

OFFICE OF THE ATTORNEY GENERAL
STATE OF GEORGIA

IN THE MATTER OF THE AFFILIATION *
OF SOUTHEAST GEORGIA HEALTH * NO. AG 2015-2
SYSTEM, INC. WITH COASTAL *
COMMUNITY HEALTH, INC. *
*
*

REPORT OF FINDINGS

I.

BACKGROUND

SOUTHEAST GEORGIA MEDICAL CENTER

Southeast Georgia Health System, Inc. (“SGHS”)¹ leases its main hospital campus in Brunswick (the “Hospital”) from the Glynn-Brunswick Memorial Hospital Authority (“Hospital Authority”). The Brunswick campus is licensed to operate 300 beds and provides services in the areas of: emergency services, ambulatory care, general surgery, physical therapy, coronary intensive care, surgical intensive care, cardiac catheterization lab services, cardiac rehab, carotid stenting, coronary intervention, vascular intervention, electroencephalography, sleep studies, diagnostic oncology, chemotherapy, radiation therapy arthroscopy, orthopedics, spinal surgery, hemodialysis, lithotripsy, obstetrics, hyperbaric oxygen, and radiology and imaging services. The Hospital’s primary service area encompasses Glynn County and the surrounding counties of McIntosh, Camden, Brantley and Wayne. SGHS also operates a Hospital in Camden County which consists of an acute care, general hospital licensed for 40 beds. The Hospital in Camden County serves Camden County and the counties of Charlton and Brantley.²

In May of 2015, the Hospital Authority and SGHS completed a restructuring transaction, in accord with O.C.G.A. § 31-7-70 *et seq.*, pursuant to which the Authority leased the Hospital in Brunswick to SGHS and transferred other assets utilized in the operation of the Hospitals to SGHS.³ The restructuring was not completed for the sole

¹ SGHS was formerly known as Kings Bay Community Hospital, Inc.

² There are no operating hospitals in Brantley, Charlton and McIntosh Counties.

³ SGHS, and not the Hospital Authority, owns the Hospital in Camden County.

purpose of carrying out the proposed affiliation, but its terms have some impact on the proposed affiliation. Under the terms of the restructuring transaction, SGHS is not permitted to enter into certain sale, merger, reorganization or management transactions without the consent of the Hospital Authority.

As presented, the proposed affiliation involves an Affiliation Agreement among SGHS, Baptist Health System, Inc. (“Baptist”) and Flagler Hospital, Inc. (“Flagler”). Baptist is located in Jacksonville, Florida and is a not-for-profit corporation. Flagler is located in St. Augustine, Florida and is a not-for-profit corporation. The Affiliation Agreement among the three health systems provides for their affiliation through Coastal Community Health, Inc., (“Coastal”) a Florida not-for-profit corporation. The Affiliation Agreement has three primary components. First, it provides for the organizational structure of Coastal. Second, it contains the agreements of SGHS, Flagler and Baptist to make the necessary changes in their organizational documents to carry out the affiliation. Third, the Agreement provides for the subsequent operations of Coastal.

THE DISPOSITION PROCESS

The Hospital Authority began considering various options for partnerships, affiliations, or alignments in 2011. In 2011 and 2012, the Hospital Authority considered affiliations with three smaller health systems, but determined that the needs of the Hospital Authority’s patients would not be best served by affiliations with smaller systems.

In 2012, the Hospital Authority entered into an agreement with Wolfson Children’s Hospital in Jacksonville, Florida for the purpose of expanding its pediatric services in Brunswick. Wolfson Children’s Hospital is an affiliate of Baptist. The arrangement with Wolfson led to a substantial expansion of pediatric services on the Brunswick campus of SGHS and further enhanced the Authority’s consideration of additional affiliations to enhance its service offerings.

As the Hospital Authority continued to evaluate options, it held a special meeting in August of 2013 to consider potential agreements with ten different health systems. From this process, the Hospital Authority determined that further exploration of an arrangement of some type with Flagler and Baptist would be appropriate. On August 15, 2013, the Hospital Authority executed a Letter to Explore Potential Affiliation with

Baptist and Flagler. For the remainder of 2013 and into 2014, the Hospital Authority continued to evaluate a potential affiliation with Baptist and Flagler. In July of 2014, the Hospital Authority entered into a Letter of Intent with Baptist and Flagler. After entering into the Letter of Intent, the Hospital Authority retained an outside consultant to provide assistance with evaluating the various relationships that the Hospital Authority might consider with Baptist and Flagler. In October of 2014, the Hospital Authority conducted a retreat at which it considered various potential relationship models. The Hospital Authority also proceeded to retain additional consultants and other professionals to assist in its evaluation of an affiliation with Flagler and Baptist subject to satisfactory due diligence.

