OFFICE OF THE ATTORNEY GENERAL
STATE OF GEORGIA

IN THE MATTER OF THE SALE OF SOUTHERN REGIONAL MEDICAL CENTER, BY SOUTHERN REGIONAL HEALTH SYSTEM, INC., AS SELLER, TO PRIME HEALTHCARE FOUNDATION, INC.	* * * * * * * *	NO. AG 2015-04

REPORT OF FINDINGS

I.

BACKGROUND

SOUTHERN REGIONAL MEDICAL CENTER

Southern Regional Health System, Inc. ("Seller" or "SRHS"), is a Georgia nonprofit corporation which operates Southern Regional Medical Center (the "Hospital"), a 331-bed acute care hospital located at 11 Upper Riverdale Road in Riverdale, Clayton County, Georgia. The Hospital provides medical and surgical inpatient and outpatient services including emergency, diagnostic imaging and lab, rehabilitation, intensive care, labor and delivery, level-three neonatal intensive care, cardiac diagnostic and care, bariatric, wound care and sleep disorder services. The Hospital's medical staff includes more than 500 physicians.

The Hospital was founded in 1971 and is based in Riverdale, Georgia, and includes the Spivey Station Surgery Center located in Jonesboro, Georgia. The Hospital buildings and the 37.74 acre hospital campus are owned by Clayton County and leased to SRHS through the Clayton County Hospital Authority. SRHS is the operator of the Hospital and holds all applicable permits and licenses for the Hospital. The Hospital's primary service area includes areas of Clayton, Henry, South Fulton and Spalding Counties.

THE DISPOSITION PROCESS

The Hospital has experienced significant operating losses over the last few years. In fiscal years 2013, 2014 and 2015, losses from operations at the Hospital were $19.4 million, $50.7 million and $17.1 million respectively. Over a five (5) year period operating losses at the Hospital have totaled approximately $104 million. These losses are attributed to declining inpatient volumes, a lower percentage of surgical cases and high levels of charity and uncompensated care. Based upon these continuing losses and negative operating trends, SRHS's Board of Directors (the "Board") determined that the continued operations of the Hospital were unsustainable.

SRHS began the process of searching for a purchaser for the Hospital in August 2011, when SRHS retained Kaufman, Hall & Associates, Inc. ("Kaufman Hall") to conduct a nationwide search for potential purchasers. Over a five (5) month period, Kaufman Hall had direct contact with over twenty (20) prospective purchasers, resulting in only two (2) interested parties – Tenet Healthcare and Emory Healthcare ("Emory"). After the two interested parties conducted their due diligence of Seller's operations, both interested parties withdrew their interest in a purchase or member substitution. In April 2012, Kaufman Hall negotiated a management agreement with Emory, which is currently in effect. During the term of the management agreement with Emory, the SRHS Board made several requests to Emory to agree to a member substitution or to provide financial support to SRMC.[1] All requests to Emory were rejected.

In the interim, Clayton County provided the Hospital with $12 million in taxpayer support during 2014-2015 by use of a special-purpose local-option sales tax (SPLOST) bond issue. Clayton County defeased $48 million of hospital bonds issued earlier by the Clayton County Hospital Authority, which resulted in approximately $3 million in annual savings for the Hospital's operations.

In March 2015, Emory engaged Deloitte Transactions and Business Analytics, LLP ("Deloitte") to conduct an operational evaluation of the Seller. The results of the evaluation were presented to the Board on April 28, 2015. After reviewing the evaluation, and on the advice of management, the Board began planning for the closure

[1] The management agreement with Emory does not require or obligate Emory to provide any financial support to the Hospital.

of the Hospital. In June 2015, Clayton County indicated to SRHS that it would not provide any further taxpayer support to the Hospital. In an effort to assist the Seller, however, the Clayton County Board of Commissioners engaged Deloitte to develop a closure plan[2] and to make one final attempt to locate a purchaser for the Hospital. Deloitte contacted twelve (12) potential purchasers for the Hospital. Only Regional Care Hospital Partners and Prime Healthcare ("Prime") signed confidentiality agreements. After reviewing the Hospital's financial statements, Regional Healthcare withdrew its interest. Prime tendered a proposed letter of intent upon which the proposed Asset Purchase Agreement is based.

