

OFFICE OF THE ATTORNEY GENERAL  
STATE OF GEORGIA

IN THE MATTER OF THE SALE OF  
WESLEY WOODS LONG TERM  
HOSPITAL, INC., AS SELLER, TO  
ES LTACH, LLC, AS PURCHASER.

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\* NO. AG 14-01  
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**REPORT OF FINDINGS**

**I.**

**BACKGROUND**

**WESLEY WOODS LONG TERM HOSPITAL, INC.**

Wesley Woods Long Term Hospital, Inc. (“Wesley Woods”) (the “Hospital” or “Contributor”), a Georgia nonprofit corporation, is an eighteen (18) bed long-term acute care hospital (“LTACH”)<sup>1</sup> located at 1821 Clifton Road in Atlanta, DeKalb County, Georgia. Wesley Woods is a “hospital within a hospital” located within Wesley Woods Geriatric Hospital. Wesley Woods is an affiliate of Emory University d/b/a Emory University Hospital (“EUH”).

Wesley Woods handles approximately two hundred eighteen (218) admissions annually. The services provided by Wesley Woods include acute, inpatient medical services for patients requiring very long lengths of stay, averaging twenty-five (25) days or more. As an LTACH facility, Wesley Woods treats patients with complex medical issues. Patients have typically suffered from a stroke, undergone a major surgical procedure, or suffer from serious wounds or infections. The patients are typically ventilator, feeding tube, or dialysis-dependant and require access to all major specialty and subspecialty physicians. Wesley Woods’ primary service area encompasses northeast DeKalb County and northeast metropolitan Atlanta.

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<sup>1</sup> Wesley Woods has was awarded a Letter of Determination in 2013 by the Department of Community Health to add ten (10) additional beds that Purchaser may be able to develop after closing the transaction. There currently exists a federal moratorium, however, prohibiting the growth and development of LTACHs. It is unclear as to how the federal moratorium will affect Wesley Woods’ ability to develop the additional ten (10) beds.

## THE DISPOSITION PROCESS

Wesley Woods has experienced significant financial performance challenges and has been operating at recurring annual operating losses. Wesley Woods has been able to continue operations only through funding by Emory Healthcare, Inc. (“EHC”).<sup>2</sup>

In 2011, EHC engaged Health Dimensions Group (“HDG”) to evaluate Wesley Woods and to provide strategic options. HDG determined that Wesley Woods needed greater economies of scale to remain viable and recommended that Wesley Woods combine with other Long Term Care Hospital facilities. The Board of Wesley Woods (the “Board”), through a steering committee, identified criteria for potential joint partners including: (1) access to development capital; (2) a reputation as a high quality provider; (3) a goal of achieving at least 100 accessible Long Term Acute Care beds within the metro Atlanta area; and (4) prior experience with academic medical centers.

Based on the criteria, the steering committee determined that Select Medical Corporation<sup>3</sup> (“Select Medical”) and Kindred Healthcare were viable potential partners. The steering committee engaged executive leadership from both Select Medical and Kindred Healthcare to provide formal presentations, local site visits, and to exchange information. The steering committee developed “term sheets” with Select Medical and Kindred Healthcare and conducted a comparison of those terms. Based upon its due diligence, the steering committee recommended that the Board partner with Select Medical in a joint venture. The steering committee’s recommendation was based on Select Medical’s prior academic medical center experience with Baylor University, EHC’s prior experience with Select Medical in its operation of an LTACH at EHC’s midtown campus in Atlanta, and Select’s overall responsiveness during the steering committee’s due diligence process.

EHC engaged Marshall and Stevens, Inc. (“Marshall and Stevens”), on behalf of Wesley Woods, to assess the value of the fixed assets of Wesley Woods. Marshall and Stevens

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<sup>2</sup> Emory University currently controls the Board of EHC, which is a Georgia not-for-profit corporation. EHC controls the Board of Wesley Woods Center, which owns and operates (1) Wesley Woods Geriatric Hospital; (2) Budd Terrace (a skilled nursing care facility); and (3) Wesley Woods Towers (a residential facility). EHC has provided management services to Wesley Woods since 1998, including staffing equipment and billing support.

<sup>3</sup> Select Medical is a corporation formed under the Delaware General Corporation Act.

ultimately concluded that the total consideration to be received by Wesley Woods through the proposed Joint Venture with Select Medical is “fair from a market perspective.”

