

OFFICE OF THE ATTORNEY GENERAL  
STATE OF GEORGIA

IN THE MATTER OF THE SALE OF  
HUTCHESON MEDICAL CENTER  
TO HUTCHESON ACQUISITION SUB,  
LLC, A SUBSIDIARY OF  
VALORBRIDGE PARTNERS, LLC.

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NO. AG 2016-01

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**REPORT OF FINDINGS**

**I.**

**BACKGROUND**

**HUTCHESON MEDICAL CENTER**

Hutcheson Medical Center, Inc. (“HMC”) is a Georgia nonprofit corporation which operates Hutcheson Medical Center (the “Hospital”), a 179-bed acute care hospital located at 100 Gross Crescent Circle, Ft. Oglethorpe, Georgia.<sup>1</sup> The Hospital provides emergency, radiology, laboratory, pharmacy, imaging (CT, ultrasound, and x-ray), respiratory therapy and inpatient services.

The Hospital was founded in 1953 as the John L. Hutcheson Memorial Tri-County Hospital under the ownership and direction of the Hospital Authority of Walker, Dade and Catoosa Counties (the “Hospital Authority”). The Hospital Authority served as the governing organization of the Hospital until June 1, 1996, when a corporate restructuring plan was implemented in which the Hospital Authority leased the facilities, and transferred operational control of the Hospital to HMC pursuant to a lease agreement (the “Lease”). The Lease extends for a period of 40 years with annual lease payments equal to the Hospital Authority’s debt service obligations. The Lease specifically provides that any sale of the Medical Center Property shall be expressly made subject to the Lease. On or about October 28, 2015, the Hospital Authority transferred its interest in the Medical Center Property to HMC and its sister corporation, Hutcheson Medical

Division, Inc. (“HMD”),<sup>2</sup> jointly, by Quitclaim Deed. The Lease was not terminated in connection with the transfer of property.

HMC’s operations consisted of the Hospital, a 109 skilled-care bed nursing home facility, a 16-bed skilled care sub-acute rehabilitation center located in the Hospital, and ambulatory surgery center, lab, cancer center, six outpatient medical clinics and a child care center. The services provided by the Hospital included emergency services, inpatient medical care, sub-specialty services, radiology, women’s services, pediatrics, wound care and sub-acute rehabilitation services.

The Medical Center Property includes the property covered by the Lease, approximately 53 acres of land in Walker and Catoosa Counties and the buildings and improvements thereon, including the Hospital, a connected office building, the Parkside Nursing Home, a childcare center, and several smaller buildings. The Hospital’s primary service area includes areas of Walker, Dade and Catoosa Counties.

### **THE DISPOSITION PROCESS**

Over the past several years, the Hospital has been negatively impacted by a number of factors, including, but not limited to, a decline in its market share, and has experienced patient migration to nearby competing hospitals located in Chattanooga, Tennessee. HMC has two major financial obligations which ultimately contributed to its filing for Chapter 11 bankruptcy protection and closure, including a \$20 million loan (line of credit) made by the Chattanooga-Hamilton County Hospital Authority d/b/a Erlanger Health System (“Erlanger”) to the Hospital Authority and HMC, and a \$26 million loan and other financial accommodations made by Regions Bank to HMC. As collateral for the Erlanger loan, the Hospital Authority pledged a portion of land, including land on which the Hospital and Nursing Home are located (approximately 50 acres). In addition, Regions Bank asserts a lien against the Medical Center Property and assets, including the land upon which the Ambulatory Surgery Center is located, the remaining land at the main campus (approximately 55 acres), all of Hutcheson’s

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<sup>1</sup> The Hospital is physically located in both Walker and Catoosa Counties.

<sup>2</sup> HMC and HMD are jointly referred to herein as the “Seller.”

receivables and inventory, and licenses and intellectual property, including all state-issued Certificates of Need (“CON”) required in the operation of these facilities.