On July 30, 2015, SRHS and its subsidiaries filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Northern District of Georgia (Case No. 15-64266).[3] On that same day, the Board unanimously approved Prime as the buyer of the Hospital. The Board conditionally approved the Asset Purchase Agreement with Prime on September 8, 2015. On October 27, 2015, the Bankruptcy Court entered an Order Approving the Asset Purchase Agreement and Approving the Sale of Assets.

THE PROPOSED TRANSACTION

The Hospital's assets as defined in the Asset Purchase Agreement ("APA"), including assets leased to the Hospital Authority, are comprised of the Hospital and the 35.74 acre campus on which the Hospital sits, hospital buildings, various licenses, permits and agreements to operate the Hospital, and all equipment, supplies and inventory used in the operation of the Hospital. In addition, the sale includes real property consisting of two lots in Riverdale, Georgia; a 7.5 acre tract of vacant land at the corner

---

[2] The management agreement with Emory was amended to allow Emory to plan and implement a closure of the Hospital. In addition, closure plans were approved by the SRHS Board in June 2015.

[3] Pursuant to the auction and sale procedures established by the Bankruptcy Court pursuant to 11 U.S.C. § 363, Prime was determined to be the successful bidder. At the time the Notice was filed with this Office, four (4) additional parties contacted the Seller in response to the auction process established by the Bankruptcy Court, signed confidentiality agreements, and were provided access to the Seller's records, facilities and operations. The only bid received, however, was from Grady Health System which was withdrawn within days of its submission.

of Tara Boulevard and Arrowhead Boulevard in Jonesboro, Georgia, and a 19,520 square foot medical office building located in Riverdale, Georgia. SRHS will transfer to Prime all right, title and interest in the Seller, including the Seller's business of providing inpatient and outpatient hospital services and related services, Spivey Station, and all ancillary business operations of SRHS. Clayton County has agreed to transfer ownership to Prime, via a conveyance to the Clayton County Hospital Authority, of the hospital building, accessory buildings (two office buildings, one leased and the other used by administration), 35.74 acres of land at 11 Upper Riverdale Road, Riverdale, Georgia and a16.42 acre wetland reserve.[4]

Prime has committed to maintain the Hospital for not less than five (5) years following the closing of the transaction as an acute care facility with an open and accessible emergency room and to maintain charity care policies that are at least as favorable as those currently in place at the Hospital. Prime has committed to make reasonable and appropriate investments in property, plant, equipment, and technology of the Hospital to support its growth and continued operations of not less than $50 Million Dollars over the five (5) year period following the closing of the transaction. In addition, Prime has committed to spend no less than $1 Million Dollars on physician recruitment, including primary and specialty care, for the Clayton County region within the first two (2) years after the closing of the transaction.

SRHS is presently sustaining $1.5 million to $2 million in operating losses per month, which is being covered by a court approved debtor-in-possession loan (DIP) from Prime during the Bankruptcy Proceeding. The loan will form part of the purchase price paid by Prime for the Hospital. Prime has also committed to forming and maintaining a local governing board consisting of community members and physicians at the Hospital. Lastly, Prime will pay approximately $8.9 million in unpaid principal, interest and reasonable attorney's fees due and payable by SRHS to Gemino Healthcare Finance, LLC.

[4] Clayton County owns the real property assets as a result of the bond defeasance described above.

For a period of five years post-closing, Prime will provide to the Clayton County Board of Commissioners a written report concerning Prime's compliance with its operating covenants.

VALUATION ANALYSIS

Stroudwater Associates, Inc. ("Stroudwater") was retained by Southern Regional Health System Inc. ("SRHS") to provide advisory services surrounding the Attorney General approval process, which included a determination of the fair market value and community benefit of the proposed transaction between SRHS and Prime Healthcare Foundation, Inc. ("Prime"), as outlined in the APA. In its report, Stroudwater ultimately concluded that the value of SRHS to be in the range of $41.3 to $49.9 million. This value combines the value of the Hospital and Clayton County's real property assets, which are included in the proposed transaction. Stroudwater compared this value of SGHS against the consideration due from Prime of $62.1 million and concluded that consideration from the proposed transaction is greater than the fair market value of SRHS. Mr. David Whelan of Stroudwater testified at the public hearing held on November 10, 2015.

