

OFFICE OF THE ATTORNEY GENERAL  
STATE OF GEORGIA

IN THE MATTER OF THE ACQUISITION  
OF OCONEE REGIONAL MEDICAL  
CENTER BY NAVICENT HEALTH, INC.

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NO. AG 2017-2

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**REPORT OF FINDINGS**

**BACKGROUND**

**OCONEE REGIONAL MEDICAL CENTER**

Oconee Regional Medical Center, Inc. (“ORMC”) leases certain real property, buildings, structures, facilities and improvements located in Baldwin County, Georgia commonly known as Oconee Regional Medical Center (the “Hospital Facilities”) from the Baldwin County Hospital Authority (“BCHA” or “Authority”) pursuant to a lease dated November 5, 1997. The main hospital facility is licensed as a 140-bed acute care hospital with a 15-bed skilled nursing unit and is located at 821 North Cobb Street, Milledgeville, Georgia, 31061 (the “Hospital”). ORMC is an affiliate of Oconee Regional Health Systems, Inc. (“ORHS”) which together with ORMC and certain affiliates (collectively “Oconee”) provide comprehensive healthcare services. These services include, among others, primary care, emergency services, ambulatory services, and acute care (the “Healthcare Services”). The Hospital’s primary service area encompasses Baldwin, Greene, Hancock, Jasper, Putnam, Washington and Wilkinson Counties with a population of about 135,000.

Oconee proposes to sell substantially all of the assets associated with the Healthcare Services to Navicent Health Oconee, LLC, a wholly owned and controlled subsidiary of Navicent Health, Inc. (“Navicent”). Navicent owns the Medical Center, Navicent Health in Bibb

County (formerly known as the Medical Center of Central Georgia), and leases and will ultimately wholly control the Medical Center of Peach County and Navicent Health in Peach County.<sup>1</sup>

The sale includes substantially all of the assets, including those owned by BCHA, ORHS, and any affiliates of ORHS.<sup>2</sup> Two subsidiaries of ORHS, Oconee Regional Healthcare Foundation, Inc. and Jasper Health Services, Inc., are not part of the transaction.<sup>3</sup> ORHS and its affiliates, excluding Oconee Regional Healthcare Foundation, Inc. and Jasper Health Services, Inc., are debtors (the “Oconee Debtors:”) in Chapter 11 bankruptcy case number 17-51005-AEC now pending in the United States Bankruptcy Court for the Middle District of Georgia (the “Bankruptcy Court”).<sup>4</sup>

At the time of the filing of the bankruptcy case, the Oconee Debtors filed a motion in the Bankruptcy Court to sell its assets to Prime Healthcare Foundation, Inc., a nonprofit corporation affiliated with Prime Healthcare, Inc.<sup>5</sup> After an auction process, Navicent submitted the highest bid to purchase the assets of Oconee. The sale has previously been approved by the United States Bankruptcy Court by Order dated July 6, 2017. Dispositions of nonprofit hospitals remain subject to review under the Georgia Hospital Acquisition Act (the “Act”) even where the entity

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<sup>1</sup> The Medical Center of Peach County is the subject of a prior Georgia Hospital Acquisition Act review conducted in 2011.

<sup>2</sup> The parties have advised the undersigned that the sale transaction will occur by way of a bifurcated closing in which the interests of ORHS and its affiliates will be addressed in one closing and the interests of BCHA will be addressed in a second closing. The bifurcated closing does not impact the analysis of the transaction under the Hospital Acquisition Act.

<sup>3</sup> The relationship related to Jasper Memorial Hospital is the subject of a prior Georgia Hospital Acquisition Act review conducted in 1999.

<sup>4</sup> The sole member of Jasper Health Services, Inc. is ORHS. Thus, while Jasper is not an entity in bankruptcy, its controlling interest is under the jurisdiction of the United States Bankruptcy Court. The controlling interest in Jasper Health Services, Inc. is not part of the transaction.

<sup>5</sup> Prime Healthcare Foundation, Inc. also owns Southern Regional Medical Center in Clayton County, but does not own any hospitals in the service area of ORMC or the area contiguous to the service area of ORMC.

that owns the hospital is operating under bankruptcy court protection. *See* 11 U.S.C. § 363(d)(1) & 11 U.S.C. § 501(c)(3).

