PROPOSED ACQUISITION TRANSACTION INVOLVING CATHOLIC MEDICAL CENTER AND MANCHESTER HEALTH SERVICES, LLC, A SUBSIDIARY OF HCA HEALTHCARE, INC.

REPORT OF THE DIRECTOR OF CHARITABLE TRUSTS

January 6, 2025

Since its 1974 formation, Catholic Medical Center ("CMC") has operated one of the largest hospitals in New Hampshire and has been a guiding Catholic and charitable presence on Manchester's west side. In June 2024, following several unsuccessful partnership attempts with other nonprofit healthcare systems and an extended period of financial deterioration, CMC's[1] Board of Trustees entered into an agreement to sell the hospital to an entity controlled by the for-profit HCA Healthcare, Inc.,[2] which has operated hospitals in New Hampshire since the early 1980s and specializes in turning around financially distressed hospitals like CMC.

On June 28, 2024, and consistent with RSA 7:19-b, CMC submitted to the New Hampshire Department of Justice's ("DOJ") Director of Charitable Trusts ("Director") a Joint Notice of Healthcare Acquisition ("Notice"), requesting no action on the proposed sale.[3] The Notice triggered a 180-day period during which the Charitable Trusts Unit ("CTU") conducted a review of whether the proposed transaction met each of the criteria set out by statute.

CMC's decision to sell the hospital is largely the result of financial distress that has brought CMC to the brink of bankruptcy. On top of large losses over the last several years, CMC has projected losses of $41.5 million for its 2024 fiscal year, and its debt totals around $160 million. In April 2024, CMC laid off 142 employees attempting to reduce its losses, but providers and patients continue to leave the hospital, reducing revenues at a greater rate than any reduction in expenses. During CTU's review period

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[1] For ease of reference, throughout this Report the term "CMC" includes Catholic Medical Center as well as its affiliates Alliance Ambulatory Services and Catholic Medical Center Physician Practice Associates, as well as CMC real-estate holding companies, which include Alliance Resources, Inc.; Alliance Enterprises, Inc.; and McGregor Street Office Building, LLC. Additional detail about these entities can be found on the Department of Justice's website within the publicly available documents submitted as part of the Notice.

[2] Specifically, the CMC assets that are involved in the sale will be owned by a newly formed entity called Manchester Health Services, LLC, which is an HCA subsidiary formed for the purpose of this acquisition. Although Manchester Health Services will legally own CMC's assets after the transaction closes, functionally those assets will be controlled and operated by HCA. For that reason, this Report focuses on HCA's history and the relevant concerns for New Hampshire communities and healthcare consumers stemming from an HCA ownership.

[3] CTU's review under RSA 7:19-b does not supplant the requirement of judicial review under the doctrine of *cy pres* prior to the redirection of the assets of a charitable organization. RSA 7:19-b, VI(b). Thus, in order for the transaction to proceed, a court must find that the continued operation of CMC as a nonprofit hospital has become "impossible or impracticable or illegal or obsolete or ineffective or prejudicial to the public interest to carry out" and exercise its authority under the doctrine of *cy pres* to approve the transaction. *See* RSA 547:3-d(I).

itself, multiple cardiac physicians resigned from CMC and Dartmouth Health announced its intent to withdraw labor-and-delivery physicians from CMC. Throughout CTU's review, CMC's competitors took advantage of CMC's instability by hiring away practitioners and staff.

In its current financial state, CMC is unable to continue borrowing and its cash reserves are not enough to meet pressing and necessary maintenance, including replacement of its crumbling power plant, the failure of which would render the hospital wholly inoperable. In late summer 2024, both Moody's and S&P Global downgraded CMC's credit rating. S&P Global observed that the rating would be further reduced if the transaction with HCA did not occur. The S&P Global report states: "We consider the magnitude of CMC's operating losses unsustainable over the long term, and therefore we view positively the recent asset purchase agreement signed with HCA . . . ."

All of these realities weighed heavily on CTU's review of the transaction, and, for those reasons, CTU could not ignore the high risk that CMC might be forced into bankruptcy as a result of its ongoing financial challenges. Throughout this process, CMC leadership represented to the Director and the community a sense of urgency in the sale and the dire consequences if the deal did not close. Most stakeholders interviewed—even including those who expressed concerns about HCA as the acquirer—conveyed significant concern about the possibility that CMC would shut down if the deal did not close.

Although the sale's terms are set forth in full in the Asset Purchase Agreement ("APA"), the agreement's key term is that for a purchase price of $110 million, HCA will acquire the hospital and most of CMC's other assets. Given CMC's years of deferred maintenance, as well as the need to reestablish physician relationships and the new tax obligations, HCA will have to commit significant financial resources into CMC and its operations before it will become financially sustainable. To that end, after the sale closes, HCA has committed to making capital expenditures of $200 million at the hospital over the next 10 years. Beyond that minimum investment, HCA must pay substantial federal, state, and local taxes in connection with its ownership of the hospital. Under HCA's ownership, a revitalized CMC will also become a tax anchor for the City of Manchester and New Hampshire, allowing both the City and the State to make further investments into the community CMC serves. Altogether, HCA's financial commitment toward revitalizing CMC is itself a sorely needed community benefit.

While HCA will own and operate the hospital after the sale closes, CMC will use the sale's net proceeds—after paying or accounting for its substantial debts and other obligations—to fund a newly created New Hampshire charitable nonprofit organization named the Catholic Healthcare Foundation of Greater Manchester (the "Foundation"). The Foundation's purpose will be to improve health, health outcomes, and access to high-quality healthcare for the residents of greater Manchester and the State of New Hampshire in accordance with the healing mission of Jesus Christ.

With that backdrop in mind, in reviewing the Notice, the APA, and through its substantial community engagement, CTU identified four key areas of concern with the

proposed transaction: (1) the lack of protection for labor-and-delivery services at CMC; (2) the lack of any HCA commitment to behavioral health services; (3) the lack of provisions for continuing essential community programs presently supported by CMC; and (4) the community's expectation of oversight over promises made by HCA in acquiring CMC. CTU's concerns about labor and delivery were particularly heightened because of HCA's prior decision to terminate labor and delivery at Frisbie Memorial Hospital shortly after taking ownership.