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.

In its analysis, Stroudwater considered all three approaches to determine the fair market value of the Hospital. However, to arrive at a final value conclusion, Stroudwater assigned a weight to the three approaches, placing the highest weight, 90%, on the Net Asset Value method.[5]

Stroudwater relied primarily on the Net Asset Value method as SRHS had no positive earnings from operations. Under the Net Asset Value, Stroudwater utilized the asset values reflected on SRHS's unaudited balance sheet for the fiscal year ending on June 30, 2015. The balance sheet was adjusted by Stroudwater to: (1) exclude assets not included in the bankruptcy filing, (2) adjust the book value of real property assets to the appraised value, and (3) remove non-operating assets. This total asset value was then reduced by corresponding liabilities on the balance sheet. Ultimately, Stroudwater concluded that under the Net Asset Value method, the value for the Hospital was in the range of $37.4 million to $38.0 million.

Under the Market Approach, Stroudwater utilized the Guideline Public Companies ("GPC") and Guideline Transactions ("GT") methods. The GPC method utilizes the revenue and earnings multiples to compare the subject Hospital to publicly traded companies (adjusted for illiquidity and financial distress) to derive an indicated range of value. Comparatively, the GT method utilizes multiples observed in sale transactions of other hospitals. Having considered both the observed GPC and GT multiples, Stroudwater selected a multiple of 0.7x revenue and 6.0-7.0x EBITDA, and applied these multiples to the corresponding financial metrics of the Hospital for fiscal year 2015. Stroudwater calculated value indications for the Hospital of $110.5 to $116.0 million based on the revenue multiple, and of negative $107million to negative $124.9 million based on the EBITDA multiples.

Under the Income Approach, Stroudwater applied a Discounted Cash Flow ("DCF") method, which provides an indication of value based on the entity's ability to generate net cash flow. This projected net cash flow is then discounted to present value using an appropriate risk-adjusted discount rate. The use of the DCF requires financial information that represents the expected future performance of the subject business. Here, Stroudwater used projections that the Hospital would continue to operate, with operating losses, for four (4) more years. Based on this set of assumptions, Stroudwater

[5] Stroudwater assigned a 3.3% weight to the other three values derived from the Income Approach and Market Approach.

discounted the resulting negative cash flows at a discount rate of 12.5%. Using this methodology, the Hospital was valued by Stroudwater to be in the range of negative $191.6 to negative $211.8 million.

Having considered all three valuation approaches, Stroudwater reconciled the various valuation ranges by placing a weight on each valuation approach. Stroudwater assigned the heaviest weight, 90%, to the Net Asset Value method and an equal weight, 3.3%, to the DCF, GPC, and GT methods. This reconciliation resulted in an estimated value range of $23.4 to $28.6 million for the Hospital. Subsequently, Stroudwater determined the value of the Clayton County real property assets included in the proposed transaction. Utilizing the real property appraisals prepared by the Hannibal Group in the past eighteen (18) months, and accounting for the distressed state and imminent closing of the Hospital, Stroudwater determined the value of the Clayton County real property assets to be in the range of $17.8 to $21.2 million. Together with the value of the Hospital, Stroudwater concluded that the total fair market value range for the assets included in the proposed transaction to be in the range of $41.3 to $49.9 million.

In its analysis of the estimated economic benefit the community will receive as a result of the proposed transaction, Stroudwater highlighted five (5) specific areas. The five areas are (1) access to a local acute care safety net hospital; (2) commitment to investment in the Hospital; (3) commitment to medical staff and employees; (4) commitment to local governance; and (5) the economic impact to the community from continuation of Hospital operations. While Stroudwater highlighted many qualitative benefits to the community in its report, it primarily focused on four (4) specific quantifiable benefits to derive a value it refers to as the transaction's purchase consideration. These four (4) quantifiable benefits are: (1) debtor-in-possession financing forgiveness; (2) Gemino indebtedness payoff; (3) physician recruitment; and (4) capital expenditure commitment.

