OFFICE OF THE ATTORNEY GENERAL
STATE OF GEORGIA

IN THE MATTER OF THE SALE OF COLUMBUS SPECIALTY HOSPITAL, AS SELLER, TO AFFABILIS, LLC, AS PURCHASER.	* * * * *	NO. AG 2016-05

REPORT OF FINDINGS

I.

BACKGROUND

COLUMBUS SPECIALTY HOSPITAL, INC.

Columbus Specialty Hospital, Inc. ("CSH"), a Georgia nonprofit corporation, operates Columbus Specialty Hospital (the "Hospital"), a long-term acute care hospital ("LTACH") located at 616 19th Street, in Columbus, Muscogee County, Georgia. Columbus Specialty Hospital is a "hospital within a hospital" located within the Midtown Medical Center West location of Columbus Regional Health ("CRH"). Although the Hospital is certified by Medicare for fifty (50) beds, the facility currently only operates thirty-three (33) beds. The Hospital has been in operation since 2003.

The services provided by CSH include physical therapy, occupational therapy, case management, speech therapy, ventilator weaning, central line management (PICC Lines), antibiotic therapy, telemetry, wound care and nutritional assessment and support. The Hospital provides services for patients with medically complex conditions, pulmonary disorders, neurological illness, post trauma, and patients who require a ventilator or have complex wound care needs. As an LTACH facility, CSH treats patients with complex medical issues requiring long lengths of stay. To maintain certification as an LTACH, by the Centers for Medicare & Medicaid Services (CMS) requires that the average of all Medicare discharges be at least twentyfive (25) days for each cost reporting period.[1] CSH's primary service area encompasses a 150-mile radius and includes Muscogee, Chattahoochee, Harris, Marion, Meriwether, Stewart, Talbot, and Troup Counties in Georgia, and surrounding areas in Alabama, including Russell and Lee counties.

THE DISPOSITION PROCESS

CSH decided to sell the Hospital in 2016 after suffering years of operating losses and related cash-flow concerns. Leading up to this decision, in 2015, the Hospital utilized a line of credit for working capital needs and has been unable to pay CRH for certain purchased services (such as rent, meals and linen, etc.). As a small and independent provider of LTAC services, CSH has been unable to negotiate favorable terms related to payer contracts, supplies, and leases to support the ongoing operations of their facility.

As of April 30, 2016, CSH had a total debt obligation of $6.432 million, which consisted of $3.312 million in current liabilities and $3.119 million in assumed liabilities. The current liabilities included $2.873 million in accounts payable, the majority of which are due to CRH for services received from CRH at CSH; CSH's inability to make its payables current is due to the Hospital's lack of cash-flow. In addition, the Hospital has certain liabilities consisting of $84,550 in accrued payroll, $201,645 in accrued paid time off, and $152,706 for Medicare tentative payments. CSH also has long-term debt obligations consisting of $2.4 million in long-term interest-bearing debt obligations due to Columbus Bank & Trust ("CB&T"), and an unrecorded liability of $757,156 payable to CRH for expenses incurred in 2013 related to certain leasehold improvements.

Due to its continuing operating losses and cash-flow concerns, in early 2016, CSH made the decision to locate a buyer for the Hospital. CHS reached out to six potential purchasers to determine interest in acquiring the Hospital, which in response, it received three initial non-binding offers from Southwest Georgia Specialty Hospital ("Southwest"), LifeCare, and

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[1] Through the Pathway for SGR reform Act of 2013 and the Protecting Access to Medicare Act of 2014 (collectively, the "SGR Reform Act"), a moratorium is in effect on the start-up of new LTACH's. The SGR Reform Act bars the establishment of new Medicare-participating LTAC and LTAC satellite facilities and prevents increases in the number of certified beds in existing LTACs and satellite facilities; the SGR Reform Act is in effect through September 20, 2017. Under the current moratorium, except in limited exceptions, any entity that intends to expand or enter into the LTAC business, must acquire an existing facility with the necessary Certificate of Need ("CON") licenses and Medicare certifications.

Cornerstone Healthcare Group ("Cornerstone"). Southwest offered to pay off the debt owed by CSH to CRH and pay $1 million toward CSH's bank loans to CB&T. The CSH Board of Directors (the "Board") had some concerns that Southwest did not own any other healthcare facilities. CSH also received an offer from LifeCare, which owns at least 18 LTACH facilities across the southeast region, in which it offered to pay only half of the debt owed by CSH to CRH and CB&T. In addition, CSH received an offer from Cornerstone, which operates 19 other LTACH facilities, to assume CSH's debt and make payments to CRH.