### **THE PROPOSED TRANSACTION**

Wesley Woods proposes to transfer its eighteen (18) LTACH bed assets to ES LTACH LLC (“ES LTACH”) (“Purchaser”), a Georgia limited liability company. Intensiva Healthcare Corporation, a Delaware Corporation and a subsidiary of Select Medical, will also be contributing two LTACH entities,<sup>4</sup> totaling 70 beds, to ES LTACH. Wesley Woods will receive a 5% membership interest in ES LTACH, LLC.

After contributing its assets to ES LTACH, Wesley Woods will merge into EHC. EHC will then transfer its 5% ownership interest in ES LTACH, which was initially issued to Wesley Woods, to Emory Rehabilitation, LLC. Emory Rehabilitation, LLC is a Georgia limited liability company of which EHC is the sole member.

ES LTACH will own and operate three long term acute care hospitals in metro Atlanta, including Wesley Woods. The ultimate goal of the Joint Venture is to achieve “operational and cost efficiencies” by managing the joint venture hospitals together. Intensiva Healthcare Corporation will be the managing member of ES LTACH and will provide back office administrative support functions, such as clinical and quality management, accounting, regulatory compliance, group purchasing, human resources, central business office, legal, finance and business development. Pursuant to the LLC Agreement and the Management Agreement, ES LTACH will also receive marketing services from Intensiva Healthcare Corporation and its affiliates. Purchaser plans to add physicians and other staff to Wesley Woods and will continue to credential its entire medical and allied medical professional staff.

### **VALUATION ANALYSIS**

Marshall & Stevens was engaged by EHC to assist in the due diligence process involved in the proposed Joint Venture. Specifically, EHC engaged Marshall & Stevens to provide an estimate of the fair market value of Select Medical’s contribution to the Joint Venture. As part

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<sup>4</sup> Intensiva Healthcare Corporation will contribute its 100% membership interest in each of: (1) American Transitional Hospitals, LLC d/b/a Select Specialty Hospital – Atlanta and (2) Regency Hospital of South Atlanta, LLC d/b/a Regency Hospital of South Atlanta. Intensiva Healthcare Corporation will receive a 95% membership interest in ES LTACH, LLC as consideration. These entities are for-profit entities, and therefore, the contributions of their assets are not subject to the review under the Georgia Hospital Acquisition Act.

of their engagement, Marshall & Stevens also provided an estimate of fair market value of Select Specialty Hospital – South, a/k/a Regency Hospital of South Atlanta and Select Specialty Hospital – Atlanta on a stand-alone basis as of December 31, 2012. In addition, Marshall & Stevens was engaged to provide a fair market value estimate of Wesley Woods’ contribution to the Joint Venture, which includes the medical and hospital equipment owned by Wesley Woods, as well as Wesley Woods’ Certificate of Need for twenty-eight (28) total hospital beds, as of December 31, 2012. On June 30, 2013, EHC retained Marshall & Stevens to provide an estimate of fair market value for the Joint Venture to demonstrate that the 5% interest Wesley Woods will receive in the proposed Joint Venture in exchange for the contribution of its hospital assets is “fair to Wesley Woods from a market perspective and is in compliance with the Georgia Hospital Acquisition Act.” George Christopher Louis of Marshall & Stevens testified at the public hearing.

There are typically three approaches considered in valuation analysis: the income approach, the market approach, and the cost (net asset value) approach. The income approach is based on the concept that the value of a business is the present worth of the expected future economic benefits to be derived by the owners of the business. Under the market approach, value is derived through a comparison of the transaction prices of similar assets trading in the marketplace. In the cost (net asset value) approach, value is estimated based on the value of all of the subject business’s underlying assets, both tangible and intangible.

In its analysis, Marshall & Stevens considered all three approaches to value but relied only on the Market and Income approaches in reaching its conclusion of value for the Joint Venture.<sup>5</sup> Under the Market approach, Marshall & Stevens utilized the Guideline Transaction method and concluded that the Joint Venture’s indicated value is approximately \$44.4 million as of June 30, 2013. In its valuation analysis of the Joint Venture under the Income approach, Marshall & Stevens utilized the Discounted Cash Flow (“DCF”) method and arrived at an indicated value of approximately \$45.5 million for the Joint Venture. Ultimately, Marshall & Stevens concluded that the Joint Venture has a fair market value of \$45 million (rounded) by

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<sup>5</sup> Marshall & Stevens determined that the Cost approach was not appropriate because “an investor would evaluate a company with positive operating margins based upon its earnings and cash-generating potential rather than through an appraisal of its underlying assets.”

applying equal weight to the value indications under the Income Approach (DCF method, \$45.5 million) and the Market approach (Guideline Transaction method, \$44.4 million).