On balance, and after a thorough but expedient review of the transaction and its circumstances, CTU determined that the APA's terms did not adequately address the community's need for labor-and-delivery services and behavioral health services, the need to continue essential community programs, or provide robust enforcement mechanisms for HCA's commitments in the APA. Furthermore, after its own review, DOJ's Consumer Protection and Antitrust Bureau ("CPAB") concluded that the deal likely violated consumer protection and antitrust laws in certain respects.

Recognizing the risks of a CMC bankruptcy if DOJ objected to the deal, however, DOJ, HCA, and CMC engaged in negotiations to mitigate these concerns. As a result, DOJ, HCA, and CMC have agreed to a set of Conditions which are detailed at the end of this Report, including resolution of CPAB's concerns. The conditions include stronger protections for labor and delivery, inclusion and expansion of behavioral health services, transition support for vital community programs, and enforcement mechanisms for DOJ to ensure the parties remain accountable to the promises they have made to the community and State. In addition, CPAB ensured that necessary terms related to payor contracts were incorporated into an Assurance of Discontinuance to be filed with the Court. If HCA and CMC abide by the Representations and Conditions set forth in this Report, DOJ intends to take no action to enjoin the proposed transaction.

I. The Department of Justice's Role in Reviewing Healthcare Transactions

Through its statutory and common law authority, the New Hampshire Department of Justice, including its Charitable Trusts Unit and its Consumer Protection and Antitrust Bureau, oversees proposed healthcare transactions involving charitable trusts in New Hampshire. DOJ has long possessed general, common-law authority to oversee charitable organizations in New Hampshire. In 1985, however, New Hampshire's legislature determined that additional, specific oversight was needed over complex transactions involving healthcare charities such as CMC and other nonprofit hospitals.

To that end, the General Court enacted RSA 7:19-b, which requires the Director to review specified transactions involving healthcare charities. CTU's investigation is aimed at determining whether the transaction complies with seven separate standards. These standards include, among others, whether the charity's board of directors engaged in due diligence in determining that the contemplated transaction is both in the charity's best interest and the community's best interest. In 2019 and to guide boards of directors and the CTU even more directly, the legislature amended RSA 7:19-b to clarify and emphasize that the board must have a particular focus on how and whether the transaction

meets the community's need for access to quality and affordable physical and mental healthcare services.

Furthermore, recognizing the potential effects on costs and service availability that combinations of healthcare facilities can have on communities and consumers, the legislature crafted RSA 7:19-b in a manner that requires the Director to consult with the Departments of Health and Human Services and Insurance, the public, and other stakeholders as part of its review of the board's due diligence. Each of CTU's reviews of healthcare transactions under RSA 7:19-b has involved extensive outreach to stakeholders and community members. The legislature also established a 180-day maximum review period to ensure that DOJ's review remains expedient and minimally intrusive to business operations even while it is diligent and critical. That timeframe can only be extended if the parties agree to it.

Ultimately, CTU's responsibility under RSA 7:19-b is to ensure that all "changes of control" of healthcare charitable trusts, whether a smaller-sized senior living facility or a large acute-care community hospital, comply with all statutory requirements. As one of those requirements is that the transaction complies with state and federal law, the CTU considers, among other things, whether CPAB has determined that the transaction violates applicable antitrust laws. In effect, then, RSA 7:19-b incorporates CPAB's legal review of the transaction into CTU's review.

CPAB is responsible for enforcing consumer protection and antitrust laws in New Hampshire. Antitrust laws protect the public against proposed transactions that are likely to substantially lessen competition in any particular line of commerce due to the loss of competition between the merging parties.[4] This protection is based on the premise that free, fair, and robust competition encourages healthcare providers to compete to offer the highest quality product or service at the best price to employers and consumers alike, and to encourage innovation. Similarly, consumer protection laws protect consumers from unfair methods of competition. Consumers are the ultimate beneficiary of a competitive market. With this legal foundation in mind, CTU and CPAB conducted a comprehensive review of the proposed transaction between CMC and HCA.

II. CMC's Services, Financial Deterioration, and Decision to Sell to HCA

A. CMC's Purpose and Services

CMC was established in 1974 through the merger of Sacred Heart Hospital (formed in 1892) and Notre Dame de Lourdes Hospital (formed in 1894). Its purpose is "[t]o establish and operate an acute care hospital in the City of Manchester" and "[t]o maintain its identity as an acute care hospital in the Roman Catholic tradition . . . ."[5]

Consistent with its purposes, CMC operates a 330-bed, full-service charitable acute-care community hospital in Manchester. As a Catholic hospital, CMC is required to

[4] *See, e.g.*, DOJ/FTC Horizontal Merger Guidelines (2023).
[5] Notice, Exhibit 2 (CMC Articles of Agreement).

operate in accordance with the moral teaching of the Catholic Church, including the Code of Canon Law, Catholic moral teaching, and the *Ethical and Religious Directives for Catholic Health Care Services* ("ERDs").[6] The ERDs were promulgated by the United States Conference of Catholic Bishops to reaffirm the ethical standards of behavior in healthcare drawn from the Catholic Church's theological and moral teachings and to provide authoritative guidance to Catholic healthcare professionals, patients, and their families on certain moral principles. The local diocesan bishop has the ultimate responsibility for interpreting and applying the ERDs.

CMC is the largest hospital in New Hampshire's largest city, and the second-largest hospital in the state. CMC provides critical services to those who need it most, not only in Manchester but throughout southern New Hampshire. With more than 2,400 employees, CMC is also a principal employer within Manchester and the surrounding area.

CMC's present services include a 24/7 emergency department, general and specialized surgery, cardiology, pregnancy care (including labor and delivery and a Level II NICU), and oncology, among many others. CMC's "New England Heart and Vascular Institute"—its cardiac care business—carries national renown and is a deserved point of pride for the organization.

CMC's labor-and-delivery suites see more than 1,000 births each year. In addition, CMC runs the Women's Wellness & Fertility Center, a unique natural family planning care service that employs physicians who specialize in natural procreative technology, consistent with the ERDs. The Women's Wellness & Fertility Center draws patients from across New England given its limited availability elsewhere.

CMC's emergency department treats an average of 31,000 patients per year. Through a contract with the Mental Health Center of Greater Manchester, CMC's emergency department provides 24/7 emergency psychiatric evaluations and on-call psychiatric coverage with Mental Health Center clinicians to determine appropriate disposition of patients with mental health issues. CMC also operates a four-bed behavioral health unit within its emergency department.