HMC became involved in contentious litigation with Erlanger and with Regions Bank related to the financing relationship and other financial accommodations to HMC.<sup>3</sup> As a result, on November 20, 2014, HMC filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Northern District of Georgia (Case No. 14-42863-pwb). The Bankruptcy Court appointed a Chapter 11 Trustee on September 21, 2015, to take control and continue operations of the Hospital until a purchaser could be located.

In HMC’s Chapter 11 schedules of assets and liabilities before the Bankruptcy Court, HMC listed claims in excess of \$82 million, and indicated total estimated assets of less than \$33 million. Given the Hospital’s continued financial decline after the filing of bankruptcy, HMC retained, and the Bankruptcy Court approved, Guggenheim Securities, LLC (“Guggenheim”), as HMC’s investment banker to market HMC’s Assets and to maximize its value. Guggenheim ran a full marketing process for all of Hutcheson’s assets over a period of several months, contacting approximately 200 potential interested parties, which included financial and healthcare sponsors in the distressed healthcare space, as well as hospitals, nursing homes, continuity of care retirement communities, surgi-center, and cancer center operators. In addition, Guggenheim also worked extensively with HMC’s creditors, including Regions Bank, Erlanger, and the committee representing unsecured creditors to conduct the process in a transparent manner.

Throughout the transaction process, the Hospital’s assets generated very little investor interest. Although the Bankruptcy Court conducted an auction process in December 2015, no qualifying bids were received by the bid deadline established by the Bankruptcy Court. Despite Guggenheim’s extensive marketing efforts of the Assets, the Hospital was forced to cease operations and close its doors on December 4, 2015.

After the Hospital ceased operations, two parties, People’s Choice Hospital, LLC (“PCH”) and Hutcheson Acquisition Sub, LLC, a wholly-owned subsidiary of

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<sup>3</sup> See *Chattanooga-Hamilton County Hospital Authority d/b/a Erlanger Health System v. Hospital Authority of Walker, Dade and Catoosa Counties and Hutcheson Medical Center, Inc.*, Case No. 4:14-cv-00040-HLM.

ValorBridge Partners (collectively referred to herein as “ValorBridge”), expressed interest in re-opening the Hospital. Guggenheim and the Trustee negotiated with the two parties to arrive at the best terms and conditions possible. ValorBridge offered an all-cash purchase price of \$4.2 million, and was selected by the Trustee as the highest and best offer available for the Hospital Assets. ValorBridge’s offer was \$200,000 higher than the \$4 million bid from PHC.<sup>4</sup> There were other offers from liquidators which were also rejected by the Trustee on the basis that those offers would have resulted in substantially lower economic recoveries and the Hospital would have remained closed. All of the major creditors in the bankruptcy proceeding, including Regions Bank, Erlanger, the Official Committee of Unsecured Creditors, Catoosa County and Walker County, stipulated in a settlement agreement that the sale of the Hospital to ValorBridge constituted fair market value of the Medical Center Property and its related assets. As a result, the Trustee filed a Motion in Bankruptcy Court seeking to sell the Hospital to ValorBridge.

The Bankruptcy Court conducted a hearing at which it heard witness testimony regarding the fairness of the marketing and sale process. The Bankruptcy Court did not receive any objections from the Chapter 11 Trustee, Regions Bank, Erlanger, or any other significant stakeholder regarding the sale of the Hospital’s assets to ValorBridge. The Bankruptcy Court ultimately determined that the sale of the Hospital to ValorBridge was fair and reasonable. On December 15, 2015, the Bankruptcy Court entered an order approving the sale of the Hospital to ValorBridge.

As of today’s date, the Hospital has re-opened and is being operated by ValorBridge under a management services agreement until the Seller has received all the prerequisite regulatory approvals.

### **THE PROPOSED TRANSACTION**

Pursuant to the Asset Purchase Agreement (“APA”), Seller, in consideration for the payment of the purchase price, and the other agreements and covenants made by ValorBridge, shall grant to ValorBridge all right, title and interest of Seller in and to the

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<sup>4</sup> PCH offered \$3 million in cash with a \$1 million note. In addition, the financial wherewithal of PHC could not be verified.

