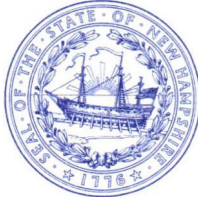


ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

ONE GRANITE PLACE SOUTH
CONCORD, NEW HAMPSHIRE 03301

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

August 12, 2024

Rebecca S. Kane, Esq.
Devine Millimet
111 Amherst St.
Manchester, NH 03101
RKane@devinemillimet.com

Re: Notice to the Director of Charitable Trusts on Behalf of Catholic Medical Center, Alliance Ambulatory Services, and Catholic Medical Center Physical Practice Associates

Dear Attorney Kane:

This letter acknowledges receipt of the Joint Notice (“Notice”) submitted by Catholic Medical Center, Alliance Ambulatory Services, and Catholic Medical Center Physician Practice Associates (hereinafter collectively “CMC entities”), pursuant to RSA 7:19-b related to the proposed sale of their assets to Manchester Health Services, LLC (“MHS”). Our office received the Notice on June 28, 2024.

In order to determine compliance with the standards for such transactions set forth in RSA 7:19-b, II, the Charitable Trusts Unit is authorized to require that the parties submit additional information. *See* RSA 7:19-b, IV. Accordingly, this letter requests the following additional information to be delivered as soon as possible but no later than September 4, 2024. Please note that many of the requests are for information from MHS, a subsidiary of HCA Healthcare, Inc. (“HCA”). I have therefore copied local counsel for HCA on this letter.

CMC Entities

Notice

1. The Notice refers on pages 7 and 13 to a description of the ethical and moral analysis completed by the “NCBC” and states that the Notice includes a “Section II.A.3” that sets forth this analysis in more detail. However, there is no Section II.A.3. Please provide the information to which the Notice refers.

2. Provide any report, presentation, summary, or other documentation developed by NCBC related to the transaction that was submitted to or considered by the CMC board of directors (“CMC Board”).
3. The Notice on page 2 indicates that CMC no longer has access to the necessary capital to invest in facilities, technologies, and labor force. What capital did CMC determine was necessary for each (facilities, technology, and labor force) in 2021-2024 and what needed investment has not occurred due to lack of capital?
4. The Notice on page 14 mentions that community programming, including Healthcare for the Homeless Program, Poisson Dental Program, and Doorways, “are expected to continue to be operated through a related CMC party, the Foundation or other community organizations.” Provide more information about the identity of the “related CMC party” and any information, plans, or documentation regarding continued operation of those particular community programs following closing of the proposed transaction.
5. Exhibit 31 of the Notice is a Form of Catholic Identity Commitment Agreement (“CICA”). Paragraph 1 (g) provides that the “CMC Facilities shall report on community benefit consistent with the [Catholic Health Association’s] reporting standards.” To whom will the CMC Facilities report? What form will the report take, as MHS will not be required to file with the IRS a Form 990, Schedule H? If Mercy Hospital produces such a report, provide a copy of the most recent report.
6. Identify all CMC staff by position title and length of time employed by CMC who have voluntarily left employment from date of Letter of Intent (September 23, 2023) to present.

The Foundation

7. Provide copies of any and all governing documents, including articles of agreement and bylaws, pertaining to the Catholic Health Care Foundation of Greater Manchester (“Foundation”).
8. Provide an estimate of the funds that the Foundation will receive from the sale of assets to HCA under the Asset Purchase Agreement (“APA”). With respect to the funds CMC expects that the Foundation will receive as a result of the sale of assets to HCA, provide an estimate of the amount of funds that the Foundation will have available for its use in each of the first six years following the closing of the transaction with HCA.
9. Detail how the Foundation will “support health care in the Manchester area and the State of New Hampshire in the Catholic tradition” as represented in the Notice at page 4.

