

OFFICE OF THE ATTORNEY GENERAL
STATE OF GEORGIA

IN THE MATTER OF THE LEASE
WITH AN OPTION TO PURCHASE
OF PEACH REGIONAL MEDICAL
CENTER TO THE MEDICAL CENTER
OF PEACH COUNTY, INC.

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NO. AG 2011-05

REPORT OF FINDINGS

I.

BACKGROUND

PEACH REGIONAL MEDICAL CENTER

Peach Regional Medical Center (the “Hospital”) is a critical access hospital licensed for 25 beds. The Hospital is located in Fort Valley, Georgia in Peach County and is operated by the Hospital Authority of Peach County (the “Authority”). The Hospital’s primary service area is Peach County. The Authority has had critical access designation since 2000. It operates an emergency room twenty-four hours per day and sees in the range of 15,000 to 18,000 patients per year, with annual admissions of over 900. The Hospital operates as a full-service community hospital with a swing bed program, imaging services, lab services, respiratory therapy, physical therapy, occupational therapy and speech therapy. The Hospital has approximately 117 employees.

As proposed, The Medical Center of Peach County, Inc. (“MCPC”), a Georgia nonprofit corporation, will lease the Hospital from the Authority and will have an option to purchase the Hospital for a nominal amount after certain conditions are satisfied. The lease agreement includes all of the assets of the existing Hospital as well as a parcel of real property on which a replacement facility is to be located, which consists of approximately twenty (20) acres in Peach County near the intersection of Georgia Highway 247 and John E. Sullivan Road (the “New Hospital Site”). MCPC is an affiliate of The Medical Center of Central Georgia, Inc., Central Georgia Health System, Inc. and the Macon-Bibb County Hospital Authority. The Medical Center of Central Georgia, Inc. and The Medical Center of Peach County, Inc. are both subsidiaries of Central Georgia Health System (“CGHS”).

The Hospital is a 25-bed critical access hospital that is over 50 years old. As part of the consideration for the transaction, MCPC will undertake to construct a new 25-bed critical access hospital on the New Hospital Site. Once the Hospital is relocated, MCPC's leasehold interest in the property and facilities currently occupied by the Hospital will terminate.

In addition to the construction of a replacement facility, MCPC has made a number of commitments related to the transaction, including assuming certain liabilities associated with the Hospital, continuing to provide indigent and charity care services, maintaining an emergency room and participating in Medicare and Medicaid.

MCPC will have the right to acquire full ownership of the replacement hospital for nominal consideration and the assumption of all related liabilities once certain conditions have been satisfied. Specifically, MCPC has a right to purchase the Hospital under the option after ten years of operation, or after only seven years of operation if \$2,000,000 in uncompensated indigent care has been provided to residents of Peach County during that time period.

THE DISPOSITION PROCESS

Since 2004, the Authority has considered various options for the Hospital including attempting to pursue funding for construction of a replacement hospital. These efforts included raising \$2,000,000 by way of a special purpose local option sales tax and acquiring a site for a replacement facility. The Authority pursued financing options through various federal agencies, including the United States Department of Housing and Urban Development ("HUD") and the United States Department of Agriculture ("DOA"). The Authority also pursued a bond finance transaction of its own while at the same time engaging in discussions with CGHS about a possible affiliation or partnership. As the Hospital's finances continued to deteriorate, the Authority determined that it would have to pursue the acquisition of the Hospital by another health care enterprise. Discussions continued with CGHS to a point that, in March of 2011, the Authority engaged specialized legal counsel to assist it with negotiation of a transaction with CGHS. In May of 2011, the Authority approved non-binding terms of an agreement with CGHS.¹

¹ In August of 2011, the Authority reached certain agreements with Peach County regarding the contribution of the \$2,000,000 in tax proceeds to the project and the continued provision by the County of up to \$450,000 per year for indigent care to be provided by the Hospital through 2014.

The Authority did not pursue a formal disposition process, which is the preferred course of action. However, the Authority's Chief Executive Officer provided detailed testimony regarding prior efforts to obtain financing for a new facility as well as its decision to approach CGHS regarding a transaction.