Beyond general hospital services, CMC provides financial and management support to several local and regional community programs. These include the Poisson Dental Facility; the Healthcare for the Homeless Project; and the Pregnancy Care Center. The Poisson Dental Facility specializes in providing dental care to indigent populations, especially children. It is the only safety net dental facility in the greater Manchester community and provides care to patients who are uninsured or receive New Hampshire Medicaid benefits. In 2023, the clinic performed over 3,000 procedures supporting over 1,300 patients. Of its patients, 65% to 75% are children, many of whom the Manchester

[6] The ERDs are publicly available on the United States Conference of Catholic Bishops's website.

Department of Public Health refers through its dental health assessments of children in the public school system.

Healthcare for the Homeless operates as a Federally Qualified Health Center offering integrated healthcare services including primary care, behavioral health, and related health care services. It operates three locations in Manchester that serve over 1,200 patients per year. CMC also supports additional community programs related to prenatal and postpartum care, such as Roots for Recovery and the Pregnancy Care Center.

CMC also serves as the State-contracted provider for the Doorway of Greater Manchester. The Doorway connects individuals suffering from substance-use disorders with services including screening, evaluation, medication-assisted treatment, and long-term recovery support.

B. Financial Circumstances

Unfortunately, CMC's tangible and intangible value to the community has not been matched by profitability. In its 2024 fiscal year, CMC suffered a $41.5 million loss, following a $45.6 million loss in 2023. Factors impacting CMC's financial deterioration included the COVID-19 pandemic, disruption in CMC's anesthesia business, an unsuccessful EMR implementation, as well as a series of affiliation missteps which caused CMC to incur significant expenses, including the failed GraniteOne partnership and a proposed affiliation with Dartmouth Health that did not comply with antitrust laws.

Given those losses and a limited ability to borrow or independently raise additional money, CMC has been unable to fund needed capital improvements. Before COVID-19, CMC budgeted approximately $15 million annually for capital improvements for necessary upkeep and replacement of IT services, infrastructure, and equipment. After the pandemic, CMC could afford to budget only around $10 million annually for this upkeep. This also prevented CMC from taking any steps to expand lucrative health care services such as trauma services, orthopedics, neurosurgery, rheumatology, and otolaryngology (ENT). Ultimately, all of these issues together created a feedback loop, as CMC's instability and lack of investment resulted in lost providers and patients. CMC's loss of revenue from provider and patient departures only further destabilized CMC and limited its ability to invest in capital and upkeep.

Furthermore, CMC carries a heavy debt load—around $160 million—, and its yearly cash losses have placed it near to triggering clauses that could require it to pay the amounts it owes immediately.[7] If triggered, these clauses could force CMC into bankruptcy in a short period of time. And even if these clauses are not triggered, without

[7] As of August 31, 2024, CMC's cash-on-hand—a key financial metric for understanding a business's ability to maintain operations and pay debt in financially challenging circumstances—had depleted to 85 days, a drop of 35% relative to its 2019 fiscal year. As noted by S&P Global, CMC's privately placed debt, which has a higher risk of acceleration, requires a cash-to-debt ratio of 60%. In its 2024 fiscal year, CMC's cash-to-debt ratio has been at or close to this threshold.

an outside infusion of funds, CMC appears unlikely to turn its financial circumstances around before it runs out of cash.

C. Decision to Sell to HCA

Even before its present financial stress, CMC's leadership[8] determined that it would be unable to continue financially as an independent community hospital. Thus, CMC's leadership has sought partnerships, affiliations, or acquisitions with other hospitals or hospital systems for more than two decades. To date, none of CMC's attempts have been successful. Moreover, these failed affiliation attempts have caused CMC to incur significant financial losses. For example, CMC attempted twice to affiliate with Dartmouth Health, but the parties failed to agree to terms that would have satisfied RSA 7:19-b as well as state and federal antitrust laws.

After CMC's most recent affiliation attempt with Dartmouth Health ended in May 2022, CMC began searching for a new deal almost immediately. As part of its search process and with assistance from an outside advisor, The Chartis Group, CMC's leadership identified a number of potential acquirers and began outreach to them.

Through early 2023, CMC's leadership focused on identifying and garnering interest from new potential partners. The ERDs recognize that while collaborative relationships with Catholic institutions may not always be practicable, "[w]hen considering a collaboration, Catholic health care administrators should first seek to establish arrangements with Catholic institutions or other institutions that operate in conformity with the Church's moral teaching."[9] CMC's leadership thus remained mindful that they must first attempt to collaborate with other Catholic institutions to ensure conformity with Catholic teaching. CMC, however, was unable to find a Catholic healthcare system that was both interested in a partnership and possessed enough resources to ensure the hospital's long-term viability.

By spring 2023, a potential sale of the hospital to HCA was the CMC Board's primary focus. Despite HCA's experience and capability to turn around severely distressed hospitals, CMC's leadership expressed some initial hesitation about a sale to HCA, given that it is a large for-profit healthcare system with limited religious affiliations. To learn more about how the hospital will be run by HCA, a CMC team, consisting of members of its Board and healthcare practitioners, visited an HCA-owned hospital in Miami, Florida, which HCA has operated consistent with the ERDs since its acquisition in 2011. Roman Catholic Bishop of Manchester Peter Libasci also directed the CMC team to meet with Archbishop of Miami Thomas Wenski. The CMC Board also received presentations from HCA representatives and had the opportunity to ask HCA representatives questions about their plans for CMC. These meetings appear to have allayed CMC leadership's concerns about HCA and its commitment to running CMC in a

[8] CMC is governed by (1) a Board of Trustees consisting of between 12 and 25 members; (2) CMC Healthcare System, which retains certain powers over CMC as its sole member and juridic person; and (3) the Bishop of Manchester, who exercises ultimate authority over both CMC and CMC Healthcare System.
[9] ERDs at p.23.

manner consistent with the ERDs. The CMC Board unanimously approved the APA in June 2024.

In addition to Bishop Libasci's review, engagement, and support of the transaction, the deal required approval from the Holy See in Rome. This approval process included not only the Holy See's assessment about how the sale ensures continued adherence with the ERDs, but also review for compliance with Canon Law that requires an assessment of the value received for the assets. On December 6, 2024, CMC received confirmation that all required conditions and approvals of the Diocese and the Holy See were satisfied.