Assets, free and clear of any and all liens (other than Permitted Liens and Assumed Liabilities). The APA defines the Hospital assets as the 179-bed acute care hospital and all licenses and permits related to the Hospital's facilities, all cash held in the Management Account, all inventory used in the operation of the Hospital, all rights of the Seller under the assumed contracts, all accounts receivable and rights to lump sum payments after closing with respect to Medicaid and Medicare. This transaction also includes the office building connected to the Hospital and related real property as described more particularly in the APA.

ValorBridge will not assume any liabilities or obligations of HMC related to the operations of the Hospital which accrued prior to the closing date of this transaction. ValorBridge will assume only the obligations of HMC under each assumed contract and the obligations owed to Oglethorpe Physician Services, LLC,<sup>5</sup> which remain unsatisfied as of the closing of this transaction under the current Management Agreement with ValorBridge.

ValorBridge will continue to operate the Hospital as a hospital. ValorBridge has indicated through testimony at the public hearing that it plans to begin reopening portions of the Hospital. Specifically, ValorBridge plans to re-open 16 inpatient beds within a month of closing. ValorBridge will also make available an additional 16 beds for use by the party purchasing the nursing home, Maybrook Healthcare, LLC (or its permitted assignee). As the patient census grows, ValorBridge anticipates that it will open additional inpatient beds in response to the community's need and benefit.

### **VALUATION ANALYSIS**

With the approval of the Bankruptcy Court, Guggenheim was retained by the Seller to market and facilitate a sale process to maximize the value of the Seller's assets. As noted above, the Hospital was forced to cease operations on December 4, 2015, due to its continued financial decline. Due to the distressed nature of the Hospital, Guggenheim did not conduct a formal valuation, but rather, prepared a Sale Process Overview report

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<sup>5</sup> Oglethorpe Physician Services, LLC was retained pursuant to the Management Services Agreement to assist the Chapter 11 Trustee in the oversight and operation of the Hospital. In exchange for its services, Oglethorpe Physician Services, LLC receives a monthly consulting fee.

summarizing the sale and marketing process and the efforts to find transaction partners to invest or purchase HMC's assets. Ultimately, ValorBridge's bid of \$4.2 million was accepted by the Chapter 11 Trustee as the best economic and community outcome available to HMC and was approved by the Bankruptcy Court on December 17, 2015.

As mentioned above, Guggenheim did not conduct a formal valuation of HMC's assets. Rather, Guggenheim conducted a sale and marketing process, wherein roughly two hundred (200) potential interested parties were contacted, which included financial and healthcare sponsors in the distressed healthcare space, as well as, hospitals, nursing homes, continuing care retirement communities, surgi-centers, and cancer center operators. Guggenheim received limited interest in the Hospital during this time, which resulted in the Bankruptcy Court's approving and issuing a Sale Procedure Order. The Sale Procedure Order required an auction to be held for Hutcheson's assets and set a deadline for potential buyers to submit a bid. Ultimately, the Bankruptcy Court did not receive any qualifying bids by the deadline. Since the Hospital continued to incur economic losses, the Trustee, with the approval of the Bankruptcy Court, ceased operations at the Hospital on December 4, 2015. Subsequently, two parties emerged interested in re-opening and acquiring the Hospital, People's Choice Hospital, LLC ("PCH") and ValorBridge.

Guggenheim and the Trustee worked with both PCH and ValorBridge to negotiate the best price and terms for the Hospital and its assets. ValorBridge submitted a bid of \$4.2 million in cash for the Hospital and its assets, including but not limited to, inventory, fixed assets used or held for use in connection with the Hospital. PCH submitted a bid of \$3.0 million in cash plus a note of \$1.0 million for the Hospital and its assets. Ultimately, the Trustee selected the offer by ValorBridge as the highest and best offer. Not only did ValorBridge offer a higher cash bid, but the financial wherewithal of PCH could not be verified. The sale of the Hospital and its assets to ValorBridge was approved by the Bankruptcy Court on December 17, 2015, with no objections.

