48%. Based on EY's sensitivity analyses of the community benefit with respect to assumption of existing debt payments, EY found that the community would benefit in the range of $99 million to $100 million, as compared with Navigant's estimation of $185.8 million.[5]

Regarding Navigant's community benefit analysis with respect to capital expense contribution by Piedmont, EY adjusted Navigant's assumption of annual capital expenditure commitments of $12.7 million to a range of $9.7 million to $12.7 million and discounted the capital expenditures using a discount rate of 8.%. EY's sensitivity analysis resulted in a present value range of approximately $40.7 million to $53.2 million, as compared to Navigant's $64 million.

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[5] EY noted in its analysis that as Piedmont is only contractually committing to guarantee the HAHC payments under the lease, the value of the guarantee in isolation and apart from the value of any stated intention of Piedmont to refinance the HAHC debt is likely to be minimal. However, EY stressed that if without a partner HMC was to break its bond covenants and be in danger of closing within a few years, the detriment in economic value to the community would likely be higher.

With respect to decreased supply costs using Piedmont group purchasing, Navigant noted that as a Piedmont affiliate, HMC will benefit at an estimated cost savings of $3 million in the first year, for a savings or benefit of decreased supply costs of $15 million over five years. EY extended Navigant's assumed five-year horizon of the $3 million-per-year savings in perpetuity, assuming HMC will continue to benefit from decreased supply costs, and discounted the supply costs savings using a discount rate of 10%. EY concluded that the community benefits associated with decreased supply costs range from $22 million to $23 million, as compared to Navigant's $15 million.

In analyzing Navigant's estimated community benefits associated with HMC employee wage and benefit adjustment, EY again extended the five-year horizon into perpetuity and conducted sensitivity analyses resulted in a present value range of $42.6 million to $48 million for HMC employee wage adjustment and $6.7 million to $7.5 million for HMC employee benefit adjustments, compared with Navigant's $27 million for employee wage adjustments, and Navigant's $5 million for employee benefit adjustments.

With respect to the property tax obligation, Navigant concluded that over a five-year horizon, the cumulative community benefits of relieving Henry County from the property tax obligation would be approximately $30 million. EY extended Navigant's five-year time period of the annual $6 million obligation to 22 years, the remaining term of the Authority debt associated with Henry County's commitment, and applied a tax rate of 38.9% to the cash flow and discounted the cash flows using a discount rate of 10%, which resulted in a present value of approximately $34.6 million for the community benefit of relieving Henry County from the property tax obligation, as compared to Navigant's $30 million.

In addition to the above-discussed community benefits, EY identified and quantified other potential benefits based on its review of the Notice, discussions, and information provided by Piedmont and HMC. These benefits include: (1) HMC pension plan liability of $29 million; (2) HMC notes payable related to purchases of medical equipment of approximately $5.9 million; and (3) the option granted to HAHC to acquire certain HMC's assets, in which it currently has no interest for $1, that were purchased for

$7 million. EY found the sum of these additional potential community benefits to be approximately $41.9 million.

Based on the market research and the limited analyses, as well as the consideration of additional potential community benefits associated with the transaction provided by Piedmont, EY's sensitivity analyses resulted in a range of $290 million to $310 million, compared with Navigant's estimate of $326.8 million of quantifiable community benefits. EY ultimately concluded that, while it cannot draw specific conclusions or findings regarding the total value of the community benefits expected to result from the proposed transaction, the results of its independent research and sensitivity analyses resulted in a value range that was slightly below Navigant's conclusion.

PUBLIC COMMENT

The public hearing was held on October 25, 2011, at 1:30 p.m. at Henry Medical Center in Stockbridge, Georgia. Five persons made comments at the public hearing. The persons commenting included the County Attorney for Henry County. Other than certain concerns expressed by the County Attorney regarding the structure of the transaction as it relates to Henry County, the comments were in favor of the proposed transaction.