Board Due Diligence

10. To the extent not previously provided, submit copies of the minutes of any and all CMC board and committee meetings related to the HCA transaction and any other proposals for an affiliation, asset purchase, or other combination transaction submitted by other potential partners.
11. To the extent not previously provided, provide minutes of board meetings related to the letter of intent between CMC and HCA, including, but not limited to, discussions regarding the negotiation and approval of the letter of intent. Include any documentation considered by the CMC board of directors, including, but not limited to, documentation related to the valuation of the CMC entities.
12. To the extent not previously provided, provide any and all documentation, including, but not limited to reports, presentations, and minutes of meetings, relating to the review of the APA and its terms, its discussions, the negotiations, and the vote by the CMC board and board committees. Include any and all reports and presentations made by representatives of HCA to the CMC board.
13. To the extent not previously provided, submit copies of any financial forecasts and consultant reports submitted to the CMC board in connection with the consideration of an affiliation, merger, acquisition, and/or asset sale with HCA and other potential partners. Include any documentation related to the valuation of the CMC entities.
14. To the extent not previously provided, provide copies of any written comments, complaints, questions, and other input submitted to CMC management and/or the CMC board from physicians, employees, volunteers, management, and the public related to the transaction with HCA. Include any comments and questions submitted during the listening session held on May 29, 2024, and any meetings held with CMC management related to the transaction with HCA.
15. Identify the names of the CMC board members who attended the listening session on May 29, 2024.
16. Identify the names of any CMC board members who served on the committee that negotiated the terms of the APA.
17. Explain in detail the “investigation” referred to on page 7 of the Notice that the CMC Board and senior management undertook to see how HCA provided health care in the State of New Hampshire.
18. Explain in detail how the CMC Board and senior management engaged former board members of Frisbie Board as stated in the Notice at page 7.
19. Provide the dates of and the names of attendees at any meetings that CMC board members had with former members of the board of directors of Frisbie Memorial

Hospital (before it was purchased by HCA) and with members of the board of the Greater Rochester Community Health Foundation. To the extent not previously provided, provide copies of any and all documentation, including, but not limited to reports, presentations, and minutes of meetings, related to any such meetings.

20. To the extent not previously provided, provide any and all documentation, including, but not limited to reports, presentations, and minutes of CMC board meetings, related to any discussion by the CMC board concerning the lawsuit filed by the North Carolina Attorney General against HCA related to Mission Hospital.
21. With respect to the five Catholic healthcare systems that entered into mutual non-disclosure agreements with CMC, identify the barriers found by the Board to exist for each.
22. With respect to the other non-Catholic healthcare systems entered into mutual non-disclosure agreements with CMC, identify the barriers found by the Board to exist for each.
23. Produce or if already produced, identify the financials that CMC presented to potential partners during the above-referenced non-disclosure periods.

Historical Financial Information

24. To the extent not previously provided, provide:
 - a. Detailed annual financial statements for CMC (including income statements, balance sheets, and cash flow statements) for FY 2019 through FY 2023, as well as the latest trailing-twelve-month (“TTM”) period available (i.e. – TTM ended June 30, 2024). The statements must provide more detail than in the audited 2023 financial statements produced with the Notice.
 - b. Schedules that identify any non-recurring or extraordinary expenses in FY 2023 and the TTM period. Discuss in detail any “addbacks” or “adjustments” to reported profitability metrics such as EBITDA for CMC.
 - c. Data concerning key operational metrics, including the following, for FY 2019 through FY 2023, as well as the TTM period:
 - i. Outpatient visits
 - ii. Payor mix
 - iii. Inpatient/Outpatient gross revenue
 - iv. Patient Days
 - v. Average Length of Stay
 - vi. Occupancy Rate/Avg Daily Census
 - vii. Discharges
 - viii. Detail on Procedure Data (i.e. # of surgeries, emergency room visits, births etc.)
 - ix. Full time equivalent (“FTE”) employees

d. Fixed Asset Listing

- i. Provide the most current fixed asset listing (preferably in MS Excel)
- ii. Indicate any assets owned or leased that are not used in the day-to-day operations of the business (i.e., non-operating assets) or are no longer in use.
- iii. Indicate any off-balance sheet assets.

e. Aged accounts receivable schedule and analysis for the end of FY 2023 and the most recent date available.

f. Detailed capitalization tables of CMC listing the amounts and units of all securities as of a current date.

g. Maintenance Contracts/Warranty Agreements - Provide a copy of significant maintenance contracts and warranty agreements for major assets owned by CMC.

h. Operating/Capital Leases - Identify and provide copies of any operating and capital leases. Provide inception dates, expiration dates, lease terms, and whether the assets are still in-operation.

i. Lease agreements related to any leased facilities, to include the following:

- i. Lease expiration date
- ii. Renewal terms
- iii. Future plans for renewal, plans for relocation, etc.

Projections

25. Provide pro forma financial projections (including income statements, balance sheets and cash flow statements) for CMC for FY 2024 to FY 2028 in Excel.