THE PROPOSED TRANSACTION

Title to the assets of SGHS will not be transferred under the proposed transaction. There is no sale or lease of the assets of SGHS.⁴ However, the Affiliation Agreement (“Agreement”) provides for the perpetual affiliation of SGHS with Baptist and Flagler by way of affiliation with Coastal. The Affiliation Agreement that is proposed expressly provides that “[o]ne of the most significant considerations in achieving successful affiliation and accomplishing Coastal’s Goals and Objectives is the willingness of the Health Systems to provide Coastal with authority over the Health Systems.” (Affiliation Agreement, Article II). The Affiliation Agreement goes on to provide that “[t]his transfer of authority to Coastal is intended to be accomplished, however, while addressing adequately the individual needs of each Health System.” (Affiliation Agreement, Article II).

Coastal is a Florida not-for-profit corporation. The board of directors of Coastal has twelve members. Six are appointed by Baptist. Three are appointed by Flagler and three are appointed by SGHS. Each of the three health systems is permitted to unilaterally withdraw the board members that it appoints. The Coastal board members do not have to be members of the boards of the three health systems. The Chief Executive Officers of each of the three health systems will not be members of the board of directors

⁴ Both representatives of SGHS that provided testimony emphasized that the transaction does not involve a sale of the assets of SGHS. (Transcript, pp. 12, 18-19 & 24).

of Coastal. The initial Chairman of the Board of Coastal shall be appointed by Flagler. The initial Vice-Chairman shall be appointed by SGHS and the initial Secretary shall be appointed by Baptist. The initial officers of the Board of Coastal shall serve until December 31, 2018 after which they shall be appointed by the Board of Coastal. The Chief Executive Officer of Baptist shall serve as the initial Chief Executive Officer of Coastal. The Chief Executive Officers of Flagler and SGHS shall serve as Executive Vice-Presidents of Coastal.

As part of the consummation of the affiliation, Coastal will become the sole member of SGHS, Baptist and Flagler. The Board of Directors of Coastal will have certain powers and will also have the power to approve certain actions of the Board of Directors of SGHS, Baptist and Flagler such that the actions of the health system boards are not effective unless previously approved by the Board of Coastal. In this regard, the Affiliation Agreement provides that certain actions of the boards of the health systems require the prior authorization of the Coastal Board. These actions include:

- (a) Adoption or revision of a strategic plan;
- (b) Amendments to the Governing Documents of the Health System;
- (c) Mergers, acquisitions and sales of all or a substantial portion of the Health System's assets;
- (d) Liquidation and dissolution;
- (e) Election and removal of the Health System's officers and directors, including the chief executive officer and the chair of the Health System's Board of Directors;
- (f) Approval of capital and operating budgets;
- (g) Any actions affecting the Health System's tax-exempt status;
- (h) Fundamental changes in mission or direction (e.g., adding or discontinuing lines of service and clinical services);
- (i) Entry into the following material agreements:
 - (i) Agreements involving annual payments that exceed 2% of the Health System's total annual budgeted operating expenses;
 - (ii) A significant joint venture or affiliation with an entity other than Coastal or the Health Systems that, in the opinion of the Health System's Board of Directors, has implications for Coastal or one of the other Health Systems;
 - (iii) An agreement providing for the management of the Health System by a third party; and
 - (iv) Insurance, managed care or other agreements with a material payor of a Health System that have a projected annual value of 5% or more of the Health System's annual net patient revenue;
- (j) Incurrence, refinancing, prepayment or defeasance of debt in excess of the greater of \$10,000,000 or 10% of the Health System's outstanding debt;

- (k) Securing a mortgage, deed of trust, or other encumbrance in excess of the greater of \$10,000,000 or 10% of the Health System's outstanding debt;
- (l) Inclusion in the Health System's annual capital budget of a capital expenditure in an amount in excess of the greater of \$10,000,000 or 10% of the capital budget; provided, however, that active capital projects that are ongoing as of the date of this Agreement shall not be subject to the approval of the Coastal Board;
- (m) Incurrence of any unbudgeted capital expense in excess of the greater of \$5,000,000 or 5% of the Health System's annual capital budget;
- (n) A capital expenditure overrun in excess of the greater of \$5,000,000 or 5% of the budgeted capital expense;
- (o) Incurrence of any unbudgeted operating expense in excess of 1% of the Health System's total annual operating expenses;
- (p) Selection of the Health System's independent auditor;
- (q) Adoption or revision of charitable care policies;
- (r) Donation of material funds to a person or entity not affiliated with Coastal or any Health System; provided, however, that Coastal shall not be required to review or authorize contributions to a local charity that do not exceed \$250,000 in any year;
- (s) Formation of a new material entity as a subsidiary; and
- (t) Actions taken to cure any breach of, or failure to comply with, covenants in bond and other debt agreements.