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 transaction between HMC and Valorbridge. 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 reviewed the Sales Process Overview report prepared by Guggenheim, which was provided to serve as the valuation of the Hospital in support of the proposed transaction in lieu of a formal valuation.

In its review, EY noted that a formal valuation is a financial exercise that uses accepted valuation approaches and methods to provide a professional opinion as to the value of a business or asset. The formal valuation attempts to estimate the sale price that a business or asset will bring in a transaction. In essence, a formal valuation provides support for a transaction price. There are three approaches to value typically considered in a valuation analysis. The three approaches are: (1) the Income Approach, (2) the Market Approach, and (3) the Cost Approach (Net Asset Value). 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 transaction prices for similar assets trading in the marketplace. The comparison is typically of transactions involving transfers of 100% ownership interests or valuations related to publicly-traded companies in similar lines of business. In the Cost Approach or Net Asset Value method, value is estimated based on the value of all of the subject business' underlying assets, both tangible and intangible, net of liabilities. Here, the Net Asset Value method would be the most relevant approach to the valuation of the Hospital and its assets. While this approach is not typically relied upon in the valuation of a hospital as a going concern, given the financial condition of the Hospital and its closure in December 2015, the Net Asset Value method would provide a minimum value of the Hospital and its assets.

The Sale Process Overview report prepared by Guggenheim served as the valuation of the Hospital in support of the proposed transaction in lieu of a formal valuation. In the course of its engagement, EY noted that although a formal valuation was not prepared, in these circumstances, a robust and thorough sale process that allows for broad market exposure and leads to arms-length negotiations can produce more reliable value indications of the final sales price than a formal valuation. Here,

Guggenheim ran a marketing process over a period of several months contacting nearly two hundred (200) potentially interested parties. While Guggenheim received limited interest in the Hospital, it did receive offers from liquidators ranging from \$250,000 to \$500,000. However, Guggenheim and the Trustee believed that to maximize value, the Hospital should be sold as a going concern. Otherwise, a permanent closure of the Hospital and the sale of equipment through liquidation would result in a significant erosion of value. Ultimately, EY concluded that Guggenheim conducted a robust sale process, which provided significant market evidence of the value of the Hospital in the proposed transaction between HMC and ValorBridge.

### **PUBLIC COMMENT**

The public hearing was held on March 31, 2016, at 5:00 p.m. in the Cafeteria at the Hospital, located at 100 Gross Crescent Circle, Fort Oglethorpe, Georgia. There were two (2) public comments made at the hearing. Neither party making a public comment at the hearing was opposed to the transaction.

Following the public hearing, the record was held open until the close of business on April 5, 2016, at 5:00 p.m., for any further public comment. This Office did not receive any written public comment after the public hearing. Counsel for the Seller and Purchaser 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 (13) 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 (13) factors set forth in O.C.G.A. § 31-7-406 can be grouped into four (4) 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 disposition of the Hospital is authorized by applicable law as provided in factor number 1, and the Seller has taken the appropriate actions to sell the Hospital. O.C.G.A. §§ 14-3-302, 31-7-400, *et seq.* With respect to factor number 2, there were donors to the Hospital who contributed over \$100,000. It does not appear, however, that the disposition of this transaction is inconsistent with the directives of any major donors.

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). As discussed in detail above, due to the troubled financial condition of the Hospital, the contentious litigation with Erlanger and Regions Bank which lead to the filing for bankruptcy protection and the ultimate closing of the Hospital, the Seller conducted an extensive process of trying to find a purchaser. After the Hospital ceased operations, Guggenheim only received two offers. ValorBridge’s all-cash purchase price of \$4.2 million was selected on the basis that it was the highest and best offer available for the Hospital Assets. The other offer by PHC was \$200,000

less and included a \$1 million note. In addition, the financial wherewithal of PHC could not be verified. As such, the deliberative process employed by the Seller in locating a purchaser for the Hospital demonstrates the exercise of due diligence, consistent with factors number 3 and 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 Seller's exercise of due diligence.