THE PROPOSED TRANSACTION

Under the terms of the transaction, MCPC will lease the existing Hospital from the Authority and will lease the new hospital site as well. MCPC will lease the Hospital from the Authority and will have an option to purchase the Hospital for a nominal amount after certain conditions are satisfied. The lease agreement includes all of the assets of the existing Hospital as well as the New Hospital Site. As part of the consideration for the transaction, MCPC will undertake to construct a new 25-bed critical access hospital on the New Hospital Site. Once the Hospital is relocated, MCPC's leasehold interest in the property and facilities currently occupied by the Hospital will terminate. MCPC will have the right to acquire full ownership of the replacement hospital for nominal consideration and the assumption of all related liabilities, once certain conditions have been satisfied. Specifically, MCPC has a right to purchase the Hospital under the option after ten years of operation or after only seven years of operation if \$2,000,000 in uncompensated indigent care has been provided to residents of Peach County during that time period.²

FINANCIAL 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

² After the closing of the proposed transaction, MCPC will hold a leasehold interest in the existing hospital and related facilities. Once the replacement hospital is constructed, MCPC will no longer have a leasehold interest in the existing hospital and facilities, but will hold a leasehold interest in the new hospital facility with a vested right to acquire full title to the new facility by paying nominal consideration once either of two conditions are satisfied. It appears that the option includes the necessary elements of a valid option under Georgia law. *See Tachdjian v. Phillips*, 256 Ga. App. 166 (2002). After the satisfaction of either of the conditions and the exercise of the option, the Authority's only right in the new facility will be that of a right of first refusal for a period of five years thereafter. It is important to note that one of the conditions is satisfied by the mere passage of time. Thus, while this transaction involves a lease primarily, the option component very likely results in the ultimate sale of the Hospital. As the option is part of the transaction under review, its exercise alone would not require further review under the Act as currently enacted.

determination as to whether the seller “will receive an enforceable commitment for fair and reasonable community benefits for its assets.”

The Authority engaged Frazier & Deeter to assess the anticipated community benefit resulting from the transaction. Frazier & Deeter reviewed the transaction under O.C.G.A. § 31-7-406(6), which requires that the seller or lessor in a disposition of a nonprofit hospital to another nonprofit corporation “will receive an enforceable commitment for fair and reasonable community benefits for its assets,” as discussed in the following valuation analysis.

VALUATION ANALYSIS

Frazier & Deeter, LLC, (“F&D”) was engaged by the Authority to provide a valuation analysis. F&D employed a standard of fair market value, defined as:

[T]he price at which property would change hands between a willing buyer and willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts.

There are typically three approaches considered in valuation: the income approach, the market approach, and the asset approach. The income approach is based on the present value of future economic benefits that accrue to the shareholders. Under the market approach, value is derived through the analysis of the market price of the common stock of comparable, publicly traded companies. The asset approach determines value based on the amount necessary to construct an asset of equal utility.

F&D considered all three approaches to value, and utilized the market approach for the valuation analysis.³ Gerald L. Bontrager, the Director of Valuation Services at F&D, testified at the public hearing. Under the market approach, F&D used the transaction method, which uses data from companies that have sold to derive multiples that are compared to financial measures, such as revenue, earnings and cash flow. The transaction method relies on the concept that the value of an entity can be estimated based on the cost of acquiring an equally desirable substitute. F&D searched databases for transactions dealing with target entities similar in size and operation

³ F&D considered but did not utilize the income approach due to a lack of income and cash flow generated by the Hospital. F&D also considered but did not use the asset approach, as the existing hospital has little operational value due to the age and location of the facilities.

to the Hospital.⁴ Through their database search, F&D arrived at a price to number of beds multiple of \$135,000 per bed, which when applied to the 25 beds of the existing hospital, resulted in a value for operations of \$3.375 million. The database search also yielded a price to revenue multiple of 0.45x, which when applied to the annualized revenue of \$8.83 million, produced an indicated value of \$3.974 million. Thereby, F&D arrived at an estimated value of operations for PRMC at \$3.7 million. However, F&D noted that the Hospital differed from the database transactions because the existing hospital is not a viable facility as a hospital in the long term and the actual real property of the facilities currently occupied by the Hospital will remain under the Authority's ownership. Therefore, a hypothetical third-party transaction would likely be consummated at much lower multiples. As such, F&D concluded that the \$3.7 million indicated value is the highest potential value that could be derived from a sale of the Hospital's operations, and due to the Hospital's continued losses and negative cash flow, F&D determined the range of fair market values to be \$0 to \$3.7 million.