(Affiliation Agreement, Article IV). Subject to the described reserved powers of Coastal, “[t]he Board of Directors and officers of each Health System shall continue to govern the day-to-day affairs of such Health System” (Affiliation Agreement, Article IV).

The health systems affiliating through Coastal have the right to withdraw from the Affiliation Agreement. Subject to various conditions which could involve costs, the Affiliation Agreement allows withdrawal without paying a cash sum during an initial withdrawal period that occurs in period beginning on the third anniversary of the closing of the transaction and ends on the date that is six months after that closing. There are subsequent similar periods during which a health system may withdraw under certain conditions. During these subsequent periods, SGHS and Flagler would be required to pay Coastal \$3,000,000 in order to withdraw and Baptist would be required to pay \$6,000,000. (Affiliation Agreement, Article XII).⁵

⁵ Mr. Colberg testified on behalf of SGHS regarding the specifics of the withdrawal rights and the associated fees. (Transcript, p. 35). It is worth noting related to the withdrawal rights that the Coastal board is empowered to alter or delete the withdrawal provisions. (Affiliation Agreement, Article XII). Such an action would require an

VALUATION ANALYSIS

Pershing Yoakley & Associates, P.C. (“PYA”) was retained by Southeast Georgia Health System, Inc. (“SGHS”) to prepare an independent assessment of the community benefit derived from the proposed affiliation between SGHS and Coastal Community Health, Inc. (“Coastal”). In its report, PYA concluded that the proposed affiliation, in addition to qualitative benefits, would result in cost savings of \$53.2 million to \$58.8 million to SGHS. Mr. David McMillan of PYA testified at the public hearing held on July 30, 2015.

In its analysis, PYA primarily focused on three areas in its assessment of the community benefit derived from the proposed affiliation. The three areas are (1) access to health services, (2) quality and scope of healthcare services, and (3) economic impact to the community. While PYA provided qualitative benefits to the community for the first two areas, it measured the third area, economic impact to the community by calculating anticipated cost savings resulting from the proposed affiliation. To determine the economic impact to the community, PYA conducted a value analysis of SGHS “with” and “without” the proposed affiliation. Since SGHS assets and invested capital will remain in the community, PYA defined the economic community benefit as the difference in calculated value of SGHS “with” and “without” the affiliation.

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 (net asset value) Approach. 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.

affirmative vote of two-thirds of the Coastal Directors then in office. (Affiliation Agreement, Article III).

In its analysis, PYA considered all three approaches, but relied solely upon the Income Approach in determining the value of SGHS “with” and “without” the proposed affiliation. Under the Income Approach, PYA applied a Discounted Cash Flow (“DCF”) method, which provides an indication of value based on the entity’s ability to generate net cash flow. This projected net cash flow is then discounted to present value using an appropriate risk-adjusted discount rate. Based on a particular set of assumptions, PYA discounted the resulting cash flows at a discount rate of 11.1% and applied plus/minus 5% to develop a range. Using this methodology, SGHS was valued in the range of \$47.5 to \$52.5 million “without” the affiliation. To determine the value of SGHS “with” the proposed affiliation, PYA utilized the same set of assumptions but incorporated a number of estimated annual operating expense savings to be reasonably expected as a result of the proposed affiliation. These operating expense savings were forecasted in the range of \$7.2 to \$10.7 million annually. Accounting for these savings, PYA discounted the cash flows at a discount rate of 11.1% and applied plus/minus 5%, which resulted in a value range of \$100.7 to \$111.3 million for SGHS “with” the affiliation. Therefore, PYA concluded that the community benefit derived from the proposed affiliation would yield quantifiable benefits to the residents of SGHS’ service area in the form of increased value of \$53.2 million to \$58.8 million, in addition to, significant qualitative benefits.