Related to the submission of Henry County, both the submission of the County Attorney provided at the hearing on October 25th, as well as the follow up information submitted on October 27th, appear to be primarily directed to concerns of the County regarding how the transaction might be changed to be of greater benefit to the County. The record contains a Guaranty and Reimbursement Agreement that addresses certain undertakings by Piedmont related to the County's financial obligations under the existing financing in place for the Hospital. The Guaranty and Reimbursement Agreement is an agreement between Piedmont and HAHC. The submissions by the County Attorney make clear that the County would prefer that the County be a party to a direct agreement with Piedmont. The Guaranty and Reimbursement Agreement expressly provides that the County is a third-party beneficiary. Further, by way of a letter signed by the operating board of HMC dated October 28, 2011, HMC has represented that the Guaranty and Reimbursement Agreement will be assigned to the County.

One of the primary issues raised by the County relates to the bond financing in place on behalf of HAHC.[6] The bond financing involves an agreement by Henry County to fund the debt service obligations of HAHC in the event that HAHC does not pay those obligations. Under the proposed transaction, Piedmont will serve as a guarantor of the debt service obligations under an agreement with HAHC of which the County is a third-party beneficiary, although not a direct party. Thus, while the County would clearly prefer to be a direct party to the agreement, it appears that, post-closing, the County will be in a much-improved position in that Piedmont will serve as an additional guarantor of the bond obligations, thus reducing the likelihood that the County would have to make payment under its agreement with HAHC related to the debt service. As noted in the EY Report, there appears to be a very real chance that HMC will incur a significant loss in 2011 and will break its bond covenants. (EY Report, p. 15). The addition of the Piedmont guarantee "yields a benefit to the community by enhancing the credit quality of the Authority Debt." (EY Report, p. 15). The submissions of the County Attorney make it abundantly clear that the County wants Piedmont to refinance the existing bond indebtedness, thus eliminating the County's guarantee. The County Attorney also submits that refinancing makes economic sense for HAHC.[7] However, it is not within the authority of the Attorney General under the Act to impose terms upon the parties to the transaction. In this case, it appears that the County originally voluntarily entered into

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[6] Greg Hurst, Piedmont's Vice-President of Finance of Development, testified that as soon as there is no penalty to refinance the existing bond indebtedness, Piedmont "intend[s] to repay these bonds and refinance those bonds . . . through our own capital sources or by indebtedness . . . through the credit of Piedmont Healthcare." (Transcript, p. 70).

[7] As to the Series 1999 Bonds, the County Attorney submits that "Piedmont should be required to firmly commit to refinancing this debt on or before July 1, 2012" when the bonds appear to be callable at par. As to the Series 2004 bonds, "Henry County requests that Piedmont be required to refinance these bonds on or before July 1, 2014, the date on which they are callable at par plus one percent." (County Attorney Letter of Oct. 27, 2011, pp. 3-4). As to both of the bond financings referenced, the County submits that "[t]he public should be provided some degree of certainty of the date on which this debt will no longer be underwritten by the citizens of this County" and that "[t]he citizens of Henry County are entitled to receive a more reliable timeframe indicating when this refinancing will be accomplished." Related to the bond financing, the County also seeks to impose a guaranty fee to incentivize Piedmont to move along with a refinancing of the outstanding bond indebtedness.

the financing agreements that are in place related to the bond indebtedness of HAHC. HAHC remains in place as does HMC. The control of HMC will be transferred to Piedmont under the proposed transaction, but HMC and HAHC do not disappear and the Hospital remains in place in Henry County. There is no requirement in the Act that the County must be released from its contractual obligations as part of the transaction proposed.[8]

Much the same can be said about the other issue raised by the County concerning the additional property tax levy in place in the County to support indigent care payments to HAHC. The County indicates that it desires to remove the levy. Correspondence submitted by HMC, in response to the submissions of the County, indicates that the County will be able to remove the levy, as the financial obligation will be undertaken by Piedmont. HMC has advised that the Guaranty and Reimbursement Agreement "requires that Piedmont continue to provide hospital services to indigents, the uninsured and the underinsured throughout the term of the Lease, regardless of the existence of any outstanding bond indebtedness." HMC further advised that "the Agreement allows the County to consider any obligations relating to tax payments for indigent care to have been fully satisfied by Piedmont. As such, the proposed transaction will allow the County to cease collection of the property tax for the benefit of the Hospital . . . ." (HMC Letter dated Oct. 28, 2011, pp. 2-3). Correspondence submitted by Piedmont, in response to the submissions of the County, reaffirms Piedmont's commitments in the Guaranty and Reimbursement Agreement as well as in an additional letter of assurance that is in the record in this matter and further states that Piedmont "believe[s] the commitments made by Piedmont Healthcare, Inc. in connection with the transaction should address Ms. Wiley's concerns in all material respects." (Piedmont Letter dated Oct. 28, 2011).[9]

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[8] However, as pointed out by the County Attorney, it will likely make economic sense for Piedmont at an appropriate point to pursue a refinancing of the obligations without any County guarantee.