Around the same time CSH began looking for potential buyers, WoundCentrics, LLC ("WoundCentrics") began providing administrative oversight functions for CSH for a monthly fee. While managing the hospital, in April 2016, WoundCentrics was made aware that CSH was looking for potential buyers. Due to its administrative experience and LTACH investment background, WoundCentrics established a strategy to purchase CSH, which included a plan to improve operations, cut costs, and negotiate new agreements and terms for existing loans and contracts to restore the Hospital to positive financial performance. WoundCentrics opted to create a new limited liability company, Affabilis, LLC (the "Purchaser" or "Affabilis"),[2] for purposes of acquiring CSH.

Affabilis' offer to purchase the Hospital included paying off CRH and CB&T in full at closing. In addition, Affabilis offered to pay $100,000 at closing to be used in the Seller's discretion to help offset closing costs, and a minimum commitment of $100,000 toward capital improvements and/or equipment within the first two years after purchasing the Hospital. Affabilis also made a commitment to donate 5% of its net proceeds to local non-profit healthcare entities for the benefit of the community. Affabilis' members currently have an ownership interest in one other LTACH facility and have multiple management contracts with other healthcare entities, including 11 other LTACHs. Ultimately, the Board selected Affabilis' offer because it was the comprehensive and economical offer for the Hospital. Robert Saulnier, CEO of CSH, testified that the Board also selected Affabilis because they were impressed with Affabilis' demonstrated intent to help the community.

THE PROPOSED TRANSACTION

CSH will transfer substantially all of its assets to Affabilis for cash consideration of $100,000 at closing, for the satisfaction if its debt obligations, including the payment and satisfaction of its the interest bearing debt obligations in the approximate amount of $4.2 million to CB&T ($1,668,501.00) and CRH ($2,478,066.00). In addition, CRH will forgive approximately $730,000 worth of debt in the form of leasehold improvements in return for a new long term lease from Affabilis.[3] Purchaser has also agreed to make yearly contributions in the amount of 5% of its net operating income to a local healthcare foundation.

During its time managing the Hospital, WoundCentrics contends that it has: (1) reached new agreements with CRH for providing support services at reduced costs; (2) negotiated a forgiveness of debt from CRH related to leasehold improvements made in 2013;[4] (3) reached a new lease agreement which lowers the monthly lease obligation by $20,000 per month; (4) increased Diagnosis Related Group (DRG)[5] revenue by $275,000; (5) decreased antibiotic costs by $100,000 per month by putting an antibiotic stewardship program[6] in place; and (6) increased the case mix index by 70 percent.

Affabilis has plans to further reduce the Hospital's debt by negotiating agreements to forgive back-interest and penalties on unpaid amounts to CRH for support services and rent, grow volume, create synergies and continue to pay down outstanding debt. In addition, the Purchaser plans to install a new Electronic Medical Record system (EMR system) to optimize billing, coding and clinical documentation for clinical services provided at CSH. Through this system, medical staff will have the ability to evaluate patients remotely through the EMR system's cloud based feature. Both parties to this transaction (the "Transaction") have indicated

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[2] WoundCentrics is the primary investor in Affabilis and the managing partner entity.

[3] According to Hospital management, approximately $1.0 million of this debt was used to pay for operating expenses and keep the Hospital operational during FY 2015 and YTD April 30, 2016. The remainder of the debt was related to financing of equipment and capital leases.

[4] This agreement is contingent on the close of the transaction.

[5] The Centers for Medicare and Medicaid Services (CMS) pays for Medicare inpatient hospital care on the basis of Diagnosis Related Groups (DRGs).

[6] Antibiotic stewardship programs are coordinated programs that promote the appropriate use of antibiotics, which improves patient outcomes, reduces microbial resistance, and decreases the spread of infections caused by multidrug-resistant organisms. According to the Centers for Disease Control and Prevention (the "CDC"), approximately "20% to 50% of all antibiotics prescribed in U.S. acute care hospitals are either unnecessary or inappropriate." In addition, the CDC contends that there exists a "growing body of evidence [which] demonstrates that hospital based programs dedicated to improving antibiotic use [through antibiotic stewardship programs] can both optimize the treatment of infections and reduce adverse events associated with antibiotic use." This article may be found at: https://www.cdc.gov/getsmart/healthcare/implementation/core-elements.html.

that these improvements would not have been possible absent this transaction and the change of management of CSH. The Hospital will continue to be operated as an LTACH facility.

