

OFFICE OF THE ATTORNEY GENERAL
STATE OF GEORGIA

IN THE MATTER OF THE CHANGE OF
CONTROL OF NAVICENT HEALTH, INC.
TO THE CHARLOTTE-MECKLENBURG
HOSPITAL AUTHORITY

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NO. AG 2018-03

REPORT OF FINDINGS

BACKGROUND

NAVICENT HEALTH, INC.

This matter presents a proposed transaction for the transfer of control of Navicent Health, Inc. (“Navicent”), whose principal place of business is in Bibb County. Navicent, a Georgia nonprofit corporation, proposes to enter into a transaction with The Charlotte-Mecklenburg Hospital Authority (also known as “Atrium Health” or “Atrium”) which will involve the change of control of Navicent. Navicent, through subsidiaries, operates The Medical Center, Navicent Health located in Bibb County; Rehabilitation Hospital, Navicent Health located in Bibb County; The Medical Center of Peach County located in Peach County and Navicent Health Baldwin located in Baldwin County.¹ The Medical Center, Navicent Health has 637 beds and includes the Children’s Hospital Navicent Health, a Level I Trauma Center and a Level 3 Neonatal Intensive Care Unit. Rehabilitation Hospital, Navicent Health has 58 beds and provides rehabilitation care. The Medical Center of Peach County has 25 beds and is an acute care critical access hospital. Navicent Health Baldwin has 140 beds and is an acute care community hospital.

¹ Control of the subsidiaries of Navicent remains with Navicent under the proposed transaction.

Navicent Health, Inc. also manages Putnam General Hospital in Putnam County and Monroe County Hospital in Monroe County (collectively “the Hospitals”).²

The proposed transaction does not involve a sale or lease of Navicent Health, Inc. or the Hospitals. However, under the transaction, a wholly-owned subsidiary of The Charlotte-Mecklenburg Hospital Authority, AHNH Georgia, Inc. (“Atrium Sub”), will become the sole member of Navicent. After completion of the transaction, Navicent will continue in existence as a Georgia nonprofit corporation, but it will be controlled by AHNH Georgia, Inc., a North Carolina nonprofit corporation, which is, in turn, controlled by The Charlotte-Mecklenburg Hospital Authority. Atrium Health has committed to provide a number of benefits to the communities served by the hospitals in exchange for obtaining control of Navicent Health, Inc. As discussed in more detail herein, the benefits are both operational and financial and specifically include, but are not limited to, a capital commitment which will consist of, among other things, at least \$175.0 million to be expended to support certain discretionary expenditures and \$250 million to support strategic growth. Atrium Health has committed to continue to provide certain core services currently provided by the hospitals and is not permitted to terminate those services without agreement from the board of Navicent.³

THE DISPOSITION PROCESS

Since 2012, Navicent has continually assessed its strategic prospects and alternatives. In 2017, the Board of Navicent determined to pursue a comprehensive affiliation to join a larger

² The Medical Center of Peach County is the subject of a prior Georgia Hospital Acquisition Act review conducted in 2011. Navicent Health Baldwin is the subject of a prior Georgia Hospital Acquisition Act review conducted in 2017.

³ The real estate and buildings utilized by The Medical Center, Navicent Health and Rehabilitation Hospital, Navicent Health are owned by The Macon-Bibb Hospital Authority. The real estate and buildings utilized by The Medical Center of Peach County are owned by The Hospital Authority of Peach County, but are subject to an option in favor of Navicent that is subject to exercise by Navicent without further review under the Hospital Acquisition Act.

health system. The Board established a Strategic Committee to pursue work on an affiliation process including establishing certain evaluation criteria. Starr H. Purdue, the Board Chair of Navicent, provided specific testimony regarding the Strategic Committee, and the criteria that were established for the evaluation of prospective transaction partners. Ms. Purdue described the criteria to include “a compatible culture . . . , compatible vision, and compatible business philosophy.” (Transcript, p. 24). Ms. Purdue also indicated as follows:

We also wanted to maintain meaningful local control of Navicent. We needed transferable intellectual capital from our partner. They would have to have the ability to complement and enhance our existing services. They needed to have a sophisticated IT platform. They needed to be financially sustainable. They needed to have a history of successfully integrating affiliates.