[9] The letter submitted for Piedmont is signed by Gregory A. Hurst, who also testified on behalf of Piedmont that Piedmont does not intend to accept county funding in this transaction and does not accept county funding in the four other counties in which it operates. (Transcript, p. 70).

Regarding the submissions of the County Attorney, the purpose of the Attorney General's review under the Hospital Acquisition Act is not to analyze the specific merits of a transaction or to consider whether a more favorable transaction could have been reached. Instead, the Act requires review of proposed transactions as presented, analyzing the specific factors set forth in the Act.

Following the public hearing, the record was held open until the close of business on Friday, October 28, 2011, for any further public comment. This Office received a total of one written public comment regarding the transaction.[10] Counsel for HMC and Piedmont were requested to inform the undersigned in writing by October 28, 2011, as to whether their respective clients intended to proceed with the proposed transaction as structured or modify the proposed transaction in some respect. By letter dated October 27, 2011, counsel for both parties have submitted a joint letter stating that their clients wish to proceed with the transaction as proposed.

II.

FINDINGS

The Hospital Acquisition Act (the "Act") involves a public interest determination in the Attorney General's review of a proposed disposition and acquisition of hospital assets. *See* O.C.G.A. §§ 31-7-400 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.

[10] The single written comment relates primarily to a billing notice sent by an outside collection firm on behalf of HMC to the person that submitted the comment. As the comment does not relate to the merits of the transaction, the billing notice is not relevant to the consideration of the transaction under the Act. The undersigned has brought the comment to the attention of HMC and understands that HMC will ensure proper follow-up with the person that submitted the comment regarding the concerns expressed.

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).

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

The disposition of the Hospital is authorized by applicable law as provided in factor number 1, and HMC has taken the appropriate steps to provide for the complete integration into Piedmont. O.C.G.A. §§ 14-3-206, 14-3-302, 31-7-400 *et seq.* 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. HMC provided specific testimony in this regard. (Transcript, p. 46).

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). HMC conducted a formal process for the solicitation and selection of proposals which is the preferred approach. Navigant Consulting was retained to assist with the affiliation process.

An affiliation steering committee worked with a physicians advisory council to establish a thirty-six (36) factor weighted scoring system for the selection of a potential affiliation partner. The thirty-six (36) factors were broken down into six categories consisting of people, finance, growth, quality, culture, and infrastructure. In September of 2010, HMC issued a request to eleven potential affiliation partners and received eight responses. The responding parties were Community Health Systems, DeKalb Medical, Emory Healthcare, Health Management Associates, Hospital Corporation of America, LifePoint Hospitals, Tenet Healthcare and Piedmont. After the responses to the request were weighed, the proposals for Piedmont and Emory Healthcare were significantly higher than the remaining six. After a second phase of evaluation, including various presentations by Emory Healthcare and Piedmont, recommendations were made to the boards of HMC and HAHC that an affiliation be pursued with Piedmont. After the recommendations, each of the boards voted to pursue an affiliation with Piedmont by way of a "substitution of member" transaction under which HMC will become a subsidiary of Piedmont and continue to lease the Hospital from HAHC.

The Chair of the Henry County Commission testified as to certain concerns about an initial decision by HMC to affiliate with Piedmont and a request to HMC that it conduct a more open process, which she testified that HMC did subsequently conduct. (Transcript, p. 33). The Vice-Chair of HMC and HAHC testified that the concerns of the County regarding the process were addressed by conducting a process that looked "at a broader range of opportunities for affiliation." (Transcript, p. 55). The Vice-Chair also provided detailed testimony regarding the process employed to select a party with which to affiliate. (Transcript, pp. 23-29).

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 by HMC.

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 HMC that voted in favor of the transaction, by the chief executive officer of HMC and by Kevin Nolan with Navigant.