### **THE DISPOSITION PROCESS**

Since 2013, Oconee has taken a number of steps to address its financial condition. In 2013 and 2014, Oconee worked more closely with its bondholders to seek new sources of capital and also undertook internal efforts to contain costs, including a reduction in workforce. After a terminated management agreement with Navicent and the resignation of the chief executive officer, Oconee obtained the services of an interim chief executive officer and an interim chief financial officer. Oconee also engaged Houlihan Lokey Capital Inc. (“Houlihan Lokey”), an investment bank, to assist Oconee in evaluating various strategic alternatives to assist Oconee in its operations “including but not limited to asset sales, membership substitutions, partnership, or a management agreement covering either the system or individual components thereof.”

Houlihan Lokey first considered all different strategic alternatives for Oconee including “restructuring alternatives ... management affiliations, and ... sale transactions.” (Transcript, p. 28). Houlihan Lokey ultimately concluded that “a sale transaction either in whole or in pieces was ... the highest and most likely scenario.” (Transcript, p. 28). Houlihan Lokey developed an information memorandum to solicit interest in Oconee and “wanted to offer this to any and all hospital systems that had a reasonable chance of moving forward.” (Transcript, p. 29).

Houlihan Lokey communicated with 62 different parties concerning a potential sale transaction. (Transcript, p. 30). Of the 62 that were contacted in some manner, approximately 27 signed confidentiality agreements and received the information memorandum from Houlihan Lokey. Of the 27 parties contacted, proposals were received in July of 2016 from a number of interested parties including, without limitation, Alecto Healthcare Services, LLC, Coliseum Health System, Community Hospital Corporation, ER Hospital, LLC, ERH Healthcare, Navicent Health, Paladin

Healthcare Capital, LLC, Prime Healthcare, and Quorum Health. Alecto Healthcare Services, LLC, Community Hospital Corporation, and ERH Healthcare proposed management arrangements while the other parties proposed purchases under varying terms. Navicent subsequently withdrew from the process. Oconee ultimately selected Prime Healthcare Foundation, Inc. as the result of the process. Upon filing bankruptcy, Oconee contemplated selling its assets to Prime Healthcare Foundation, Inc. After a Bankruptcy Court approved auction, Navicent ultimately prevailed as the highest and best bidder for the assets.

### **THE PROPOSED TRANSACTION**

As described above, the transaction provides for the complete sale of Oconee pursuant to an Asset Purchase Agreement (“APA”). Pursuant to the APA, substantially all of the assets associated with the Healthcare Services, together with the Hospital Facilities owned by BCHA, will be sold to Navicent.

### **BENEFITS ANALYSIS**

Under O.C.G.A. § 31-7-406(6), a transaction involving the acquisition or disposition of the assets of a nonprofit hospital to a nonprofit entity requires the Attorney General to make a determination as to whether the seller “will receive an enforceable commitment for fair and reasonable community benefits for its assets.”

Oconee retained Grant Thornton, LLP (“GT”) to provide assistance in the assessment of its proposed sale. Charles Gallman with GT testified at the hearing. (Transcript, p. 65) The scope of GT’s engagement included an independent assessment of the estimated community benefits to be derived from the proposed sale. GT provided a Community Benefits Report to Oconee dated May 18, 2017 which analyzed the proposed sale transaction with Prime. By letter dated July 14, 2017, GT provided an update and bridge to the Report to reflect the changes to the APA in light of the proposed transaction with Navicent.

GT focused on a number of qualitative and quantitative benefits to the community under the proposed transaction. GT's Report acknowledges that "ORMC cannot continue in its current form." (Report, p. 26). In the Report, GT focused primarily on quantifiable benefits including cost savings, particularly related to supply costs, and capital commitments over and above what Oconee would expend without the transaction. GT calculated a value of approximately \$17.4 million to \$24.3 million for the quantifiable benefits. GT also focused on four qualitative community benefits of the proposed transaction including: 1) continued access to healthcare services; 2) enhanced quality and expansion of available services; 3) continued commitment to local governance; and 4) support in economic development. Beyond these benefits, the GT bridge letter dated July 14, 2017 discusses additional benefits that will result from the proposed transaction with Navicent which largely derive from the fact that the transaction will result in ORMC being part of a larger healthcare system with a contiguous service area.