III. HCA Healthcare, Inc.

HCA is a for-profit corporation that is publicly traded on the New York Stock Exchange. HCA's primary business is operating general, acute-care hospitals. It operates 178 general acute-care hospitals across the United States and England.[10] Although it is headquartered in Nashville, Tennessee, HCA has owned and operated hospitals in New Hampshire since 1983, when it acquired Parkland Medical Center. Presently, HCA owns Portsmouth Regional Hospital, Parkland Medical Center (Derry) and Frisbie Memorial Hospital (Rochester) in New Hampshire, totaling 432 licensed beds.[11] HCA also owns two ambulatory surgery centers, three freestanding emergency rooms, and one urgent care clinic in New Hampshire. After the transaction with CMC closes, HCA's New Hampshire presence will nearly double to 762 licensed beds.

HCA's acute-care hospitals "typically provide a full range of services to accommodate such medical specialties as internal medicine, general surgery, cardiology, oncology, neurosurgery, orthopedics and obstetrics, as well as diagnostics and emergency services."[12]

In 2020, HCA acquired Frisbie Memorial Hospital. At the time, Frisbie delivered approximately 100 babies per year. In 2022, however, HCA discontinued labor-and-delivery services, leading to a review by DOJ into whether HCA violated any conditions related to its acquisition of the hospital. HCA and DOJ resolved the dispute without the need for litigation after HCA agreed to contribute $750,000 to the Greater Rochester Community Health Foundation and release certain spending and other restrictions on $2 million so those funds could be made immediately available to the Foundation for grants to the community.

More recently, in late 2023 the State of North Carolina sued HCA, alleging that it failed to comply with certain terms in a similar purchase agreement requiring HCA not to discontinue emergency department and oncology services. HCA disputes North Carolina's allegations and the suit remains ongoing.

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[10] HCA also operates several specialty hospitals and other healthcare facilities.
[11] HCA acquired Portsmouth Regional Hospital in 1983 and Frisbie Memorial Hospital in 2020.
[12] HCA 2023 Form 10-K.

Despite those recent issues, HCA has successfully run hospitals in New Hampshire for more than 40 years. It also has a long history of turning around hospitals—including Frisbie—that, like CMC, are in severe financial distress. HCA represents that in 2023 it treated more than 7,000 New Hampshire behavioral health patients through inpatient, outpatient, and emergency services. Parkland and Portsmouth Hospital also serve as designated receiving facilities for the New Hampshire Department of Health and Human Services. In total, HCA operates 58 inpatient behavioral health beds, which are a critical community need. HCA has also participated in and supported a number of community health programs including training programs for healthcare professionals.

Finally, as a for-profit entity conducting business in New Hampshire, HCA generates tax revenues for state and local agencies. In 2023, it paid $259.3 million in salaries and benefits operating its New Hampshire locations and paid state and local taxes totaling $67.9 million. HCA's acquisition of the hospital will result in the creation of a significant new tax revenue source for the City of Manchester and increase HCA's already substantial state and local tax payments.

IV. Catholic Health Care Foundation of Greater Manchester

Prior to the transaction's closing, CMC will form a New Hampshire voluntary corporation named The Catholic Health Care Foundation of Greater Manchester, which will be established exclusively for charitable, educational, and religious purposes. CMC provided the Foundation's draft Articles of Agreement and Bylaws as part of its submission to CTU.

The Foundation's principal purpose will be to improve health, health outcomes, and access to high-quality healthcare for the residents of greater Manchester and the State of New Hampshire in accordance with the healing mission of Jesus Christ. The Foundation's purposes and activities will directly and indirectly further the purposes of the Roman Catholic Church within the Diocese of Manchester, in accordance with the ERDs. The Foundation plans to accomplish its goals by issuing grants to nonprofit organizations improving health and wellness consistent with the teaching of the Roman Catholic Church and scholarships to those pursuing healthcare professions.

The Roman Catholic Bishop of the Diocese of Manchester will be the Foundation's sole member with certain reserved powers, and the Foundation will be governed by the Bishop and a local Board of Trustees. The Foundation's Board will have between 5 and 11 trustees, who will be nominated by the Board and approved by the Bishop. Three of these trustees will be *ex officio* trustees: (1) the President of Catholic Charities of New Hampshire; (2) the Diocesan Cabinet Secretary for Development and Communications of the Roman Catholic Diocese of Manchester; and (3) the Vice President of Mission Integration of the hospital.

The Foundation's Board will be responsible for identifying healthcare needs in the community, determining priorities, and providing funding for programs to meet those needs. Examples of grants to improve the health in the community may include funding

needed to continue critical charity care which CMC has historically provided through the Poisson Dental Clinic and Healthcare for the Homeless programs. The Foundation also anticipates providing scholarships to those pursuing professions in the healthcare industry.

V. Key Terms of the Proposed Sale of CMC to HCA

The terms governing HCA's purchase of CMC are set forth in the APA, which is publicly available on the Department of Justice website. The APA's key terms, as relevant to CTU's review, are explained below.

A. Purchase Price

HCA agreed to purchase from CMC substantially all of its assets, including the hospital. In exchange for those assets, HCA will pay CMC $110 million. Some of CMC's assets are not included in the transaction and will remain CMC's property after the transaction closes. These assets include, for example, CMC's ownership interest in the Bedford Ambulatory Surgery Center; any assets related to St. Peter's Home; and CMC's accounts receivable—i.e., money that CMC is owed for services it already performed—as of the transaction's closing date. CMC's expectation is that collection of its accounts receivable will make up a large portion of the funds it has to pay its creditors and endow the Foundation after closing.

After the transaction closes, CMC will no longer own or operate the 330-bed hospital. The transaction with HCA is not an affiliation or partnership. Control of the hospital cannot revert to CMC.

B. Local Governance

There will be limited local governance of CMC after the transaction closes. A new hospital "Board of Trustees" will be created that must initially be comprised of residents of southern New Hampshire. While this new Board of Trustees will have some input into hospital operations, including the quality of care and the ability to make recommendations about budgeting and capital expenditures, the Board of Trustees will be merely advisory in nature and is fully beholden to HCA's authority.

C. Catholic Identity

Under the terms of the APA, HCA is required to enter a "Catholic Identity Commitment Agreement" ("CICA") with the Bishop and the Foundation. The CICA requires HCA to operate the hospital in compliance with the ERDs. The CICA provides that HCA will adopt an ERD Operational Policy, which will establish procedures and mechanisms to ensure that the hospital complies with the ERDs. The ERD Operational Policy, and any changes to the policy, must be approved by the Bishop.