Joyce Rogers, a member of the board of HMC and HAHC as well as the board of Henry Health System, Inc., provided conflict of interest certifications with no exceptions and also provided a certification regarding the transaction's compliance with the requirements of the Act. Charles Mills, the Chair-Elect of HMC and HAHC and the Chair of Henry Health System, Inc. and a board member of HAHC, provided conflict of interest certifications with no exceptions and also provided a certification regarding the transaction's compliance with the requirements of the Act. Gerald Taylor, a board member of HMC and Henry Health System, Inc., provided conflict of interest certifications with no exceptions and also provided a certification regarding the transaction's compliance with the requirements of the Act. Steve Kay, the Chair of HMC and HAHC, provided conflict of interest certifications with no exceptions and also provided a certification regarding the transaction's compliance with the requirements of the Act. Dr. Gayla Sylvain, a board member of HMC and HAHC, provided conflict of interest certifications with no exceptions and also provided a certification regarding the transaction's compliance with the requirements of the Act. Gopal C. Rao, a board member of HMC, provided conflict of interest certifications and also provided a certification regarding the transaction's compliance with the requirements of the Act. Dr. Rao's conflict of interest certifications include an exception indicating that he is a physician and a member of the Piedmont Heart Institute and that his spouse is a physician who provides indigent care for HMC's pre-natal clinic. Dr. Rao further indicates that he has recused himself from all discussions of the transaction and was not present at the board meeting at which the transaction was discussed and approved. Dr. Joseph Blissit, an emeritus board member of HMC, provided conflict of interest certifications with no exceptions and also provided a certification regarding the transaction's compliance with the requirements of the Act. Dr. Sheryl M. Simpson-Jones, a board member of HMC, provided conflict of interest certifications with no exceptions and also provided a certification regarding the transaction's compliance with the requirements of the Act. Marcia G. Taylor, a board member of HMC, provided conflict of interest certifications with no exceptions and also provided a certification regarding the transaction's compliance with the requirements of the Act. Mike Gasses, a board member of HAHC, provided conflict of interest certifications with no exceptions and also provided a certification regarding the transaction's compliance with the requirements of the Act. Dr. Tarsem Gupta, a board member of HAHC, provided conflict of interest certifications and also provided a certification regarding the transaction's compliance with the requirements of the Act. Dr. Gupta's conflict of interest certifications include an exception to note that a medical directorship or physician relationship is possible after the transaction, but has not been promised to him, related to the transaction. Michael Lyle, a board member of HAHC, provided conflict of interest certifications and also provided a certification regarding the transaction's compliance with the requirements of the Act. Mr. Lyle's conflict of interest certifications note that he is employed in the healthcare industry and has no current affiliations with Piedmont. His certifications note that some affiliation in the future could be possible, but that none is foreseen at this time. The certifications further note that he has been employed in the healthcare industry for the past forty-one years. David Huelsbeck, a board member of Henry Health System, Inc., provided conflict of interest certifications and also provided a certification regarding the transaction's compliance with the requirements of the Act. Mr. Huelsbeck's certifications note some ordinary business transactions with Piedmont by companies in which he and his family own interests. Mr. Huelsbeck's certifications also note some stock ownership in publicly traded companies that likely do business with Piedmont. Dr. Kandathil Mathew, a board member of Henry Health System, Inc., provided conflict of interest certifications with no exceptions and also provided a certification regarding the transaction's compliance with the requirements of the Act. Kay Pippin, a board member of Henry Health System, Inc., provided conflict of interest certifications with no exceptions and also provided a certification regarding the transaction's compliance with the requirements of the Act. Dr. Deborah E. Haynes, a board member of Henry Health System, Inc., provided conflict of interest certifications with no exceptions and also provided a certification regarding the transaction's compliance with the requirements of the Act.

Charles F. Scott, the President and Chief Executive Officer of HMC, provided conflict of interest certifications and also provided a certification regarding the transaction's compliance with the requirements of the Act. Mr. Scott's conflict of interest certifications note that he expects to continue in his position with HMC after closing of the transaction and receive compensation for his services from HMC, which will be controlled by Piedmont.[11]

[11] The Affiliation Agreement expressly provides that "[a]fter the Closing, Charles F. Scott will continue as the President and Chief Executive Officer of HMC."

Kevin C. Nolan, the Managing Director of Navigant Consulting, Inc., provided conflict of interest certifications with no exceptions and also provided a certification regarding the transaction's compliance with the requirements of the Act.