(Transcript, pp. 24-25).

With these goals, Navicent utilized Kaufman Hall to develop a list of potential partners that would be compatible with Navicent. Kaufman Hall helped to develop a list of about 19 organizations. Navicent then determined that it did not want to pursue a transaction with for-profit or faith-based organizations which resulted in consideration of about ten organizations. Some of the organizations were located in Georgia and some were not. Navicent undertook a scoring process of those ten organizations by way of a blind process such that those scoring did not know the name of the entity being scored. After that scoring process, Navicent selected Atrium as the leading potential partner with which to consider a transaction and undertook a process of discussions with Atrium.

THE PROPOSED TRANSACTION

As described above, the transaction provides for the transfer of control of Navicent pursuant to a member substitution transaction. After closing of the transaction, Atrium Sub will be the sole controlling member of 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.”

Navicent retained Stroudwater Associates (“Stroudwater”) to provide assistance in the assessment of its proposed transaction. The scope of Stroudwater’s engagement included an independent assessment of the estimated community benefits to be derived from the proposed transaction, which Stroudwater memorialized in its Fair Market Value and Community Benefit Opinion (“Report”) to Navicent. David Whelan, a senior advisor with Stroudwater, testified at the hearing held on November 5, 2018. (Transcript, p. 94).

In its analysis of the estimated economic benefit the community will receive as a result of the proposed transaction, Stroudwater identified a number of qualitative and quantitative community benefits. Stroudwater focused primarily on three quantifiable benefits, including: (1) Atrium’s capital commitment over a ten-year period; (2) the continuation of charity and indigent care and existing community benefit program over a ten-year period; and (3) the synergies generated by the affiliation.

Atrium committed to invest at least \$425.0 million in capital expenditures for Navicent over the first ten years after the proposed transaction, including \$250.0 million for strategic growth expenditures and \$175.0 million for discretionary expenditures. In its analysis of the community benefit to be generated by the proposed transaction, Stroudwater quantified the resulting value of Atrium’s capital commitment using present value techniques to arrive at a value of \$374.2 million. Secondly, Stroudwater identified financial benefit to the community in Atrium’s commitment to maintain charity care, Medicaid and community benefit operations,

which it determined had a present value of \$597.1 million. Finally, Stroudwater quantified the synergies which may be generated from the proposed transaction. Noting that economies of scale, scope, structure and skill may result from the proposed transaction, Stroudwater concluded the synergy from operations had a present value of \$75.2 million. In total, Stroudwater arrived at a combined value of \$1.047 billion for the quantifiable community benefits that will result from the proposed transaction. (Report, p. 50).

In addition to the quantitative benefits, Stroudwater recognized significant qualitative considerations that should provide valuable healthcare related benefits and services to the patients and stakeholders of Navicent that further enhance the community benefit. As an example, David Whelan testified that, because it was Atrium's stated intention "to use Navicent as a regional hub to create a healthcare network in middle and south Georgia," the region as a whole will benefit due to the better access and coordination of care. (Transcript, p. 105). Taking the \$1.047 billion in quantifiable benefits and the numerous qualitative community benefits into consideration, Stroudwater determined that "there [are] sufficient community benefits from this transaction." (Transcript, p. 106).

Pursuant to O.C.G.A. § 31-7-405(b), the Attorney General retained Ernst & Young, LLP ("EY") to act as an independent financial advisor consultant to assist in the review of the proposed transaction. The Attorney General engaged EY to provide valuation advisory services, but not to issue any separate valuation or fairness opinion. As part of its engagement, EY held discussions with representatives of the parties involved and performed independent market research and analyses to review Stroudwater's conclusions regarding its assessment of the community benefit to be derived from the proposed transaction. Bridget Bourgeois, a healthcare valuation specialist at EY, testified at the hearing. (Transcript, p. 106).