F&D also examined the benefits provided by the proposed transaction and found the following four primary quantifiable benefits afforded to the Authority and the community in general: first, the financial liabilities to be assumed by MCPC; second, the continued investment by MCPC to cover losses from the operations of the existing hospital during the construction of the new hospital; third, the investment from the construction of the new hospital and related activities; and fourth, the continued employment of existing hospital employees. From the four quantifiable community benefits, F&D arrived at a value range of \$36,386,261 to \$37,940,915. F&D concluded that the aggregate quantifiable consideration far exceeded the fair market value of the assets and operations.

The Attorney General was assisted by the firm of Pershing Yoakley & Associates, P.C. ("PYA") in the review of F&D's valuation analysis. The Attorney General engaged PYA to provide valuation advisory services, but not to provide a separate valuation or fairness opinion. David McMillan, a Shareholder at PYA, testified at the public hearing. With respect to a valuation of the Hospital, PYA noted that the Hospital, in its current condition, is not solvent, so any identified benefits should be considered on the basis that if The Medical Center of Central

⁴ F&D located transactions in the Capitol IQ database published by Standard & Poor's, and in Irving Levin Associates, Inc's Deal Search Online database of healthcare merger and acquisition transactions.

Georgia, Inc. had not extended a line of credit to the Authority, then Peach County would no longer have an operating hospital in its community.

With respect to F&D's fair market valuation, PYA agreed that the market approach could result in a maximum value of the Hospital approximating \$3.7 million.⁵ However, given the scarcity of cash flow and the lack of tangible assets, PYA expected the Hospital's fair market value to be significantly less than \$3.7 million. Based on their evaluation of the Hospital's financial statements, PYA found that there is negligible value associated with the Hospital and agreed with F&D's finding that the entity's value falls within the range of \$0 to \$3.7 million.

Regarding F&D's community benefit findings, PYA agreed that the community will benefit from the four previously named quantifiable benefits, and found no material variances from the community benefits as defined and quantified by F&D. PYA ultimately concluded that the proposed lease and transfer agreement, along with MCPC's willingness to provide for the working capital needs of the Hospital while financing a replacement hospital, demonstrates an enforceable commitment for fair and reasonable community benefits in excess of the current value of the Hospital's assets.

PUBLIC COMMENT

The public hearing was held on December 15, 2011, at 12:00 p.m. in Peach County, Georgia, at the Community Room, Peach County Fire Department Main Station, 6711 Peach Parkway, Byron, Georgia 31008-6921. Three persons made comments at the public hearing.⁶ All were in favor of the transaction.

Following the public hearing, the record was held open until the close of business on Thursday, December 22, 2011, for any further public comment. This Office received several written comments after the hearing. All were supportive of the transaction.⁷ Counsel for the

⁵ As to F&D's decision to not employ the asset approach, PYA stated that due to the age of the assets along with the lack of working capital, the asset approach would likely have resulted in a determination that the Hospital had negligible value. Additionally, PYA found that it was understandable that F&D not employ the income approach, given the Hospital's lack of historical cash flow.

⁶ Among the persons providing public comments, Dr. John E. Stumbo, the Mayor of Fort Valley, spoke in favor of the transaction. His comments included information outlining how he originally opposed the transaction, but now favors the transaction. Dr. Stumbo is also a member of the Authority.

⁷ Written comments in support of the transaction were received after the hearing from Lawrence C. Collins, the Mayor of the City of Byron; Dr. John E. Stumbo, the Mayor of the City

Authority and MCPC were requested to inform the undersigned in writing by the close of business on Thursday, December 22, 2011, as to whether their respective clients intended to proceed with the proposed transaction as structured or modify the proposed transaction in some respect. By letter dated December 22, 2011, counsel for both parties have submitted 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 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, 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).

of Fort Valley; Perry Swanson, the President of the Peach County Chamber of Commerce; State Senator George Hooks; State Representative Robert L. Dickey, III; Congressman Sanford D. Bishop, Jr.; and Larry E. Rivers, the President of Fort Valley State University.

The Exercise of Due Diligence by the Seller

Factor number 1 is satisfied, as the disposition of the Hospital is authorized by applicable law. With regard to factor number 2, it does not appear that the proposed disposition is inconsistent with the directives of any major donors who have contributed over \$100,000.00. The Authority provided specific testimony that there have been no donors that contributed over \$100,000.00.