#### **Conflicts of Interest**

The disclosure of any conflict of interest involving the Seller, the Chief Executive Officer of the Hospital and its expert consultant is to be considered under factor number 5. Because HMC filed for Chapter 11 bankruptcy protection, was under the control of the Chapter 11 Trustee and the Hospital ceased operations, the conflict of interest certifications as required by the Act were filed only by the Chapter 11 Trustee and by the expert consultant appointed by the Bankruptcy Court. Such certifications do not disclose any substantive or impermissible conflicting financial interest in the proposed transaction.

With regard to factor number 13, ValorBridge has indirect physician ownership. However, internal controls have been implemented to ensure its physician owners will not be in a position to refer patients to the Hospital.

#### **Valuation of the Hospital Assets**

The factors numbered 6, 7 and 10 involve a determination of the value 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 factors number 6, 7 and 10. For purposes of factor number 6, the sale of the Hospital to ValorBridge, 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).

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 the Seller will receive fair market value for the sale of its assets. The Sales Process Overview report developed by Guggenheim, and as reviewed by EY, demonstrates that Guggenheim conducted a robust and thorough sale process of the Seller’s assets. Although a formal valuation was not performed, given the distressed financial condition and closure of the Hospital in December 2015, EY remarked that a robust sale process that allows for broad market exposure and arms-length negotiations, similar to the sale process undertaken by Guggenheim, can produce a more reliable value indication of the final sales price than a

formal valuation. In essence, the proposed consideration of \$4.2 million for the Hospital and its assets is direct evidence of the market price for such assets. Based on the record, it appears that the Seller will receive fair market value for its assets as required by the Act.

Since the Seller is not providing any financing for the transaction, factor number 7 is inapplicable. As to factor number 10, since the Hospital was under the control of a Chapter 11 Trustee and had ceased operations and closed its doors at the time it located a purchaser for the Hospital, a right of first refusal in the event ValorBridge proposes to sell, lease or transfer the Hospital to another entity would not be meaningful in this transaction. Therefore factor number 10 is not applicable.

#### **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 proceeds from the transaction will be insufficient to repay all debts attributable to the Hospital, and therefore, there will be 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. Dr. Boykin Robinson, President of Division 2 of ApolloMD,<sup>6</sup> testified at the public hearing that the emergency room will remain open 24 hours a day, seven days a week, 365 days a year. ValorBridge has committed to continue acute care hospital operations of the Hospital, including a commitment to keep the emergency room open. In addition to emergency services, ValorBridge has committed to provide radiology, laboratory, pharmacy, imaging (CT, ultrasound and x-ray), respiratory therapy, and inpatient services. ValorBridge plans to expand inpatient services, support services and add telemetry services. Dr. Robinson also testified that the Hospital will continue to accept Medicare and Medicaid. ValorBridge's strategic plan includes a rebranding and

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<sup>6</sup> ApolloMD is a portfolio company of ValorBridge.

re-engineering of hospital services which will better serve the healthcare needs of the community. ValorBridge plans to improve efficiencies across all service lines and to increase collaboration with local physicians and community stakeholders to ensure alignment between the growth of the hospital and individual practice objectives. In addition, ValorBridge plans an immediate capital infusion into the Hospital for much needed upgrades. ValorBridge also plans to improve employee satisfaction by offering benefit packages to a higher percentage of employees and by developing a culture where employees are actively engaged in the mission and goals of the Hospital. The Hospital will continue to provide legally required charity care, and will commit an average of 2% of gross revenues for the provision of charity care. 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 29<sup>th</sup> day of April, 2016.

  
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.