At the hearing on July 19, 2017, Charlies Gallman testified that he has concluded "that the community benefits to flow from the buyer to the seller as part of this transaction are fair and reasonable." (Transcript, p. 70). The Report specifically addresses the \$3,000,000 commitment by Navicent to physician recruitment as well the contemplated expenditure of a portion of the sum of \$3,000,000 on an integrated medical record platform. Related to the \$3,000,000 to be expended, GT concluded that the benefits of the commitment are difficult to estimate. GT valued the capital commitment by Navicent of \$10,000,000 at a present value of \$7.5 million to \$7.8 million. GT also analyzed the cost savings to ORMC as the result of being part of a larger system. GT valued those savings in the range of \$9.9 million to \$16.5 million.

In addition to the quantitative benefits, GT recognized the benefits of Navicent's commitment to maintain indigent care policies for five years and to maintain indigent care policies similar to those at other Navicent facilities for an indefinite period thereafter. GT also

recognized Navicent's commitment to operate ORMC for a period of five years after closing and to operate at least an emergency room or urgent care facility at ORMC for a period of five years thereafter. GT also specifically recognized a benefit from the Navicent transaction of ORMC being part of a larger healthcare system in a contiguous service area. GT recognized that there is currently significant outmigration from ORMC's service area to Navicent's main hospital in Macon which regularly operates at capacity. Navicent's acquisition offers the benefit of providing health care services to patients in the service area close to where the patients reside, at lower cost, and will generate greater revenue for ORMC.

The Attorney General retained Ernst & Young, LLP ("EY") in accordance with O.C.G.A. § 31-7-405(b), as an independent financial advisory consultant to assist in the review of the proposed transaction. The Attorney General engaged EY to provide valuation advisory services, but not to provide a separate valuation or a fairness opinion. Bridget Bourgeois, who specializes in healthcare valuations, testified at the hearing. As part of its engagement, EY held discussions with representatives of the parties involved in the proposed transaction and performed independent research and analyses to assist in the review of the conclusions contained in GT's independent assessment of the community benefit derived from the proposed affiliation.

In the course of its engagement, EY analyzed GT's underlying valuation methodologies and assumptions, and performed a number of sensitivity analyses of GT's assessment of community benefit by changing certain assumptions employed by GT in its analysis.

EY reviewed GT's analysis of the value of the anticipated cost savings from the proposed transaction and its conclusion that the costs savings had a value in the range of \$9.9 to \$16.5 million. EY concluded that "GT appropriately applied present value techniques to quantify the value, in today's dollars, of the future cost savings" (EY Report, p. 27). EY also concluded that

GT likely made a conservative assumption that the cost savings benefits would continue for the foreseeable future without an increase for inflation risk.

Related to GT's analysis of the value of the commitment of Navicent to expend \$10,000,000 over a three-year-period after the close of the transaction and GT's determination of a present value of \$7.5 to \$7.8 million, EY concluded that GT appropriately utilized present value techniques to arrive at a value, in today's dollars, of the incremental capital expenditure commitment of Navicent.

While GT did not reach a conclusion about the value of the benefit associated with Navicent's obligation to expend for physician recruitment, EY conducted an analysis of this obligation. EY's review generated an estimated value of \$2.4 million.

EY's analysis generated a range of value for the quantifiable economic benefits of the transaction have a value of \$19.1 million to \$29.4 million if the physician recruitment portion of the Navicent commitments are included. If the physician recruitment portion is excluded, EY's analysis yields results of approximately \$16.7 to \$27 million. EY's analysis compares to GT's estimate of \$17.4 million to \$24.3 million. While EY did not draw specific conclusions about value based on its analysis, it did conclude that the GT utilized reasonable valuation methods in analyzing the quantifiable community benefits of the proposed transaction.