Marshall & Stevens valued Wesley Woods' contribution to the Joint Venture under the Cost Approach as "the Hospital [Wesley Woods] was unprofitable as of the date of the valuation, both from a historical and go-forward basis" and that "accordingly, the value assigned to Wesley Woods' contribution to the Joint Venture was based on the fair market value of its hospital and medical equipment and CON [certificate of need]." Marshall & Stevens valued the equipment and the 28-bed certificate of need license at \$1.5 million and \$200,000 respectively.<sup>6</sup>

Marshall & Stevens valued Select Medical's contribution to the Joint Venture, consisting of Select Specialty Hospital – Atlanta and Select Specialty Hospital – South, a/k/a Regency Hospital, under the Income and Market approaches. Marshall & Stevens equally weighted the Income (DCF method) approach and the Market (Guideline Transaction method) approach to arrive at a fair market value of \$17,550,000 for Select Specialty Hospital – Atlanta and \$14,860,000 for Select Specialty Hospital – South, a/k/a Regency Hospital as of December 31, 2012.<sup>7</sup>

Relying upon the above-described valuation analyses, Marshall & Stevens concluded that the fair market value of the Joint Venture was approximately \$45 million as of June 30, 2013, while the fair market value of Wesley Woods' contribution to the Joint Venture, consisting of its hospital and medical equipment along with its certificate of need, was \$1.7 million. Marshall & Stevens compared these two fair market value estimates and determined that the relative value of Wesley Woods' contribution represented approximately 3.8% of the total fair market value of the Joint Venture. Therefore, Marshall & Stevens concluded that the 5% interest in the Joint

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<sup>6</sup> With regard to the certificate of need value, it is worth noting that Marshall & Stevens attributed a value of \$150,000 to the existing license for the 18 beds in operation, plus \$50,000 for the additional 10-bed license. Following the valuation, recent regulatory developments resulted in the renewal of a moratorium on new LTACH beds through September 30, 2017. Both EHC and Select Medical have indicated, however, that the moratorium on new LTACH beds will have little effect on the Joint Venture as Select Medical has sufficient available capacity at its two current LTACH facilities to accommodate the additional patient volume associated with the ten (10) additional beds. Thus, the value of the Joint Venture and the projections used by Marshall & Stevens are not expected to be significantly impacted by the moratorium.

<sup>7</sup> In its analysis of fair market value for Select Specialty Hospital – Atlanta and Select Specialty Hospital – South, Marshall & Stevens also adjusted the two respective indications of value by

Venture that Wesley Woods will receive in exchange for its contribution of its assets is “fair to Wesley Woods from a market perspective.”

Pursuant to O.C.G.A. § 31-7-405(b), Ernst & Young, LLP (“EY”) was retained as an independent financial advisory consultant by the Attorney General to assist in the review of Marshall & Stevens’ fair market valuation analysis of the Joint Venture. Bridget Bourgeois, a partner at Ernst & Young, specializing in health care valuations, testified at the hearing. EY performed independent research and analyses to test the fair market values contained in Marshall & Stevens’ valuations.

In its review, EY confirmed that the income, market, and cost approaches to value applied by Marshall & Stevens are consistent with generally accepted industry standards for valuation analysis. In the course of its engagement, EY analyzed Marshall & Stevens’ underlying valuation methodologies and assumptions, performed a number of sensitivity analyses, and tested the impact to value of Marshall & Stevens’ conclusions by changing certain assumptions employed by Marshall & Stevens in its analysis.