VALUATION ANALYSIS

Pershing Yoakley & Associates, P.C. ("PYA") was retained by CSH to provide an estimate of the value of the Hospital with respect to the proposed sale of CSH to Affabilis. PYA submitted its findings and conclusions in a report to CSH. James Lloyd of PYA testified at the public hearing held on November 15, 2016.

PYA used the fair market value ("FMV") standard of valuation to determine the value of the Hospital. FMV is defined by the American Institute of Certified Public Accountants as "the price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm's length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts."

There are three traditional approaches 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 value 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 businesses trading in the marketplace. In the Cost (net asset value) Approach, value is estimated based on the value of the sum of all of the subject business's underlying assets, both tangible and intangible.

PYA used all three approaches in its valuation, and arrived at the estimated FMV of the Hospital by evaluating and reconciling the results of the three methods in light of their relative merits, and the quantity and quality of data collected. Under the Income Approach, PYA applied the Discounted Cash Flow ("DCF") method, which provides an indication of value based on the entity's ability to generate economic benefits (net cash flow) for its owners. Net cash flow is a common measure of a company's dividend-paying capacity because it represents the earnings available for distribution to investors without impairing future operations. This projected net cash flow is then discounted at a rate that reflects the overall risk of those cash flows and adjusts for time value. The discount rate applied to the projected cash flows is related to the perceived risk of the investment and current capital costs.

Based on revenue and expense assumptions, along with other factors, PYA estimated the Hospital's net cash flow to be negative $830,939 in year one, $34,069 in year two, $579,971 in year three, $738,459 in year four, $696,411 in year five, and $746,119 in the terminal period. PYA then capitalized the terminal cash flow, in the amount of $746,119, using a 16.0% capitalization rate to arrive at the value of $4,663,244 for the terminal cash flows beyond year five. PYA then applied a discount rate of 18% to determine present value of the projected cash flows of the Hospital. The discount rate used in PYA's analysis represents an estimate of the Hospital's weighted-average cost of capital ("WACC"), which reflects estimates of the costs of debt and equity weighted by the percentage of debt and equity in CSH's capital structure. The Hospital's free cash flows used in the DCF method represent the cash flow that is available to both debt and equity holders. Therefore, the free cash flow is converted to present the value through the application of a WACC. PYA's Income Approach analysis, using the DCF method, resulted in an FMV valuation of $2.577 million for the Hospital.

PYA also used the Cost (net asset value) Approach in its valuation analysis. Specially, PYA applied the Asset Accumulation Method, which is a cost-based approach that provides an indication of value by adjusting the entity's assets and liabilities from their historical accounting book values to their respective current market values. The current, non-interest bearing liabilities are then subtracted from the assets to determine the total invested capital value of the business. PYA began by identifying and evaluating seven categories of tangible and intangible assets of the Hospital. Based on its analysis, PYA estimated the total asset value for the Hospital to be $5,538,703. PYA then calculated the Hospital's liabilities at $6,431,987. Based on the total asset value of the Hospital, less its liabilities, PYA valuated the Hospital at $2.230 million under the Asset Accumulation Method.

Finally, PYA determined the Hospital's value utilizing the Guideline Transaction Method ("GT") (a/k/a M&A Method) under the Market Approach. This method considers the valuation data of recent acquisitions of similar businesses and applies them to the subject business. Applying the GT method, PYA identified and calculated valuation multiples based on financial data for two similar transactions. PYA's GT method analysis resulted in a value of $2.735 million for the Hospital.

After valuing the Hospital under all three approaches, PYA reconciled and weighed the results based on various factors. PYA placed a weight of 50% on the DCF method, reasoning that a buyer's purchase price would most likely be more influenced by the anticipated cash flow from the investment. PYA applied a 25% weight to the values derived from the other two methods. Applying each method's respective weight, PYA estimated the fair market value of the Hospital at $2.530 million.