As part of its review, EY performed sensitivity analyses of Stroudwater's community benefit analysis to address various methodology and logic issues. Specifically, EY found there were inconsistencies in the treatment of taxes when Stroudwater quantified the synergy from operations that may be generated by the proposed transaction. EY noted that addressing Stroudwater's analyses to provide consistent treatment of taxes would result in a negative adjustment to the indicated value. However, EY's sensitivity analyses ultimately indicated a total community benefit value range of approximately \$1.033 to \$1.047 billion, which was reasonably consistent with Stroudwater's concluded \$1.047 billion determination. While EY did not draw specific conclusions about value based on its analysis, it did conclude that Stroudwater employed relevant valuation approaches and methods in its analysis of the community benefits.

PUBLIC COMMENT

The public hearing was held on November 5, 2018 at 12:00 p.m. at The Medical Center, Navicent Health in Bibb County, Georgia. Notice of the proposed transaction and the public hearing was provided as required by O.C.G.A. § 31-7-404.⁴ The public hearing location is appropriate in Bibb County because that is the location of the "main campus" of Navicent's hospital system within the meaning of O.C.G.A. § 31-7-405. 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. All were in favor of the transaction.

As required by O.C.G.A. § 31-7-405(b), David Whelan of Stroudwater testified on behalf of Navicent. As required by O.C.G.A. § 31-7-405(c), Starr Purdue, the Chair of the Board of Navicent testified as did Dr. Ninfa Saunders, the President and Chief Executive Officer of

⁴ The proposed transaction is the subject of two notices published in The Macon Telegraph which is the legal organ for Bibb County. The undersigned also provided notice to Macon-Bibb County by

Navicent. Rhonda Perry, the Executive Vice-President of Business Integration Navicent and former Executive Vice-President and Chief Operating Officer of Navicent, also testified.⁵

Following the public hearing, the record was held open until the close of business on Friday, November 9, 2018, 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.⁶

Counsel for the parties were requested to inform the undersigned in writing by November 9, 2018, as to whether their respective clients intended to proceed with the proposed transaction as structured or modify the proposed transaction in some respect. On November 9, 2018, counsel for both parties submitted a joint letter stating that their clients wish to proceed with the transaction as proposed.

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

correspondence with its Mayor, Robert A. B. Reichert in accordance with O.C.G.A. § 31-7-404. Mayor Reichert attended the hearing and provided a public comment in support of the transaction.

⁵ The Chair of the Macon-Bibb Hospital Authority spoke during the public comment portion of the hearing in favor of the proposed transaction. (Transcript, pp. 183-186).

⁶ The undersigned received an oral comment after the hearing from a representative of a local organization primarily expressing concern regarding indigent care in the Macon-Bibb area and emphasizing the growing need for access to care and the importance of the mission of charitable organizations like Navicent in the community.

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 transfer of control of Navicent Health, Inc. is authorized by applicable law as provided in factor number 1. Navicent has taken the appropriate steps to provide for the transfer of control to Atrium Sub. O.C.G.A. §§ 14-3-206 and 14-3-302.⁷ The proposed transaction is authorized under the Georgia Nonprofit Corporation Code.

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. Each of the members of the Board of Directors of Navicent and its Chief Executive Officer, have executed certifications that the proposed transaction is consistent with the intent of major

⁷ The Act does not require an analysis of the legal authority of Atrium.

donors who have contributed in excess of \$100,000.00 to Navicent.⁸ No concerns have been raised by any donors during the public hearing or the review process. Therefore, the record supports finding that factor number 2 is satisfied.

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). Navicent did not conduct a formal process for the solicitation and selection of proposals which is typically the preferred approach. However, as previously discussed, Navicent conducted a very robust process of evaluation of potential transaction partners including utilization of a Strategic Committee and the engagement of professional services from Kaufman Hall during the process of selection of a partner and the use of Stroudwater and the law firm of Alston & Bird, LLP, during the process of negotiating and finalizing a proposed transaction. The record supports a finding that Navicent “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).