EY’s adjustments to Marshall & Stevens’ value analysis included rolling forward the valuation date for the fair market value estimates performed on December 31, 2012 to June 30, 2013, applying a tax rate of 38.9%, and a discount rate range of 10.5% to 12.0%. Adjusting Marshall & Stevens’ analysis based on these factors resulted in a range of value of \$16.6 million to \$17.8 million for Select Specialty Hospital – Atlanta, \$15.5 million to \$16.8 million for Select Specialty Hospital – South, and \$43.4 million to \$47.2 million for the Joint Venture. Applying these same factors to Marshall & Stevens’ valuation of Wesley Woods’ contribution resulted in an implied relative proportion of Wesley Woods’ value to the Joint Venture value of 3.6% to 3.9%. EY indicated that all of these ranges of value fall within Marshall & Stevens’ value analysis, which concluded that Wesley Woods’ contribution represented approximately 3.8% of the total Joint Venture fair market value of \$45 million.

Ultimately, EY concluded that Marshall & Stevens utilized valuation methodologies and techniques that are commonly employed to support its valuation of the Joint Venture, Select Medical’s contribution consisting of its two current hospitals, and Wesley Wood’s contribution of its assets. Based on its independent analysis and research, EY indicated that the valuation

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removing any working capital funding balances, as Select Medical is not contributing any working capital to the Joint Venture.

multiples implied by Marshall & Stevens' valuation of the Joint Venture and Select's contribution of its two hospitals are within the range of market observations. Thus, EY concluded that it appears that the 5% ownership interest in the Joint Venture that Wesley Woods is expected to receive in the proposed transaction exceeds the value of its contribution to the Joint Venture as quantified by Marshall & Stevens.

### **PUBLIC COMMENT**

The public hearing was held on April 29, 2014, at 12:00 p.m. at the Emory Conference Center, Oak Amphitheater, 1615 Clifton Road, NE, in Atlanta, Georgia. There were no comments made during the public comment portion of the hearing.

Following the public hearing, the record was held open until the close of business on May 2, 2014, for any further public comment. This Office did not receive any public comments after the public hearing. Counsel for Wesley Woods and Select Medical were requested to inform this office in writing by May 2, 2014, as to whether their respective clients intended to proceed with the proposed transaction as structured or modify the proposed transaction in some respect. Counsel for both parties have written a joint letter stating that their clients wish to proceed with the transaction as proposed.

## **II.**

### **FINDINGS**

The Hospital Acquisition Act (the "Act") involves a public interest determination in the Attorney General's review of a proposed disposition and acquisition of hospital assets. *See* O.C.G.A. § 31-7-400 *et seq.*; *Sparks v. Hospital Authority of City of Bremen and County of Haralson*, 241 Ga. App. 485 (1999) (physical precedent only). The Act requires a written notice filing and a public hearing "regarding the proposed transaction in the county in which the main campus of the hospital is located." O.C.G.A. §§ 31-7-401, 31-7-405(a). The purpose of the public hearing is "to ensure that the public's interest is protected when the assets of a nonprofit hospital are acquired by an acquiring entity by requiring full disclosure of the purpose and terms of the transaction and providing an opportunity for local public input." O.C.G.A. § 31-7-406.

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

determining whether the appropriate steps have been taken by the parties. *Id.* The thirteen factors are listed in Appendix A to this report.

The thirteen factors set forth in O.C.G.A. § 31-7-406 can be grouped into four categories relating to (a) the exercise of due diligence by the seller (factors number 1, 2, 3, 4 and 8), (b) conflicts of interest (factors number 5 and 13), (c) valuation of the hospital assets (factors number 6, 7 and 10), and (d) the charitable purpose of the proposed transaction (factors number 9, 11 and 12).

### **The Exercise of Due Diligence by the Seller**

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

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). Jennifer Schuck, CEO and Board member of Wesley Woods, testified that the decision to seek a joint venture partner was prompted by continuing financial struggles. As stated above, the Board of Wesley Woods conducted an extensive review process. The deliberative process employed by the Board in selecting Select Medical demonstrates the exercise of due diligence, consistent with factors number 3 and 4.