In addition to the foregoing, among other things, the CICA provides that the Bishop shall approve any changes to the hospital's mission and core value statements; shall have the right to nominate three members of the hospital's new Board of Trustees;

shall be given an opportunity to advise HCA about the appointment of the hospital's Chief Executive Officer; shall approve the appointment of a Vice President of Mission Integration; and shall have the right to appoint a member to the Board of Trustees's Ethics and Mission Committee. The CICA provides that HCA will continue to offer certain pastoral care services at the hospital, including daily Mass, certain Sacraments, and hospital chaplains; will continue to prominently display in the hospital Catholic religious art, pictures, and symbols, including crucifixes; and will ensure that the hospital's senior leaders attend a program of Catholic formation. The CICA includes procedures for addressing any dispute regarding compliance with the ERDs, but the Bishop ultimately has the right to terminate the CICA if he determines that HCA is in breach and, under those circumstances, HCA will forfeit the hospital's Catholic identity.

D. Hospital Investment & Operations

In the APA, HCA promised to (1) expend a specified amount of money at the hospital over a period of 10 years; (2) continue operating the hospital and certain services, with broad exceptions, for a period of 10 years; and (3) implement a charity care policy. Each of these promises is discussed in further detail below.

1. Investment Commitments

Under the APA, HCA must make $200 million in capital expenditures at the hospital within 10 years. Replacement of the hospital's decaying power plant is a likely priority and need, and the cost of replacing it has been estimated to be approximately $43 million. A primary factor in CMC's financial peril has been its inability to provide the necessary investment to appropriately maintain the hospital, which has led to physician and patient departures. HCA's commitment in this regard will help ensure the sustainability and availability of healthcare services at the hospital moving forward.

2. Commitment to Maintain Core Services

Subject to several exceptions, the APA prohibits HCA from discontinuing certain enumerated health services at the hospital for a period of 10 years. The covered services—defined as the "Core Services" in the agreement—are identified as the following:

- Emergency department
- Inpatient surgery and medical
- Intensive and critical care
- Obstetrics and gynecology
- Pregnancy
- Newborn care
- Outpatient surgery

- Heart and vascular
- Neurological
- Diagnostic imaging

HCA's commitment in the APA to "Core Services" is subject to several exceptions. Generally stated, these exceptions include, among others: (1) insufficient qualified available physicians or clinical staff necessary to provide the service; (2) the patient volume for the service declines below 67% (i.e., two-thirds) of the average monthly patient volume, or the actual or projected patient volume becomes insufficient to maintain the level of safety and quality for the service to match other HCA facilities; and (3) the service suffers a financial loss for 12 consecutive months following the first anniversary of closing.

Early in its review, CTU identified a concern with HCA's commitment to labor-and-delivery services at CMC, which was only further heightened by Dartmouth Health's sudden decision to withdraw labor-and-delivery physicians from CMC later this year. To address this concern, CTU obtained a firm commitment from HCA to maintain labor-and-delivery services for 10 years, subject to exceptions that are more limited than those in the APA. Moreover, recognizing that the APA was uncertain about whether HCA would be required to make efforts to, for example, retain staff and maintain patient volumes, CTU obtained a commitment from HCA to make good-faith efforts to ensure that certain events that may permit a service to be discontinued do not occur. CTU also obtained a commitment from HCA to continue CMC's existing emergent behavioral health services and to expand the number of DRF beds HCA operates within the State's mental health system.

3. Charity Care

Under the APA, HCA must provide a charity care policy at the hospital for at least 10 years. HCA intends to adopt the charity care policy that it currently provides at its other New Hampshire facilities. CMC's Board concluded that HCA's charity care policy presently in use at HCA's three other New Hampshire hospitals is more generous than CMC's current charity care policy.

E. Enforcement

Similar to HCA's 2020 acquisition of Frisbie Memorial Hospital that established the Frisbie Foundation, the APA provides that the Foundation, as CMC's successor, will largely enforce the APA terms. At the same time, however, the APA limits the Foundation's remedies if HCA breaches its commitments. For example, as to a breach of the protections for Core Services, the Foundation may only raise a concern with an appointed accounting firm or proceed to arbitration. The APA provides limited ability for CMC or the Foundation to bring HCA to court if HCA fails to abide by its commitments.

A common refrain CTU heard during its review period from stakeholders and the general public was the importance of ensuring some oversight over HCA and the hospital

moving forward, particularly in light of the recent dispute about the closure of labor-and-delivery services at Frisbie Memorial Hospital and Beth Israel Lahey Health's controversial decision to terminate certain services at Exeter Hospital. To that end and in addition to its authority to enforce the additional Representations and Conditions imposed as part of this Report, CTU obtained independent enforcement authority over HCA's obligations in the APA that most affect the community, including the capital expenditure and Core Services commitments just discussed. That authority comes without the strings attached to the Foundation's enforcement ability and provides additional assurances to the community in the event of a dispute.

VI. Charitable Trusts Unit's Review

After receiving the Notice, CTU posted it and information pertaining to it on the Department of Justice website. The posted information was updated throughout CTU's review to include the non-confidential documents submitted to CTU by the parties. CTU also contacted the Commissioners of Health and Human Services and Insurance to alert them to the Notice and to request their input on the transaction consistent with RSA 7:19-b, IV(b). Both the Insurance Commissioner and the Commissioner of Health and Human Services provided CTU with helpful input.

As provided for by statute, CTU retained outside healthcare experts to aid its review. Specifically, CTU retained Tyler Brannen, MHS, FHFMA, Senior Health Economist in Berry Dunn's Health Analytics Practice Group, to analyze the proposed transaction, particularly with respect to its potential impact on the greater Manchester community. CTU hired Mr. Brannen because he possesses extensive experience analyzing issues related to the healthcare system and community health needs. In addition to reviewing the parties' submissions to CTU and available data, Mr. Brannen conducted interviews with certain stakeholders and participated in CTU's interview of the CMC Board. Mr. Brannen's report is attached as Exhibit A and is incorporated by reference into this Report.

CTU retained Berkeley Research Group ("BRG") to provide an opinion about whether the transaction represented fair market value for CMC's assets. BRG's Fairness opinion is discussed herein and is attached as Exhibit B.