There is no management agreement involved in this matter.⁹ O.C.G.A. § 31-7-406(8). Therefore factor number 8 is not implicated.

⁸ The Navicent Health Foundation continues as an independent entity after the transaction. After closing the Foundation will be vested with the power to enforce Atrium’s obligations and will hold the right of first refusal. Donations to the Foundation are not implicated in this transaction.

⁹ Navicent has provided descriptions of a Consultation Service Agreement related to physician consultations with Carolinas Physicians Networks, Inc. which is a wholly-owned subsidiary of Atrium

Conflicts of Interest

The disclosure of any conflict of interest involving the Seller, the Chief Executive Officer of Navicent and Navicent's 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 Navicent, by Ninfa Saunders, the Chief Executive Officer of Navicent, and by Anu Singh of Kaufman Hall as well as by David Whelan of Stroudwater Associates.¹⁰ 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.

With regard to factor number 13, the instant transaction involves the transfer of control of assets of a nonprofit corporation to another nonprofit entity, controlled by a public hospital authority of the State of North Carolina. 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.

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 transfer of control of a nonprofit corporation which controls hospital assets subject to the Act to a nonprofit corporation controlled by a public hospital authority, Navicent should receive an enforceable commitment for fair and reasonable community benefits for the transfer of control its assets. *See* O.C.G.A. § 31-7-406(6). Based on

and another Consultation Services Agreement related to pharmacy matters with Atrium. Neither of these agreements reach the level of a management agreement as referenced in the Act.

¹⁰ As Mr. Whelan provided the testimony required by O.C.G.A. § 31-7-405(b), his certification and disclosure is required. While it has provided services to Navicent since at least 2012, Kaufman Hall provides current services to both parties to the proposed transaction and could not have provided the financial and economic analysis on behalf of Navicent.

the record, including the analysis conducted by Stroudwater on behalf of Navicent and the review by EY at the request of the Attorney General as described herein, Navicent 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 Navicent is not providing any financing for the transaction, factor number 7 is inapplicable. As to factor number 10, under the terms of the Affiliation Agreement, the Foundation or its designee retains a right of first refusal to purchase the assets if Atrium proposes to sell the assets. (AA, p. 36-38). The right of first refusal includes a general restriction on change of control transactions involving Navicent Health from the closing of the proposed transaction through the date that is at least ten years after closing. After that time, a right of refusal will exist in favor of the Foundation or its designee. The right of first refusal will operate in a manner such that it is triggered by a proposed transfer of control of Navicent as a whole, but is not triggered upon the proposed sale or other disposition of individual hospitals. The proposed right of first refusal is consistent with the purposes of factor number 10. While the sale, lease or transfer of hospitals controlled by Navicent would not necessarily trigger the right of first refusal, any proposed disposition would be subject to the requirements of the Act unless somehow excepted.

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. 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. Under the terms of the Affiliation Agreement, Atrium has made various commitments regarding maintenance of the core healthcare services provided in the Navicent service area. The commitments include, but are not limited to, ensuring that Navicent provides “substantially the same, or better, level and scope of service as currently provided” and “as comprehensive as other comparable Level-1 trauma, teaching, and tertiary providers.” (AA, p. 25). Adjustments to the services provided are contemplated in the event of changing conditions, but evaluation of such adjustments is required to be a collaborative process and “to take into account . . . the Hospital’s operations as a whole in furtherance of its charitable mission.” (AA, p. 25). Termination of certain provided services requires the advance approval of the board of Navicent. (AA, p. 25). Atrium also undertakes to maintain or enhance Navicent’s physician residency training program and to maintain the four year medical school program with Mercer University. (AA, p. 34). The obligations provided for in the record, including those described herein, support a finding 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 5th day of December, 2018.



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.