26. For the aforementioned projected period, provide the following data, if available:

- i. Inpatient/Outpatient gross revenue
- ii. Patient Days
- iii. Average Length of Stay
- iv. Occupancy Rate/Avg Daily Census
- v. Discharges
- vi. Detail on Procedure Data (i.e. # of surgeries, emergency room visits, births etc.)

27. Provide analysis related to deferred, maintenance, and strategic capital needs required by CMC and priorities for capital expenditures over the next 5 years. Provide schedule or analysis of capital needs by facility or in as much detail as is possible.

Transaction Documents

28. Provide the latest draft asset purchase agreement for the Transaction, if any updates have been made to the version dated June 21, 2024, that was submitted as Exhibit 14.
29. Provide the schedule of sources and uses for the Transaction as well as a pro forma balance sheet as of the closing of the Transaction.
30. Provide any third-party materials (financial due diligence, synergy analysis, etc.) vetting the Transaction, aside from the fairness opinion report prepared by VMG.

Market Competition

31. Describe the local competitive environment facing CMC. Does CMC face a high, medium, or low level of competition for its services?
32. Describe any differentiators and/or competitive advantages that CMC holds over its competitors.
33. Describe demographics of patient base. How does CMC's payor mix compare to other hospitals in New Hampshire?

Asset Purchase Agreement

34. Describe any changes made to the APA as a result of comments, questions, or concerns raised at the listening session held on May 29, 2024, and any other meetings with physicians, employees, volunteers, management, and the public related to the transaction with HCA.
35. Describe how the transaction with HCA will address the community needs identified in the most recent Community Needs Assessment for Greater Manchester and previously included in CMC's Community Benefits Report, specifically:
 - a. Substance Use Disorder;
 - b. Access to Mental Health Services;
 - c. Senior Services;
 - d. Oral Health;
 - e. Heart Disease and Stroke;
 - f. Cultural/Language Barriers to Care; and
 - g. Access to Primary Care.
36. If the transaction with HCA does not close, explain what are the next steps that the CMC board will take to address CMC's financial condition.

37. In negotiating the terms of the APA, did the CMC board consider or implement any of the recommendations set forth in the Harvard Negotiation and Mediation Clinical Program report, "Managing Conflict in Affiliations Between Health Care Charitable Trusts?" If so, describe which recommendations were considered or implemented.
38. Has CMC experienced a Financial Loss as defined in the APA with respect to any of the services included in the definition of "Core Service" under the APA?
39. Provide original cost, most recent year end market value, and restriction status for each of the CMC entities' donor restricted funds which comprise their donor restricted net assets, both temporary and permanent/perpetual.
40. Create a pro forma Estimated Closing Statement, assuming that the Closing Date takes place on September 1, 2024.

HCA/Manchester Health Services, LLC

41. Submit copies of the governance documents for Manchester Health Services, LLC ("MHS"), including any bylaws or similar governing documents. What is the total number of members of the board?
42. Submit copies of the proposed Uninsured and Charity Care Policies that MHS intends to implement in accordance with the APA.
43. Describe what steps HCA intends to take to avoid a "Financial Loss" as defined in the APA with respect to each of the "Core Services" HCA has agreed not to discontinue for a period of ten years in accordance with paragraph 7.12 of the APA.
44. Describe any plans HCA has with respect to the Women's Wellness & Fertility Center, including any plans to recruit physicians and to curtail or expand the services offered.
45. Provide a timeline for HCA to determine how it will fulfill its capital support commitment in accordance with paragraph 7.14 of the APA, including how the \$200 million will be spent.
46. The Statement of MHS Regarding Fulfillment of Charitable Objects provides that MHS will make capital expenditures in an aggregate amount equal to or greater than \$200 million, and these capital improvements will permit CMC to provide "additional services to the community." What additional services are contemplated by MHS?
47. What contractual rate increases between commercial insurance payers and CMC are anticipated during the three years after the transaction? What is the minimum HCA would need?
48. What type of provider payment models and methodologies would HCA seek to use with commercial payers? For example, would HCA embrace alternative payment methods including value base care models, or seek fee-for-service arrangements? Will HCA be

receptive to accepting risk, and using accountable care type models with commercial payers, Medicaid Managed Care Organizations, Medicare Advantage payers, and traditional Medicare?