#### **PUBLIC COMMENT**

The public hearing was held on July 19, 2017 at 12:00 p.m. at Oconee Regional Medical Center in Baldwin County, Georgia. Notice of the proposed transaction and the public hearing

was provided as required by O.C.G.A. § 31-7-404.<sup>6</sup>

The public comments received during the public hearing were all in favor of the proposed transaction. In addition to the oral comments during the hearing, a number of written comments were also submitted. As required by O.C.G.A. § 31-7-405(b), Charles Gallman of GT testified on behalf of Oconee. As required by O.C.G.A. § 31-7-405(c), Dr. Phyllis Parks-Veal, the Vice-Chair of the Board of ORHS and Chair of the Board of ORMC testified as did Ted Zarkowsky, the Chair of the Board of ORHS, and a member of the board of the Authority. Dr. Chris Hendry, the Chief Medical Officer of Navicent and Rhonda Perry, the Executive Vice-President and Chief Operating Officer Navicent also testified.

Following the public hearing, the record was held open until the close of business on Friday, July 21, 2017, for any further public comment. Written comments in support of the transaction were received after the hearing. No comments in opposition to the transaction were received.

Counsel for the parties were requested to inform the undersigned in writing by July 21, 2017, as to whether their respective clients intended to proceed with the proposed transaction as structured or modify the proposed transaction in some respect. On July 21, 2017, counsel for both parties submitted a joint letter stating that their clients wish to proceed with the transaction as proposed.

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<sup>6</sup> The proposed transaction is the subject of four notices published in The Union-Recorder which is the legal organ for Baldwin County. Two of the notices contemplated that the transaction would involve a sale to Prime Healthcare Foundation, Inc. or another purchaser approved by the United States Bankruptcy Court. The latter two notices specifically contemplated Navicent to be the purchaser. The undersigned also provided notice to Baldwin County by correspondence with its Commission Chairman who attended the hearing and provided a public comment in support of the transaction.



## FINDINGS

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(a) & 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 to be considered 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 are 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 disposition of Oconee's assets and the interest of BCHA in the Hospital Facilities is authorized by applicable law as provided in factor number 1. Oconee and the Authority have

taken the appropriate steps to provide for the sale to Navicent. O.C.G.A. §§ 14-3-206, 14-3-302, 31-7-400 *et seq.* With regard to factor number 2, it does not appear that the proposed disposition is inconsistent with the directives of any major donors who have contributed over \$100,000.00. The filing submitted by Oconee and BCHA expressly provides that there are no donors who have contributed over \$100,000.00.

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). Oconee conducted a formal process for the solicitation and selection of proposals which is the preferred approach. Oconee engaged professional assistance from Houlihan Lokey and GT respectively related to consideration of its business operations, conducting a process for a transaction and for analyzing the benefits to be conferred as a result of the transaction. The record supports a finding that the governing bodies of Oconee and BCHA “exercised due diligence 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). The record further supports a finding of adequacy regarding “[t]he procedures used by the nonprofit corporation in making its decision to dispose of its assets” and that “appropriate expert assistance was used.” O.C.G.A. § 31-7-406(4).<sup>7</sup>

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<sup>7</sup> Dr. Parks-Veal testified that, without a sale transaction, the Hospital would likely close. (Transcript, p. 21). Mr. Zarkowsky provided similar testimony and testified that he feels that Oconee has done everything it could in terms of securing a sale transaction. (Transcript, p. 26). Mr. Turnbull, with Houlihan Lokey, testified that the entities that offered management arrangements were not of any real assistance to Oconee because they did not offer any access to capital. (Transcript, p. 35). Mr. Turnbull also testified that in the Bankruptcy Court auction process, the only bidders were Prime Healthcare and Navicent. (Transcript, p. 35).

The APA is conditioned on the execution of a management service agreement (the “Management Agreement”). (APA, p. 31). The parties executed the Management Agreement on July 7, 2017. Pursuant to the Management Agreement, Navicent provides a list of certain described management services to Oconee in exchange for a set fee that is only due and payable if the sale transaction does not close. (Management Agreement, p. 3). In addition, ORHS only has liability under the Management Agreement up to a stated maximum. (Management Agreement, p. 4). The terms of the Management Agreement are reasonable within the meaning of O.C.G.A. § 31-7-406(8). Factor number 8 is satisfied.