Deloitte Transactions and Business Analytics, LLP ("Deloitte") was retained by the Attorney General in accordance with O.C.G.A. § 31-7-405(b), as an independent financial advisory consultant to assist in the review of the Transaction. The Attorney General engaged Deloitte to provide valuation advisory services, but not to provide a separate valuation or a fairness opinion. Mr. Jimmy Peterson, a principal at Deloitte, specializing in healthcare valuations, testified at the hearing. As part of its engagement, Deloitte held discussions with representatives of all the parties involved in the proposed Transaction and performed independent research to analyze the conclusions contained in PYA's fair market value analysis of the Transaction.

In its review, Deloitte confirmed that the three approaches used by PYA to value the hospital are consistent with generally accepted industry standards for valuation analysis. With regard to PYA's valuation under the Income Approach, Deloitte determined that the projections were acceptable and the inherent risks associated with the projections were appropriately accounted for in PYA's WACC calculation. Specifically, Deloitte observed that in Affabilis' revenue projections for the Hospital, it estimated a turnaround from negative historical revenue growth and negative historical EBITDA margins, to a 5-year revenue Compound Annual Growth Rate ("CAGR") of 10.4%, a long-term revenue grown rate of 2% and a terminal EBITDA margin of 8.6%. After discussing the projections with Affabilis, Deloitte determined that the drivers behind the positive change in revenue and EBITDA could be attributed to Affabilis's success in historically managing the Hospital, as well as their future plans to improve the Hospital's profitability. Deloitte discussed Affabilis' revenue projections with CSH, and CSH confirmed that the projections were optimistic, but achievable, assuming that the Transaction is successful. With regard to PYA's WACC calculation, Deloitte determined that PYA took the necessary steps to account for company-specific risks such as high barriers to entry, sustained historical losses, no track record profitability, uncertainty surrounding reimbursement trends, and impending bankruptcy. In sum, Deloitte concluded that PYA's Income Approach analysis was consistent with valuation industry norms.

Deloitte also analyzed PYA's valuation of the Hospital under the Cost (net asset value) Approach. Deloitte reviewed the assets and liabilities considered by PYA, and determined that PYA considered all costs involved in creating or acquiring the assets. Deloitte noted that PYA's value conclusion under the Cost Approach was 13% less than the Income Approach and 18% less than the Market Approach. However, Deloitte determined that this variance in value was not unreasonable given the facts and circumstances of the Hospital. Deloitte concluded that PYA's application of the adjusted net asset method under the Cost Approach is consistent with industry norms.

Finally, Deloitte analyzed PYA's valuation of the Hospital using the Market Approach. Deloitte noted that there are two available methods that PYA could have used under the Market Approach: the Guideline Public Company method ("GPC") and the Guideline Transaction method ("GT"). In their valuation of the Hospital, PYA only utilized the GT method. PYA explained that given the size of the Hospital and its sole focus as an LTAC, there were no suitable comparable entities to allow for the effective use of the GPC method. With regard to PYA's valuation of the Hospital using the GT method, Deloitte determined that PYA's analysis was not unreasonable and consistent with Deloitte's expectations. Deloitte analyzed PYA's valuation multiples by performing a limited analysis of LTAC transactions, and concluded that PYA's selected multiples were in line with the market data.

In sum, based on Deloitte's analysis of information provided by PYA and the parties to the Transaction, including discussions with PYA and the parties, Deloitte concluded that the valuation methodologies and approaches utilized by PYA to estimate the FMV of the Hospital appear appropriate and consistent with typical valuation methodologies and approaches. In PYA's FMV analysis, performed as of April 30, 2016, the "interest-bearing debt obligations" was $2.4 million. Deloitte noted that by the time the parties submitted their Notice to the Attorney General, that amount had been paid down to $1.7 million. However, Deloitte determined that this difference did not materially affect the outputs of PYA's valuation. Further, Deloitte observed that the offers of multiple other buyers of CSH appeared to be less than Affabilis' offer, and that the total consideration offered by Affabilis is greater than the FMV of the Hospital as estimated by PYA.

PUBLIC COMMENT

The public hearing was held on November 15, 2016, at 5:00 p.m. in the Cafeteria of CSH, in Columbus, Georgia. There were no comments made during the public comment portion of the hearing.