CTU also engaged in its own extensive investigatory process. CTU submitted two formal requests for additional information from CMC and HCA, dated August 12, 2024, and October 2, 2024. This process resulted in the submission of 30 additional exhibits constituting hundreds of pages of materials and was completed by October 22, 2024. All the correspondence, documents, and other information submitted by CMC and HCA pertaining to the proposed transaction collectively are considered to be the "Notice."[13]

[13] CTU posted to its website the correspondence and documentation submitted to the CTU by the parties, with the exception of items not subject to disclosure under the New Hampshire Right to Know law, RSA 91-A.

Throughout its review process, CTU accepted public comment in multiple forms including written communications, phone calls, and comments submitted at the public hearing. CTU received over 100 public comments through correspondence directly sent to the Director. Public sentiments included current and former HCA employees claiming experiences with understaffing at HCA facilities; community members concerned that CMC will lose its Catholic identity; and concerns about CMC's takeover by a for-profit entity.

CTU conducted a public hearing on October 23, 2024, at Memorial High School in Manchester, New Hampshire. Approximately 200 people attended the two-hour hearing in person, and 337 people attended the hearing remotely. Scott Spradling of the Spradling Group moderated the hearing. Representatives from CMC (chairman of the Board of Trustees Tim Riley and Trustee Matt Albuquerque) and HCA (Dr. William Lunn) offered presentations about the deal. CMC CEO Alex Walker offered brief remarks related to CMC's labor-and-delivery services. CTU's retained expert, Mr. Brannen, also provided a presentation.

A question-and-answer session followed the presentations, and every audience member who wished to pose a question or make a comment had the ability to do so. Not every person who posed a question through Zoom had the opportunity to have their question read and answered at the public hearing. After the hearing, CTU collected the questions, condensed duplicate or similar questions, and asked the parties to provide written answers to them. CTU posted the parties' answers to these questions on its website. For those who could not attend the public hearing, CTU posted a recording to its website.

CTU and CPAB toured both CMC and Frisbie Memorial Hospital, given its recent acquisition by HCA. During the tour of Frisbie, HCA representatives touted HCA's investments in the hospital, including a new inpatient physical rehabilitation center. By contrast, during the tour of CMC, its poor condition and lack of investment were apparent. Most notable was the condition of CMC's power plant, which is littered with chunks of fallen concrete from the decaying surrounding structure. Due to space constraints, CMC presently uses modular trailers to conduct critical testing as well as provide supplemental utilities. CMC representatives also explained several inefficiencies resulting from the hospital's ad hoc layout and how it could be improved with investment. CMC representatives believe that HCA's capital expenditure commitment and its experience turning around financially distressed hospitals will remedy these issues.

CTU also met in person or by telephone with a wide spectrum of stakeholders with interests in public health, healthcare, HCA operations, CMC's Catholic identity, and the City of Manchester. Among those, a bipartisan group of state and local officials expressed support for the proposed transaction to CTU. In both public remarks and in a meeting with CTU, Manchester Mayor Jay Ruais conveyed his unequivocal support for the proposed transaction. He noted the importance of retaining a hospital on Manchester's west side to ensure healthcare access. Mayor Ruais spoke with the City of

Rochester's Mayor, Paul Callaghan, regarding HCA's operation of Frisbie Memorial Hospital. Mayor Callaghan indicated to Mayor Ruais that HCA has been a good partner for Rochester.[14] Mayor Ruais also spoke with CMC and HCA leadership throughout the process and informed CTU that he supported the deal as negotiated. Mayor Ruais submitted an Op-Ed in the *Union Leader* endorsing the deal stating that it "would ensure immediate access to the financial and operational resources needed to allow the hospital to continue its legacy of providing high-quality care to Manchester for many more decades." He observed that tax revenue from the deal would support education, law enforcement, infrastructure, and housing initiatives as well as keep thousands of good-paying jobs in the community.

Similarly, former State Senators Lou D'Allessandro and Donna Soucy each wrote a letter to CTU expressing their support of CMC's purchase by HCA. Senator D'Allessandro stated that CMC "is one of the major employers in the area with a workforce of over 2,500 people that provide high-quality jobs to many in the community. . . . With HCA's partnership, I am pleased that we will be able to keep access to high-quality care right in New Hampshire." Senator Soucy wrote that "Manchester would be best served maintaining CMC as a viable resource on the West side of Manchester to meet growing patient demand" and stated "[g]iven their 40-year track record in the Granite State, HCA is well-positioned to make an impact in Manchester. I've seen firsthand the good work they do at their other facilities . . . and I remain confident they will bring the same spirit and determination to revitalize CMC."

Community providers in Manchester told CTU that they recognized the need for CMC to restructure due to its financial status; however, they also expressed concern as to whether HCA would be a real community partner in providing behavioral health services as well as participating in Manchester's Community Needs Assessment.

During his interview, Bishop Libasci described CMC's history and importance to Manchester. He described CMC's hospital as a beacon of Catholic presence and Catholic health on Manchester's west side, and, for that reason, the Catholic Identity Commitment Agreement was a critical part of the sale. He also overviewed CMC's financial challenges including the lack of funds to make longstanding, necessary renovations. He explained that, while he is permitted to have a delegate serve in his place on the Board, he chose to act as his own representative throughout the sale process including the due diligence of selecting an acquirer and negotiating the proposed transaction. Bishop Libasci regularly attended Board meetings to stay informed and provide input to the search and acquisition process. Biship Libasci also emphasized the success of HCA's ownership and operation of Mercy Hospital, a Catholic hospital in Miami, Florida, as a key in the choice to sell CMC's hospital to HCA.

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[14] *See also* Paul Callaghan: HCA Healthcare a part of the 'Rochester Miracle', *Union Leader* Op-Ed (August 19, 2024).

CTU met with CMC's Board in late October 2024. The Board includes a diverse group of individuals including the Bishop, CMC healthcare providers, and prominent members of the Manchester community. The Board members in attendance actively participated throughout the meeting. They discussed the financial challenges of operating an independent hospital and how hospitals throughout the State have selected partners while CMC has been left behind. During the meeting, CTU questioned the Board about why they agreed to sell CMC to HCA. In particular, CTU asked the Board about their choice of HCA as a partner, their involvement in negotiating the terms and conditions of the agreement, and why they determined that the transaction was in CMC's and the community's best interests.