### **Conflicts of Interest**

The disclosure of any conflict of interest involving the Sellers, the Chief Executive Officer of the Hospital and their expert consultant is to be considered under factor number 5. Conflict of interest certifications as required by the Act and the notice filing requirements of the Attorney General have been filed by members of the governing boards of ORHS, ORMC and the Authority by Steven Johnson, the interim chief executive officer of ORHS, and GT. The certifications in the record are adequate and the disclosures do not rise to the level of creating an impermissible conflict of interest in the proposed transaction and are disclosed as contemplated by O.C.G.A. § 31-7-403(a) & (b) and O.C.G.A. § 31-7-405(b). Factor number 5 is satisfied.<sup>8</sup>

With regard to factor number 13, the instant transaction involves the sale of assets of a nonprofit corporation to another nonprofit corporation. Healthcare providers will not be offered an opportunity to invest or own an interest in the Hospital as part of the transaction or after the transaction. Therefore, factor number 13 is not applicable.

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<sup>8</sup> Certifications were originally submitted that contemplated a sale to Prime Healthcare Foundation, Inc. After the approval of the sale to Navicent Health, Inc., revised certifications were submitted by the governing boards, Mr. Johnson and Grant Thornton.

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

The factors numbered 6, 7 and 10 involve a determination of the value of the hospital assets. Since this transaction involves the sale of a hospital owned by one nonprofit corporation and a public hospital authority to a nonprofit corporation, Oconee should receive an enforceable commitment for fair and reasonable community benefits for its assets. *See* O.C.G.A. § 31-7-406(6). Based on the record, including the analysis conducted by GT on behalf of Oconee and the review by EY at the request of the Attorney General as described herein, Oconee will receive an enforceable commitment for fair and reasonable community benefits in exchange for its assets as required by O.C.G.A. § 31-7-406(6).

Since Oconee is not providing any financing for the transaction, factor number 7 is inapplicable. As to factor number 10, under the terms of the APA, the Authority retains a right of first refusal to purchase the assets if Navicent proposes to sell the assets. (APA, p. 31). The right of first refusal extends for a period of five years from closing and requires Navicent to provide the Authority with 120 days advance written notice of any proposed sale transaction. (APA, p. 31). The proposed APA is consistent with the purposes of factor number 10.

### **Charitable Purpose of the Proposed Transaction**

With respect to the charitable purpose of the proposed transaction, factor number 9 requires that the disposition proceeds be used for charitable healthcare purposes consistent with the nonprofit's original purpose. Navicent and ORHS are both nonprofit corporations and the cash consideration being paid is inadequate to pay even the outstanding secured debt on the Hospital. There are no proceeds from sale. Therefore, factor number 9 is not applicable.

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) healthcare to the disadvantaged, the uninsured and

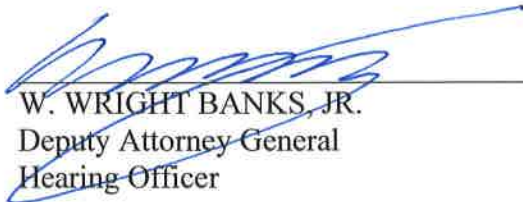
the underinsured and (d) benefits to the community to promote improved health care. The APA requires Navicent to institute and maintain policies for the treatment of indigent patients comparable to those maintained by Navicent at facilities other than those acquired from ORHS. (APA, p. 30). Navicent is also required to operate the Hospital as a general acute care hospital, including the emergency department, for a period of five years after the closing of the purchase and is further obligated to provide either emergency or urgent care services at the Hospital for the five years thereafter. (APA, p. 30). Navicent also is obligated to invest a minimum of \$3,000,000 in physician recruitment, retention and physician-related technology improvements. (APA, p. 30). Navicent is also obligated to invest at least \$10,000,000 in capital improvements for the Hospital. (APA, p. 30).

The obligations described herein and the record evidence that factors 11 and 12 are satisfied in this matter.

### CONCLUSION

Upon review of the public record and in accordance with the Act, the undersigned Hearing Officer finds that the public record in this matter discloses that the proposed transaction is appropriate in light of the factors set forth in the Act.

This 26<sup>th</sup> day of August, 2017.

  
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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.

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