The certifications are adequate and the disclosures do not rise to the level of creating an impermissible conflict of interest in the proposed transaction and are disclosed as contemplated by O.C.G.A. § 31-7-403(a) & (b) and O.C.G.A. § 31-7-405(b).

With regard to factor number 13, the instant transaction involves the transfer of control of a nonprofit corporation 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. Since this transaction involves the complete integration of one nonprofit into another nonprofit, HMC should receive an enforceable commitment for fair and reasonable community benefits for its assets. *See* O.C.G.A. § 31-7-406(6).[12] Based on the record, including the analysis conducted by Navigant on behalf of HMC and HAHC and the review by Ernst & Young at the request of the Attorney General as described herein, HAHC will receive an enforceable commitment for fair and reasonable community benefits in exchange for the use of its assets as required by the Act.

Since HMC and HAHC are not providing any financing for the transaction, factor number 7 is inapplicable. As to factor number 10, the Affiliation Agreement prohibits assignment or transfer of Piedmont's rights without the prior written consent of HAHC except for limited authorized assignments to affiliates of Piedmont. (Affiliation Agreement, p.10). The Amended Lease also prohibits assignment except that HMC may make assignments "to any entity owned or controlled by, in control of or under common

[12] HMC did not have a formal valuation conducted regarding the value of the assets, but instead relied upon Navigant's analysis of community benefits. Even in transactions involving the acquisition of assets from a nonprofit corporation by a nonprofit corporation, a formal valuation is a preferred method of determining whether there are adequate community benefits conferred in light of the value of the assets transferred.

control with [HMC]." (Amended Lease, p. 30).[13] 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 health care purposes consistent with the nonprofit's original purpose. Piedmont and HMC are both nonprofit corporations and Piedmont is not paying actual cash consideration to HMC or HAHC in exchange for its membership interest in HMC. There are no proceeds from sale.

The other two charitable purpose factors, factor numbers 11 and 12, concern the purchaser's commitment to provide (a) continued access to affordable care, (b) the range of services historically provided by the seller, (c) health care to the disadvantaged, the uninsured and the underinsured and (d) benefits to the community to promote improved health care. The Affiliation Agreement requires that Piedmont cause HMC to comply with the covenants of the Amended Lease, including those "relating to provision of care to the disadvantaged, the uninsured, the underinsured, and the indigent, to participation in the Medicare and Medicaid programs and to the provision of community benefits by HMC." (Affiliation Agreement, p. 13). Thus, Piedmont is assuming responsibility for assuring that HMC provides such compliance. The Affiliation Agreement expressly prohibits "material reductions in clinical services offered at HMC's facility without approval by the HMC board during the first three (3) years after the Effective Date." (Affiliation Agreement, p. 13). The Affiliation Agreement also requires that a multiyear strategic plan be developed to "address the development of new services and the expansion of existing services." (Affiliation Agreement, p. 13). Under the heading of "Community Support," the Agreement requires:

> HMC management and its Board of Directors shall have the primary responsibility for coordination and support of local educational institutions in the community. PHC and HMC agree that there shall be no decrease in the existing

[13] Related to the protection of the HAHC assets, it is worth noting that the Affiliation Agreement contemplates that HAHC will obtain at closing the option to purchase certain real property assets that HMC owns and in which HAHC has no current interest for a purchase price of $1.00 in the event of a termination or expiration of the Amended Lease. (Affiliation Agreement, p. 11).

> level of financial and other support provided by HMC to community organizations. PHC shall work with HMC management to negotiate in good faith with Mercer University to extent PHC's existing partnership with Mercer to provide for healthcare related offerings using the Mercer campus in the County and the Hospital. Further, PHC agrees to actively support the effort to develop a Southern Crescent Technical College ('SCTC') campus in the County and will work with local HMC management to develop healthcare related education and training opportunities at the Hospital for SCTC students.

(Affiliation Agreement, p. 13). 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. The record as a whole demonstrates that HAHC has obtained from Piedmont 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 Hospital Acquisition Act, the Hearing Officer finds that the public record in this matter discloses that the parties have taken appropriate steps to ensure that the transaction is authorized and that the value of the charitable assets is safeguarded.

This 23rd day of November, 2011.

W. WRIGHT BANKS, JR.
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.