As to the first quantified benefit, Stroudwater included the $9.2 million debtor-in-possession financing, provided by Prime, that will be forgiven upon the approval and consummation of the proposed transaction. The second direct economic benefit will be Prime's satisfaction of an unpaid debt due to Gemino Healthcare Finance, LLC in connection with a previously obtained credit facility. Stroudwater valued the satisfaction of this debt at $8.9 million. The third direct economic benefit to the community from the proposed transaction is Prime's commitment to spend no less than $1 million on physician recruitment, for primary and specialty care, within the first two (2) years after the closing. The fourth direct economic benefit to the community from the proposed transaction is Prime's commitment to invest $50 million in capital expenditures for the Hospital over the first five (5) years after the closing of the transaction. Stroudwater discounted the $50 million in capital expenditures to present value using a 3.0% discount rate, arriving at a present value of $43.1 million. Thus, Stroudwater found that the total direct economic benefit, or the purchase consideration, of the proposed transaction to be $62.1 million.

Stroudwater ultimately concluded that the purchase consideration of $62.1 million is greater than the fair market value of the proposed transaction. Furthermore, Stroudwater concluded that Prime's acquisition of SRHS would bring additional quantitative and qualitative economic benefits to the community.

In accordance with O.C.G.A. § 31-7-405(b), the Attorney General retained Ernst & Young, LLP ("EY") as an independent financial advisory consultant by the Attorney General to assist in the review of the proposed transaction between SRHS and Prime. The Attorney General engaged EY to provide valuation advisory services, but not to provide a separate valuation or a fairness opinion. Ms. Bridget Bourgeois, a partner at Ernst & Young, specializing in health care valuations, testified at the hearing. As part of its engagement, EY held discussions with representatives of all the parties involved in the proposed transaction and performed independent research and analyses to review the conclusions contained in Stroudwater's fair market valuation and assessment of the community benefit to be derived from the proposed transaction.

In its review, EY confirmed that the Income, Market, and Cost approaches to value considered by Stroudwater are consistent with generally accepted industry standards for valuation analysis, and found Stroudwater's decision to rely primarily upon the Net Asset Value methodology under the Cost Approach to be reasonable, given the current state of the Hospital and the surrounding circumstances of the proposed transaction. EY also found Stroudwater's decision to supplement the Net Asset Value method with methodologies under the Income and Market Approaches to be reasonable given Stroudwater's objective and purpose. However, EY found that when such methods result in negative values, as in Stroudwater's DCF method and the Market Approach method using an EBITDA multiple, or an exceedingly high value as indicated by Stroudwater's Market Approach using a revenue multiple, such value ranges should be given no weight in the final value conclusion.

In the course of its engagement, EY analyzed Stroudwater's underlying valuation methodologies and assumptions, and performed a number of sensitivity analyses of certain assumptions used by Stroudwater in its valuation of the Hospital and the purchase consideration. As for the value of the Hospital and the Clayton County real property assets, EY's sensitivity analysis resulted in a value range of $46.3 to $50.6 million, as compared to Stroudwater's $41.3 to $49.9 million. Furthermore, EY's sensitivity analysis of the purchase consideration resulted in a range of $64.3 million to $65.5 million, as compared to Stroudwater's $62.1 million. Ultimately, EY concluded that its sensitivity analyses yielded similar results to Stroudwater's conclusion.

EY also conducted independent research of valuation multiples for comparable hospital transactions and performed sensitivity analyses to compare them to the valuation multiples used in Stroudwater's report. Based on this independent research and analysis, EY indicated that the valuation multiples implied by Stroudwater's value for SRHS were below or near the low end of the range of valuation multiples observed for comparable hospital transactions in the market place. EY found this to be consistent due to the distressed state of the Hospital and the challenging local market characteristics. Therefore, EY concluded that it appears Stroudwater used reasonable valuation methods and techniques in its valuation analysis of the Hospital, the purchase consideration, and the community benefits to be derived from the proposed transaction.