Board members explained the several criteria they set out in looking for a partner, highlighting the need to maintain CMC's Catholic identity and the need for capital investment, among several other factors. One Board member indicated that, after CMC's financial decline accelerated in late 2023, they were concerned that HCA would walk away from the deal given the increasing resources likely needed to turn the hospital around. With no suggestions of dissent, the Board told CTU that HCA was an ideal partner for CMC and was the only organization that met all of the Board's objectives.

While the Board discussed their decision to sell to HCA in detail, the Board provided CTU with limited details about the due diligence they conducted to ensure the continued provision of essential healthcare services at CMC such as labor and delivery or behavioral health; to ensure continuity of community programs like Poisson Dental Facility or the Healthcare for the Homeless Project; or to ensure that HCA could be held to its commitments through appropriate oversight and enforcement mechanisms. Rather, the Board's sentiment was that the risk of the hospital closing outweighed the need to focus on those issues.

VII. Application of the RSA 7:19-b Review Standards

RSA 7:19-b applies to this transaction because under the APA's terms, HCA will purchase substantially all the assets of CMC, a healthcare charitable trust. Under RSA 7:19-b, CTU must review a proposed transaction and assess whether it complies with a set of minimum standards. If it does not, DOJ must object to the transaction or identify conditions that would bring it to a standard which is consistent with the law.[15] The following discussion sets forth CTU's analysis and conclusions with respect to each of those minimum standards.

A. RSA 7:19-b, II(a), Permitted by Law

By default, a proposed transaction fails the minimum standards under RSA 7:19-b if it violates other law. Specifically, RSA 7:19-b, II(a), requires CTU to determine whether "[t]he proposed transaction is permitted by applicable law, including, but not

[15] *See* RSA 7:19-b, IV.

limited to, RSA 7:19–32, RSA 292, and other applicable statutes and common law." This transaction implicates two key bodies of law: antitrust and *cy pres*.

1. Consumer Protection and Antitrust Review

The Department of Justice's Consumer Protection and Antitrust Bureau investigated the proposed transaction to assess its impact on competition for healthcare services in the region. CPAB's investigation concluded that HCA's acquisition of CMC would likely result in a substantial lessening of competition for inpatient cardiac services in Southern New Hampshire. This lessening of competition would likely result in increased costs for healthcare services and potential adverse effects on access to certain services.

As of the date of this Report, CPAB and HCA entered into an Assurance of Discontinuance to resolve CPAB's concerns. In reaching this agreement, CPAB recognizes the financial condition of CMC and its importance to the Manchester community. Although the transaction poses risks of anticompetitive effects, it is in the public interest for CMC to continue providing high-quality healthcare to the Manchester community. The terms in the Assurance are intended to mitigate some of those effects and ensure CMC's long-term viability. Considering this Assurance of Discontinuance and provided that HCA abides by its terms, CTU does not have a basis to conclude that the transaction would violate consumer protection and antitrust laws at this time.

2. Judicial Review

Because CMC is a charitable trust, its assets are restricted to use to further its charitable purposes, namely, operating a hospital in the Roman Catholic tradition.

Cy pres is an equitable doctrine applied by the courts to modify the charitable purpose of a charitable trust in appropriate circumstances.[16] A substantial change in the purpose of a charitable organization or a change in the use of its restricted or even unrestricted assets often requires judicial review under the doctrine of *cy pres*.[17]

If the deal closes, CMC will no longer operate an acute-care hospital in Manchester in the Roman Catholic tradition, so its charitable assets will have changed in purpose. To lawfully accomplish that change in purpose, CMC began a *cy pres* proceeding in state court. CMC represents that its *cy pres* petition will be amended to include a request that the court approve the transfer of CMC's restricted assets to the Foundation.

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[16] *See* Restatement of Charitable Organizations, § 3.02; Restatement (Third) of Trusts, § 67. As noted, RSA 7:19-b, VI(b), provides that the CTU's review under RSA 7:19-b does not "supplant or restrict the standards that may lawfully be applied in connection with the doctrines of cy pres, deviation, and termination."

[17] *See, e.g.*, RSA 498:4-a; 547:3-d; 564-B:4-413; *see also* Restatement of Charitable Nonprofit Organizations, § 3.01 (2021).

CTU has reviewed CMC's petition for *cy pres* regarding its proposed change of purpose and will assent to the requested relief subject to the parties' compliance with the Representations and Conditions provided below.

B. RSA 7:19-b, II(b), Due Diligence

The bulk of CTU's work reviewing acquisition transactions like the one proposed by CMC and HCA relates to whether CMC's decision makers exercised "due diligence." Specifically, under RSA 7:19-b, II(b), CTU must object to the deal unless CMC's Board exercised due diligence in all of the following:

- "selecting the acquirer";
- "engaging and considering the advice of expert assistance";
- "negotiating the terms and conditions of the proposed transaction";
- "determining that the transaction is in the best interest of the health care charitable trust" (i.e., in CMC's best interest); and
- determining that the deal is in the best interest of the "community or communities which it serves, including the community's or communities' need for access to quality and affordable physical and mental health care services."

1. Selecting the Acquirer, Engaging Experts, Negotiating the Terms and Conditions, and Best Interest of CMC

As discussed in CTU's Report Regarding the Governance of LRGHealthcare,[18] hospitals are among the largest, most complex, charitable organizations in New Hampshire. Hospital board members therefore must devote more time and attention to making major decisions than their counterparts who govern less complex charities.[19] As a result, before entering into transactions that could impact the hospital's ability to carry out its charitable mission, board members must not only apply their own particular skills and expertise in reviewing the transactions, they usually must consult with outside experts to advise them on whether the transactions are in the best interests of the charitable trust in light of its purpose.

For approximately two years, CMC's Board devoted a considerable amount of time and attention discussing potential partners and reacting to feedback from CMC officers and outside experts about discussions with potential partners and acquirers. Board members used their own skills and experiences but also considered the expert advice of their outside consultants. Board members recognized the need not only to find a

[18] *See* Report of the Attorney General, Charitable Trusts Unit Regarding the Governance of LRGHealthcare (April 21, 2022).
[19] *See* Restatement of Charitable Nonprofit Organizations, § 2.03, cmt. b.

partner that could invest in CMC's deteriorating facilities but one that would also remain committed to Catholic ethics and traditions.

In particular, when evaluating whether HCA would be an appropriate acquirer and considering the need to continue Catholic ethics and traditions at the hospital, Board members traveled to Miami, Florida, to visit a Catholic-affiliated HCA hospital. Board members also met with and discussed their concerns with HCA representatives. The Board also considered other potential alternatives to a sale to HCA but concluded that none would be able to meet CMC's needs as closely as the proposed transaction with HCA.