The due diligence factors number 3 and 4 necessitate review of the process and procedures employed by the Seller “in deciding to dispose of hospital assets, selecting the acquiring entity, and negotiating the terms and conditions of the disposition.” O.C.G.A. § 31-7-406(3). The Authority did not conduct a formal process for the solicitation and selection of proposals, which is the preferred approach. However, the Authority provided detailed testimony regarding all of the Authority’s efforts to obtain financing for a new facility, its current financial distress, its decision to approach CGHS, with which it had prior relationships, and the steps that it has taken to protect the interests of the Authority in the transaction. Factors 3 and 4 are satisfied.

With regard to factor number 8, there is a management services agreement in place currently pursuant to which CGHS is providing ongoing management to the Hospital pursuant to an Interim Hospital Management Agreement (“Management Agreement”) dated November 1, 2011, for a term of twelve months.⁸ Under the Management Agreement, the Authority pays CGHS a payment of \$12,000.00 for the term of the Agreement and reimburses out-of-pocket expenses incurred by CGHS. The Agreement defines the responsibilities of the parties and does not, by itself, transfer control of the Hospital to CGHS such that it should have been reviewed under the Act. The terms of the Management Agreement appear reasonable. Therefore, factor number 8 is satisfied.

Conflicts of Interest

The disclosure of any conflict of interest involving the Sellers, the Chief Executive Officer of the Hospital and 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 Authority, by the

⁸ Separately, CGHS is providing financial support by way of a line of credit.

chief executive officer of the Authority and by Gerald Bontrager, the Director of Valuation Services for Frazier & Deeter, LLC.

Other than two, the certifications are all without exceptions. Thomas Green, the Chairman of the Authority, disclosed that his law firm may provide legal services to CGHS. Nancy Heiden Peed, the Chief Executive Officer of the Authority, disclosed that she may continue employment with the Hospital after the transaction. The certifications are adequate and the two 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).

With regard to factor number 13, the instant transaction involves the transfer of control of a nonprofit hospital operated directly by a hospital authority to another nonprofit corporation. Health care 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. The Authority 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 Frazier & Deeter on behalf of the Authority and the review by Pershing, Yoakley & Associates at the request of the Attorney General as described herein, the Authority will receive an enforceable commitment for fair and reasonable community benefits in exchange for the use of its assets, as required by the Act.

Other than the contribution of \$2,000,000 in tax funds by Peach County, the Authority is not providing any financing for the transaction. Therefore, I conclude that factor number 7 is inapplicable. As to factor number 10, the Lease and Transfer Agreement provides, upon the expiration of the forty-year term, for the reversion of the leased facilities to the Authority and the transfer of the assets used in the operation of the Hospital to the Authority. However, if MCPC exercises its option to purchase the Hospital, it is required to grant to the Authority, at the closing of the purchase, a right of first refusal to reacquire the Hospital for a period of five years after the exercise of the option. Thus, factor 10 is satisfied.

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 health care purposes consistent with the nonprofit's original purpose. MCPC is a nonprofit corporation and is not paying actual cash consideration to the Authority in exchange for the rights it acquires in the transaction. Thus, there are no proceeds from sale.⁹ The other two charitable purpose factors, 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.

MCPC has made express contractual commitments in the Lease and Transfer Agreement to provide emergency services and has specifically agreed that "[n]o person in need of emergency medical treatment shall be denied admission" to the Hospital. MCPC has also agreed to provide indigent and charity care and to fulfill the Authority's Indigent Care Contract with Peach County. MCPC will also maintain its status as a participating provider in Medicare and Medicaid. Thus, factor 10 is satisfied.

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. The record as a whole demonstrates that the Authority has obtained from MCPC an enforceable commitment to provide health care to the disadvantaged, the uninsured and the underinsured and to provide benefits to the community to promote improved health care.

III.

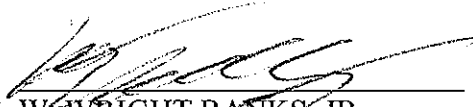
CONCLUSION

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 that the transaction, including the lease and option to purchase

⁹ While there are no cash proceeds, it is worth noting that, after construction of the new hospital facility, the existing hospital and related assets will belong to the Authority. Such existing hospital and related assets remain shall subject to any legal or other restrictions on the use and disposition of the Authority's assets.

pursuant to the Lease and Transfer Agreement, is authorized and that the value of the charitable assets is safeguarded.

This 17th day of January, 2012.



W. WRIGHT BANKS, JR.
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.