49. Does HCA anticipate terminating any contracts or financial arrangements with payers, including Medicare pilot programs or shared savings programs? If so, describe which arrangements or contracts.
50. Does HCA anticipate a commercial payer contracting strategy that directly includes the other New Hampshire HCA hospitals, and potentially other hospitals in the HCA system?
51. What CMC healthcare service lines does HCA anticipate expanding and which service lines does HCA expect to discontinue in the next 10 years?
52. Describe Portsmouth Regional Hospital's efforts in the past 3 years to address its local community's health needs (comparable to "community benefits" as defined in RSA 7:32-d). Include in your answer, any collaboration with community partners.
53. Describe Parkland Memorial Hospital's efforts in the past 3 years to address its local community's health needs (comparable to "community benefits" as defined in RSA 7:32-d). Include in your answer, any collaboration with community partners.
54. Describe the efforts undertaken by HCA to address the community health needs in the communities served by Frisbie Memorial Hospital since February 2020. Include in your answer, any collaboration with community partners.
55. CMC identifies caring for one of the nation's oldest populations as one reason for its financial constraints. What plan does HCA have to care for this group of individuals?
56. Will the HCA business model for CMC include preventing the use of physician administered specialty drugs from non-CMC/HCA pharmacies (so called "white bagging" or "brown bagging")?
57. Will HCA prioritize improving access to mental health and substance use disorder services? If so, what initiatives are anticipated for youths and adults?
58. What primary care strategies will be employed by HCA at CMC? Does HCA anticipate using the collaborative care model (including billing payers using the specific collaborative care CPT codes)?
59. What anticipated changes to the delivery of healthcare at CMC are expected to result in more cost-effective care?

60. Are there current staffing levels in specific clinical areas that need to be reduced in order for HCA to meet internal targets, based on ratios or other measures? If so, what clinical areas?
61. What partnerships with other healthcare provider organizations does HCA intend to keep in place? Will cardiology continue to offer services in the North Country, including at Androscoggin Hospital? How does HCA plan to enhance CMC's cardiac and vascular network?
62. The APA suggests that the "The Quality Management and Patient Experience Committee" will have responsibility for overseeing potential healthcare quality issues. How would concerns about a physician be addressed?
63. Will HCA submit data to Leapfrog for CMC so that Leapfrog can report quality ratings for CMC? If so, when will the data be reported?
64. Will CMC have full access to the most robust EMR system used elsewhere in the HCA system, or will the CMC system be specific to Manchester?
65. Does HCA anticipate expanding the use of physician extenders (e.g. physician assistants) at CMC?
66. Following the closing of the transaction, will CMC continue to support Amoskeag Health and have a presence at CMC? If so, describe HCA's plans with respect to Amoskeag Health.
67. Following the closing of the transaction, will CMC continue its Parish Nurse Program? If so, describe HCA's plans with respect to the parish nurse program.
68. Are there any key clinical staff that HCA intends to hire (or replace due to departures) to meet HCA's strategic objectives for CMC? What is HCA's strategy for attracting and retaining additional workforce at CMC?
69. What lessons did HCA learn from the Frisbie Hospital transaction that will be managed differently with CMC?
70. What specific actions, programs, resources will HCA undertake to address the priority health needs identified in the most recent Community Needs Assessment for Greater Manchester? What are the most significant ways that HCA anticipates benefiting the community?

71. Does HCA anticipate higher patient volumes at CMC within three years for any specific service lines/specialties? If so, will the patient volume come from competitors or the ability to meet unmet needs in the primary service area?
72. Are there CMC facilities or equipment that will be considered a priority for upgrading or replacement?
73. Provide the number of physicians currently employed by CMC and their areas of practice and the number of physicians HCA intends to hire and their areas of practice.

If any of the CMC entities or HCA wishes to claim that any of the information or documentation produced in response to this letter is exempt from public inspection and copying pursuant to RSA 91-A:5, IV, please provide a notation on the documents or information submitted and an explanation as to why these documents are exempt from disclosure under RSA 91-A. The information and documentation otherwise will be available for public inspection in accordance with RSA 91-A:4.

Thank you for your attention to this matter. Please be advised that the Charitable Trusts Unit reserves the right to request further information.

Sincerely,

/s/ Mary Ann Dempsey

Mary Ann Dempsey
Director of Charitable Trusts
(603) 271-7549
MaryAnn.Dempsey@doj.nh.gov

cc: Jason E. Cole, Esq.
Jon B. Sparkman, Esq.
Andrew Eills, Esq.
Bradford Cook, Esq.