Ernst & Young, LLP (“EY”), in accordance with O.C.G.A. § 31-7-405(b), was retained as an independent financial advisory consultant by the Attorney General to assist in the review of the proposed affiliation between SGHS and Coastal. The Attorney General engaged EY to provide valuation advisory services, but not to provide a separate valuation or a fairness opinion. Ms. Bridget Bourgeois, a partner at Ernst & Young, specializing in health care 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 PYA’s independent assessment of the community benefit derived from the proposed affiliation.

In its review, EY confirmed that the Income, Market, and Cost approaches to value considered by PYA are consistent with generally accepted industry standards for valuation analysis, and found PYA’s decision to rely solely upon methodologies under

the Income Approach reasonable given the facts and circumstances of the proposed affiliation. In the course of its engagement, EY analyzed PYA's underlying valuation methodologies and assumptions, and performed a number of sensitivity analyses of PYA's assessment of community benefit by changing certain assumptions employed by PYA in its analysis.

In particular, EY conducted independent research of valuation multiples for comparable hospital transactions and performed sensitivity analyses to assess the impact to PYA's value range for SGHS and conclusions regarding the community benefit derived from the proposed affiliation. Based on this independent research and analysis, EY indicated that it found a range similar to PYA's concluded range in regards to community benefit. However, the valuation multiples implied by PYA's calculations of value for SGHS were below or near the low end of the range of valuation multiples observed for comparable hospital transactions in the market place. Ultimately, EY concluded that it appears PYA used reasonable valuation methods and techniques in its analysis to quantify the community benefit from the proposed affiliation with Coastal.

PUBLIC HEARING AND COMMENT

The public hearing was held on July 30, 2015, at 12:00 p.m. at Southeast Georgia Medical Center in Brunswick, Georgia. Six persons made comments at the public hearing. All comments were in favor of the proposed transaction. (Transcript, pp. 75-89).

Following the public hearing, the record was held open until the close of business on Monday, August 3, 2015, for any further public comment. No additional public comments were received. Counsel for SGHS was requested to inform the undersigned in writing by the close of business on August 3, 2015, as to whether the parties intended to proceed with the proposed transaction as structured or modify the proposed transaction in some respect. Counsel submitted confirmation that the parties intend to proceed with the transaction as presently structured.

During the public hearing, SGHS presented testimony from Carl Alexander, the Chairman of the Board of Directors of SGHS, and from Gary Colberg, the Chief Executive Officer of SGHS. (Transcript, pp. 8-20 & 21-40).⁶ SGHS also presented

⁶ On August 11, 2015, Gary Colberg resigned as the President and Chief Executive Officer of SGHS and Michael Scherneck, the Chief Financial Officer of SGHS assumed

testimony from David McMillan with PYA. (Transcript, pp. 52-63). Coastal presented testimony of Carlton DeVooght, its Senior Vice-President of Operations. (Transcript, pp. 41-52). Bridget Bourgeois also testified in her capacity as consultant to the Attorney General for purposes of this transaction. (Transcript, pp. 64-75).

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.

The Act has a remedial purpose and 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 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 Commissioners*, 245 Ga. App. 190, 197 (2000) (Hospital Acquisition Act applies to Rabun County’s purchase of a nonprofit hospital’s assets).

The terms “acquisition” and “disposition” are defined in the Act. O.C.G.A. § 31-7-400. However, the terms “purchase” and “lease” which are integral parts of those definitions are not specifically defined in the Act. 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

the role of President and Chief Executive Officer. Counsel for SGHS has confirmed that notwithstanding Mr. Colberg’s resignation, his testimony continues to be that of SGHS.

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 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. In the instant matter, the level of affiliation proposed and the related conditions and potential consequences necessitate review under the Act.

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

The transaction is authorized by applicable law as provided in factor number 1, and SGHS has taken the appropriate steps to provide for the affiliation with Coastal. O.C.G.A. §§ 14-3-206, 14-3-302, 31-7-400 *et seq.* With regard to factor number 2, SGHS provided specific testimony indicating that the proposed disposition is not inconsistent with the directives of any major donors who have contributed over \$100,000.00. (Transcript, p. 18).