With regard to factor 8, ES LTACH and Select Medical will enter into a management services agreement with Select Unit Management, Inc. (“Select Management”), an affiliate of Select Medical, wherein Select Management will provide certain services related to operations, finance, human resources, information systems, compliance, billing, legal, managed care contracting, procurement contracting and credentialing. Select Management will be paid a 7% management fee and reimbursed for its costs incurred in connection with the provision of the



management services. The fee charged by Select Management appears to be within reasonable parameters for management services in the healthcare industry.<sup>8</sup>

### **Conflicts of Interest**

The disclosure of any conflict of interest involving Wesley Woods, its chief executive officer and its expert consultant is required to be considered under factor number 5. Conflict of interest certifications as required by the Act and the notice filing requirements of the Attorney General have been filed by members of the governing board of Wesley Woods, by the chief executive officer of Wesley Woods and by Wesley Woods' expert consultant. Such certifications do not disclose any impermissible conflicting financial interest in the proposed transaction. With regard to factor number 13, there are no health care providers who will be offered an opportunity to invest or own an interest in ES LTACH or a related party. Thus, factor 13 does not apply.

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

The value of the hospital and the amount of consideration to be paid in the proposed transaction must be weighed under factor numbers 6, 7 and 10. For the purposes of factor number 6, the contribution of the assets of Wesley Woods to ES LTACH, 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

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<sup>8</sup> Fees for healthcare management services generally range from 5% to 8%.

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 Wesley Woods will receive fair market value for the sale of its assets. The valuation analysis rendered by Marshall and Stevens indicates that the fair market value of the Hospital assets was \$1,693,320 and the total fair market value of invested capital by Contributor and Select Medical was \$44,955,000. Marshall and Stevens concluded that Contributor’s receipt of a 5% membership interest in Purchaser to be fair to Contributor. Ms. Bourgeois testified that Marshall and Stevens used commonly employed valuation methods and techniques in its valuation of hospitals and the joint venture. Ms. Bourgeois further testified that the 5% ownership interest Contributor will receive through the joint venture is consistent with fair market value of Wesley Woods contribution of assets.

Since the Contributor is not financing any portion of the proposed transaction, factor number 7 is not applicable. The proposed transaction complies with factor number 10 because Section 8.2 of the LLC Agreement provides the “Non-Transferring Member” of ES LTACH with a right of first refusal. The LLC Agreement provides that if a member elects to sell its membership interest in ES LTACH, it must give notice thereof to the Non-Transferring Member prior to such sale. Such notice must include the membership interest proposed to be transferred,

the proposed purchase price, the terms of the transfer, and the name of the proposed purchaser. Under this agreement, Emory Rehabilitation, LLC would have thirty (30) days after receipt of this notice to exercise a right of first refusal under the same terms and conditions as contained in such third party offer.

#### **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 proposed transaction is a joint venture which provides for Contributor to receive a 5% membership interest in Purchaser. Contributor is not receiving cash or similar consideration. The joint venture will allow the community to continue to receive long term hospital care. In addition, Wesley Woods will merge into EHC, and the 5% interest in ES LTACH, which was initially issued to Wesley Woods, will be transferred to Emory Rehabilitation, LLC. The 5% membership interest in ES LTACH held by Emory Rehabilitation, LLC will support the charitable missions of EHC, a nonprofit corporation.

The other two charitable purpose factors, factor numbers 11 and 12, concern the purchaser's commitment to provide (a) continued access to affordable care, (b) the range of services historically provided by the seller, (c) health care to the disadvantaged, the uninsured and the underinsured and (d) benefits to the community to promote improved health care. Purchaser will continue to operate the Hospital as a long term acute care hospital and will offer all of the long term acute care services typically provided at such a hospital. Purchaser has committed to operate and manage the Hospital in furtherance of certain community-based healthcare purposes, including the provision of care to Medicaid and uninsured patients.

Purchaser will continue to operate and manage the Hospital in a manner intended to further certain community-based healthcare purposes, including the provision of care to certain Medicaid and uninsured patients such that the net unreimbursed costs of providing Medicaid and uninsured care are equal to a minimum of 5% of the net patient revenue of Purchaser. To the extent that Purchaser does not meet this threshold of unreimbursed costs, Purchaser has agreed to pay the difference to the Foundation of Wesley Woods, Inc. for use in the provision of healthcare to Medicaid and uninsured patients or, if the Foundation of Wesley Woods, Inc. is unable to receive such funds, to a nonprofit or charitable institution or organization determined by the Purchaser's board for use in the provision of healthcare to Medicaid and uninsured patients. No


patient is expected to be refused admission because of inability to pay and Purchaser intends to provide services at the Hospital following the closing of this transaction to the same indigent population as is currently being served. 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 May, 2014.

  
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.