Following the public hearing, the record was held open until the close of business on Friday, November 18, 2016, for any further public comment. This Office did not receive any public comments after the public hearing. Counsel for CSH and Affabilis were requested to inform this office in writing before the record closed, as to whether their respective clients intended to proceed with the proposed transaction as structured or modify the proposed transaction in some respect. Counsel for both parties have written 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 *et seq.*; *Sparks v. Hospital Authority of City of Bremen and County of Haralson*, 241 Ga. App. 485 (1999) (physical precedent only). The Act requires a written notice filing and a public hearing "regarding the proposed transaction in the county in which the main campus of the hospital is located." O.C.G.A. §§ 31-7-401, 31-7-405(a). The purpose of the public hearing is "to ensure that the public's interest is protected when the assets of a nonprofit hospital are acquired by an acquiring entity by requiring full disclosure of the purpose and terms of the transaction and providing an opportunity for local public input." O.C.G.A. § 31-7-406.

Under the Act, disclosure is linked to whether "appropriate steps have been taken to ensure that the transaction is authorized, to safeguard the value of charitable assets, and to ensure that any proceeds of the transaction are used for appropriate charitable health care purposes." O.C.G.A. § 31-7-406. The Act identifies thirteen factors that are key considerations in determining whether the appropriate steps have been taken by the parties. *Id.* The thirteen factors are listed in Appendix A to this report.

The thirteen factors set forth in O.C.G.A. § 31-7-406 can be grouped into four categories relating to (a) the exercise of due diligence by the seller (factors number 1, 2, 3, 4 and 8),

(b) conflicts of interest (factors number 5 and 13), (c) valuation of the hospital assets (factors number 6, 7 and 10), and (d) the charitable purpose of the proposed transaction (factors number 9, 11 and 12).

The Exercise of Due Diligence by the Seller

Consistent with factor number 1, the disposition is authorized by applicable law since CSH may sell any part of its property pursuant to the Nonprofit Corporations Code and the Board of CSH has taken the appropriate corporate action to authorize the transfer of its assets to Affabilis. *See* O.C.G.A. §§ 14-3-302, 14-3-1202. With respect to factor number 2, there are no major donors who have contributed over $100,000 to CSH.

The due diligence factor numbers 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). Robert Saulnier, CEO of CSH, testified that the decision to sell the Hospital was prompted by continuing financial struggles. As stated above, CSH conducted an extensive review process in which it reached out to six potential purchasers which had experience in the LTACH market. CSH received three non-binding offers (written and verbal) and only one of those offers included a Letter of Intent. CSH ultimately received an offer from Affabilis which, at the time, was already providing management services to the Hospital. Ultimately, CSH chose to proceed with the offer from Affabilis because it offered the most favorable terms and the Board felt that Affabilis demonstrated a commitment to investing in the community. The deliberative process employed by CSH in selecting the Purchaser demonstrates the exercise of due diligence, consistent with factor numbers 3 and 4. Since there is no separate management or services contracts negotiated in conjunction with the proposed transaction, factor 8 is not applicable to the determination of CSH's due diligence.

Conflicts of Interest

The disclosure of any conflict of interest involving CSH, its chief executive officer and its expert consultant is required 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 CSH, by the chief executive officer of CSH and by CSH's expert consultant. Such certifications do not disclose any impermissible conflicting financial interest in the proposed transaction. It is worth noting, however, that Ryan

Candler, Executive Vice President and System COO, and Debbie Bostic, CNO, did not vote on the proposed transaction. Mr. Candler abstained from voting because of his position with CRH. Ms. Bostic did not participate in the meeting.

The ownership interest of a physician in the purchasing entity requires that the Attorney General consider under factor number 13 -- "[w]hether health care providers will be offered the opportunity to invest or own an interest in the acquiring entity or a related party, and whether procedures or safeguards are in place to avoid conflict of interest in patient referrals." O.C.G.A. § 31-7-406 (13). Stuart Oertli, Vice President of Operations of Affabilis testified at the public hearing that there are some physician investors in Affabilis. Mr. Oertli testified, however, that the physician investors will not have the ability to refer patients to the Hospital. Mr. Oertli also testified that Affabilis will comply with the regulations implemented by the Centers for Medicare & Medicaid Services (CMS) which are intended to prohibit conflicts of interest in patient referrals.[7] Since Affabilis will be subject to these regulations, and its physician owners will not have the ability to refer patients to the Hospital, any potential conflict of interest under factor number 13 will be avoided.

Valuation of the Hospital Assets

The value of the hospital and the amount of consideration to be paid in the proposed transaction must be weighed under factor numbers 6, 7 and 10. For the purposes of factor number 6, the contribution of the assets of CSH to Affabilis, a for-profit purchaser, implicates a "fair value" determination. Factor number 6 requires consideration of:

> 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.