The due diligence factors number 3 and 4 necessitate review of the process and procedures employed by SGHS “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). Beginning in 2011, SGHS conducted a multi-year process for the consideration of the best affiliation option for SGHS. In 2011 and 2012, the Hospital

Authority considered affiliations with three smaller health systems, but determined that the needs of the Hospital Authority's patients would not be best served by affiliations with smaller systems. In 2012, the Hospital Authority entered into an agreement with Wolfson Children's Hospital in Jacksonville, Florida for the purpose of expanding its pediatric services in Brunswick. Wolfson Children's Hospital is an affiliate of Baptist. The arrangement with Wolfson led to a substantial expansion of pediatric services on the Brunswick campus of SGHS and further enhanced the Authority's consideration of additional affiliations to enhance its service offerings. As the Hospital Authority continued to evaluate options, it held a special meeting in August of 2013 to consider potential agreements with ten different health systems. From this process, the Hospital Authority determined that further exploration of an arrangement of some type with Flagler and Baptist would best serve SGHS. The Hospital Authority then executed a Letter to Explore Potential Affiliation with Baptist and Flagler and, after further consideration, the Hospital Authority entered into a Letter of Intent with Baptist and Flagler. After entering into the Letter of Intent, the Hospital Authority retained an outside consultant to provide assistance with evaluating the various relationships that the Hospital Authority might consider with Baptist and Flagler. In October of 2014, the Hospital Authority conducted a retreat at which it considered various potential relationship models. The Hospital Authority also proceeded to retain additional consultants and other professionals to assist in its evaluation of an affiliation with Flagler and Baptist subject to satisfactory due diligence.

Based on the information in the record regarding the procedures used and the due diligence exercised by SGHS, I conclude that factor numbers 3 and 4 are satisfied as required by O.C.G.A. § 31-7-406(3) & (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 by SGHS.

Conflicts of Interest

The disclosure of any conflict of interest involving SGHS, the Hospital Authority, the Chief Executive Officer of SGHS and the expert consultant retained by SGHS 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 SGHS, the Hospital Authority, the Chief Executive Officer of SGHS and the expert consultant retained by SGHS. None of the certifications contain any exceptions other than that filed by David McMillan, a principal with PYA, who served as the expert consultant for SGHS. Mr. McMillan submitted a certification disclosing certain possible services that Mr. McMillan may provide to Coastal in his position with PYA within the three-year period after the completion of the proposed transaction. I conclude that these disclosures do not raise a concern for purposes of this review.

Community Benefits

The factors numbered 6, 7 and 10 involve a review of the community benefits associated with the proposed affiliation. Since this transaction involves the affiliation of one nonprofit with another including the substitution of Coastal as the single member of SGHS, the transaction must involve an enforceable commitment for fair and reasonable community benefits for its assets. *See* O.C.G.A. § 31-7-406(6).⁷ Based on the record, including the analysis conducted by PYA on behalf of SGHS and the review by Ernst & Young at the request of the Attorney General as described herein, SGHS will receive an enforceable commitment for fair and reasonable community benefits in exchange for the use of its assets as required by the Act.

Factor number 7 is inapplicable as there is no financing for the transaction. Factor number 10 involves a review of whether a meaningful right of first refusal has been retained. O.C.G.A. § 31-7-406(10). Factor number 10 is not directly applicable to the instant transaction in that the title to the assets of SGHS is not transferring to Coastal. However, as part of the affiliation with Coastal, SGHS will transfer a level of control over SGHS and, in turn, the assets of SGHS. Under the Affiliation Agreement, SGHS retains the right to withdraw from the Affiliation Agreement under certain conditions and during certain specific windows of time. (Affiliation Agreement, Article XII). In the

⁷ SGHS did not have a formal valuation conducted regarding the value of its assets, but instead relied upon PYA's analysis of community benefits. Even in transactions involving nonprofit corporations, a formal asset valuation is a preferred method of determining whether there are adequate community benefits conferred in light of the value of the assets involved in a given transaction.

context of the instant transaction, I conclude that the withdrawal rights conferred upon SGHS satisfy the requirements of O.C.G.A. § 31-7-406(10) to the extent applicable.

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. SGHS and Coastal are both nonprofit corporations and no cash consideration is involved. Coastal is not paying to obtain its membership interest in SGHS. There are no proceeds from sale.


The other two charitable purpose factors, factor numbers 11 and 12, concern the 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 supports the conclusion that the management of SGHS and Coastal believe that all of these factors will be enhanced by the proposed transaction and that the transaction is structured in a manner to ensure that there is no negative impact on continued access to affordable care, the range of services historically provided by SGHS or the provision of health care to the disadvantaged, uninsured or underinsured. Further, the record supports the conclusion that substantial benefits to provide improved health care will result from the transaction. I conclude that factor numbers 11 and 12 are satisfied.

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. The necessary elements of the required notice under O.C.G.A. § 31-7-402 are included in the record and the disclosure requirements of O.C.G.A. § 31-7-406 have been satisfied.

This 28th day of August, 2015.



W. WRIGHT BANKS, JR
Deputy 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.