PUBLIC COMMENT

The public hearing was held on November 10, 2015, at 5:00 p.m. in the Health Education Center Auditorium at the Hospital, located at 11 Upper Riverdale Road, S.W., Riverdale, Georgia. There were nine (9) public comments made at the hearing; all comments were in favor of the transaction.

Following the public hearing, the record was held open until the close of business on November 13, 2015, 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 SRMC 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 are no major donors to the Hospital who have contributed over $100,000. Therefore, this factor in inapplicable.

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, SRMC began the process of trying to find a purchaser in 2011. The Seller went to great lengths to locate a purchaser and to avoid closing the Hospital. The Board's decision that Prime was the best option for the Hospital was based on the following factors: (1) Prime was determined by the Board to be a qualified and suitable purchaser; (2) Prime committed to a binding obligation to continue acute care hospital operations at the Hospital, including the operation of an emergency department, for a period of five (5) years; (3) Prime committed to offering employment to substantially all of the Hospital's employees upon the closing of the transaction; (4) Prime's financial terms included a commitment to invest $50 million in capital expenditures into the Hospital over the initial five (5) year period; and (5) Prime provided the greatest assurance of completing the sale in an expeditious manner. As such, the deliberative process employed by SRMC 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. 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 the Hospital, by the Chief Executive Officer of the Hospital and by the expert consultant retained by the Seller. None of these certifications listed any exceptions. The financial consultant retained by the Seller, Robert W. Kirsch, Managing Director of Stroudwater Associates ("Stroudwater"), disclosed as an exception that Stroudwater had previously provided consulting services to the Seller. Stroudwater also disclosed, however, that it had "disclaimed" any amounts owed to Stroudwater by the Seller. Such certifications do not disclose any substantive or impermissible conflicting financial interest in the proposed transaction.

With regard to factor number 13, health care providers will not be offered an opportunity to invest or own an interest in the Hospital. Therefore, factor number 13 is not applicable.

Valuation of the Hospital Assets

The factors numbered 6, 7 and 10 involve a determination of the value of the hospital assets. Since this transaction involves the sale of a nonprofit to another nonprofit, SRHC 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 Stroudwater on behalf of SRHS and the review by Ernst & Young at the request of the Attorney General as described herein, SRHS will receive an enforceable commitment for fair and reasonable community benefits in exchange for the use of its assets as required by the Act.

Since SRHC is not providing any financing for the transaction, factor number 7 is inapplicable. As to factor number 10, for a period of five (5) years post-closing, Prime will provide Clayton County a right of first refusal as to the hospital and its assets. Prime has also committed to not cease operation of the Hospital without giving Clayton County 180 days written notice. The proposed Agreement is consistent with the purposes of factor number 10.

Charitable Purpose of the Proposed Transaction

With respect to the charitable purpose of the proposed transaction, factor number 9 requires that the disposition 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,[6] 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. Troy Schell, General Counsel for Prime, testified at the public hearing that the emergency room will remain open 24 hours a day, seven days a week, 365 days a year. In the Asset Purchase Agreement, Prime has committed to continue acute care hospital operations of the Hospital, including a commitment to keep the emergency room open for a period of five years. Mr. Schell also testified that the Hospital will continue to accept Medicare and Medicaid. In addition, Prime has agreed to provide charitable services that are at least as favorable as those currently in place at the Hospital. Leadership for Prime has repeatedly reiterated to this Office during interviews and during Mr. Schell's testimony at the public hearing that it is against Prime's mission statement to allow a distressed hospital to close and that Prime is committed to keeping SRMC in operation. Prime has further indicated that following the acquisition of the Hospital, a strategic plan will be developed to identify opportunities to expand existing services and to develop new service offerings for 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.

[6] Some unpaid debts will need to be addressed by the Chapter 11 bankruptcy proceeding currently pending in the United States Bankruptcy Court for the Northern District of Georgia.

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 10TH day of December, 2015.

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.