O.C.G.A. § 31-7-406(6).

[7] These regulations were created to address the potential for a conflict of interest if a physician were to refer paying patients to a hospital in which she or he owns a financial interest, while referring indigent patients to other hospitals. Pertinent literature indicates a second category of conflicts of interest resulting from referral by a physician for hospital admission where hospital care is not warranted.

The use of the disjunctive "or" in factor number 6 distinguishes the valuation determination relating to the sale of hospital assets to a for-profit purchaser from the valuation determination relating to the sale of hospital assets to a not-for-profit purchaser. The question of "whether a seller or lessor will receive fair value for its assets" by necessity must apply to the sale of hospital assets to a for-profit purchaser, since this qualification precedes the clause "or, in the case of a proposed disposition to a not-for-profit entity, [the seller] will receive an enforceable commitment for fair and reasonable community benefits for its assets." (Italics and parenthetical supplied.)

While the term "fair value" is not defined in the Act, it is reasonable to conclude that fair value means "fair market value," since the Act is concerned with the sale or lease of real, personal and intangible property. Moreover, under a separate provision of the Act, board members and the chief executive officer of the nonprofit seller corporation must provide a certification "stating that the nonprofit corporation has received fair market value for its assets or, in the case of a proposed disposition to a not-for-profit entity or hospital authority, stating that the nonprofit corporation has received an enforceable commitment of fair and reasonable community benefits for its assets." O.C.G.A. § 31-7-403(b)(3). (emphasis supplied). The reference to "fair market value" in this separate, but related, provision of the Act with otherwise substantively similar language to the language of factor number 6 suggests that the term "fair value" in factor number 6 should be read as "fair market value," to apply the Act's provisions consistently, especially since "fair market value" is the more descriptive and specific term. Thus, when the provisions of the Act are read in pari materia and in context, the term "fair value" should be construed to mean "fair market value."

The terms of the transaction support a finding that CSH will receive fair market value for the sale of its assets. As summarized in more detail above, the valuation analysis rendered by PYA indicates that the FMV of the Hospital is $2.530 million. The proposed consideration includes $100,000 in cash consideration at closing, a contribution of 5% of its net operating income each year to a nonprofit foundation providing support for healthcare services in the community, a commitment to a minimum of $100,000 in capital expenditures for the benefit of the Hospital during the two year period immediately following the closing, and the satisfaction of the Seller's long-term debt of $1.7 million due to CB&T at closing. Mr. Peterson, with Deloitte, testified that the consideration CSH is to receive in this transaction, based on Deloitte's analysis of the PYA report, appears to be consistent with fair market value. Deloitte also concluded that the total consideration offered by the Purchaser is greater than the FMV of CSH as estimated by PYA. Based on the record, it appears that the Seller will receive FMV for its assets as required by the Act.

Since the Seller is not financing any portion of the proposed transaction, factor number 7 is not applicable. The proposed transaction complies with factor number 10 because Section 9.13 of the Asset Purchase Agreement provides CSH with the ability to exercise a right of first refusal for a period of three years to purchase the assets of the Hospital on the same terms and conditions as set forth by any potential buyer.

Charitable Purpose of the Proposed Transaction

With respect to the charitable purpose of the proposed transaction, factor number 9 requires that the disposition of proceeds be used for charitable health care purposes consistent with the nonprofit's original purpose.

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. Purchaser will continue to operate the Hospital as a long term acute care hospital and will offer all of the long term acute care services typically provided at such a hospital.

Purchaser will continue to operate and manage the Hospital in a manner intended to further certain community-based healthcare purposes, including the provision of care to certain Medicare patients, patients without secondary insurance, and patients who have reached their "lifetime reserve days or co-pay days" that need LTACH services beyond the time period for which their insurance will pay. Purchaser will continue to "write-off" balances for patients in need. In addition, Purchaser has committed to donate 5% of its proceeds to nonprofit healthcare entities in the community. 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.

III.

CONCLUSION

Upon review of the public record and in accordance with the Hospital Acquisition Act, the Hearing Officer finds that the public record in this matter discloses that the parties have taken appropriate steps to ensure (a) that the transaction is authorized, (b) that the value of the charitable assets is safeguarded and (c) that any proceeds of the transaction are used for appropriate charitable health purposes.

This 13TH day of February, 2017.

JULIE ADAMS JACOBS
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.