After a thorough review process, CMC's Board voted unanimously to begin exclusive negotiations with HCA. During these negotiations, CMC's Board received regular updates on the status and provided thoughtful, critical input to the process. The board was acutely aware of CMC's financial circumstances and probable inability to return to profitability without outside investment. As discussed, without outside investment, CMC entered a feedback loop that was likely to culminate in a bankruptcy with the closure of the hospital a potential result. Accordingly, the Board justifiably reasoned that a sale of assets to HCA and a conversion to a grant-making foundation was the most realistic way to ensure the hospital's viability moving forward. The Board also ensured that HCA agreed to the Catholic Identity Commitment Agreement, which provides assurance that HCA will continue to operate the hospital in a manner consistent with the ERDs.

Given all of the information provided, CMC's Board demonstrated that it conducted sufficient due diligence with respect to selecting HCA as an acquirer; in engaging and considering expert advice; in negotiating the terms and conditions of the sale; and in negotiating a deal that is in CMC's best interest.

2. Best Interest of the Served Communities

Beyond simply identifying an acquirer and negotiating a deal that is in its own best interest, however, a healthcare charitable trust's board of directors must also exercise due diligence in determining that the hospital's sale is in the community's best interest.[20] This requirement is consistent with the board's fiduciary duty of loyalty under common law to "act in good faith and in a manner the fiduciary reasonably believes to be in the best interests of the charity in light of its purposes."[21] And unlike the trustees of for-profit corporations, "fiduciary duties are owed to the charity's purposes rather than to a specific person or persons."[22]

RSA 7:19-b requires that a board consider how the transaction would address community needs, "including the community's or communities' need for access to

[20] RSA 7:19-b, II(b).
[21] *See* Restatement of Charitable Nonprofit Organizations, § 2.02(a); *see also* Opinion of the Attorney General, Fiduciary Duty of Corporate Members of Charitable Organizations, at 3 (Feb. 13, 2017).
[22] Restatement of Charitable Nonprofit Organizations, § 2.02, cmt. a.

quality and affordable physical and mental health care services." RSA 7:19-b, II(e). Community needs may be identified in the community health needs assessments developed pursuant to RSA 7:32-f. Moreover, the concept of community needs includes consideration of the three outcomes that are evaluated with respect to any health care system: cost, quality, and access.[23]

Considering all the information received during its review, CTU determined that the APA terms, as negotiated, were insufficient for CTU to conclude the proposed transaction was in the community's best interest. Specifically, the APA omitted key community healthcare needs, such as the continuation of programs such as Poisson Dental and Healthcare for the Homeless; adequate protections for labor-and-delivery services and behavioral health; and enforcement of the agreement. CMC's Board failed to persuasively explain to CTU their reasoning for why these were not focal points. For those reasons, CTU did not view the APA terms as sufficient particularly given the heightened community concern about HCA's discontinuation of labor and delivery at Frisbie Memorial Hospital, the potential that a for-profit hospital system may eliminate essential but less profitable service lines, and community expectations for oversight over HCA's commitments.

To be sure, CMC's perspective in this regard appears to have been driven largely by CMC's financial circumstances and a belief that any deal that ensured a hospital will remain on Manchester's west side in some form was better for the community than no deal at all. Of course, CTU could not discount the substantial risk of harm to the community—including a sizeable risk that the second-largest hospital in the State would close entirely—if CMC were to enter bankruptcy. Nor could CTU ignore other inherent community benefits from the deal, including HCA's experience in turning around financially distressed hospitals, its $200 million capital expenditure commitment, and the addition of a new anchor to Manchester's tax base.

But CMC's Board also insisted that they selected HCA not merely because of its capability to ensure the hospital's sustainability but also because the deal with HCA met specific criteria driven by CMC's unique needs. While the hospital's continued existence undoubtedly serves the community, CMC's Board did not provide evidence indicating that it lacked *any* ability to focus on or advocate for commitments from HCA relative to specific community healthcare needs, such as labor and delivery, behavioral health, and community programs.

As such, the conditions imposed with agreement from CMC and HCA reflect those absent focal points and adequately resolve those shortcomings. As to Poisson Dental and Healthcare for the Homeless, CTU obtained a commitment from HCA to provide financial support as they transition away from CMC. As to labor and delivery, CTU obtained additional language clarifying that labor and delivery must be maintained as a protected service, a five-year commitment to maintain the service notwithstanding

[23] *See* Community Benefit and Market Changes in New Hampshire, N.H. Ctr. for Pub. Policy Studies (2017).

financial losses, and a commitment to make good-faith efforts to ensure that the Contingencies which would permit Core Services to be discontinued do not occur. As to behavioral health, CTU obtained a commitment from HCA to add 10 new designated receiving facility beds in New Hampshire, a substantial expansion of behavioral health services. Additionally, CTU ensured that the existing emergent behavioral health services at the hospital will be a "Core Service" subject to the APA's restrictions on discontinuation. Finally, and as already discussed above, CTU obtained authority to enforce these conditions without the strings and limitations placed on the Foundation. And, while these conditions serve key community needs, they do not come at the cost of unduly burdening HCA's ability to return CMC to profitability.

With these conditions agreed to and considering the unacceptable risk of harm that a CMC bankruptcy would pose to the community, CTU's concerns about the APA's terms related to community needs were mitigated. Accordingly, this legal requirement is satisfied.

C. RSA 7:19-b, II(c), Conflicts of Interest

RSA 7:19-b, II(c), provides:

> Any conflict of interest, or any pecuniary benefit transaction as defined in this chapter, has been disclosed and has not affected the decision to engage in the transaction;

Pecuniary benefit transactions are financial conflict of interest transactions involving a charitable organization's directors, their family members, their employers, or their businesses.[24] Pecuniary benefit transactions are not prohibited under New Hampshire law, provided that they are in the best interest of the charity and certain conditions are met, including the exclusion of the interested board member from deliberations and votes and the disclosure of the transaction to the Director.[25] CTU has not identified any such undisclosed conflicts of interest.

D. RSA 7:19-b, II(d), Fair Value of Transaction

RSA 7:19-b, II(d), provides:

> The proceeds to be received on account of the transaction constitute fair value therefor;

Under the transaction's terms, CMC will receive $110 million from HCA as proceeds for its assets. Both CTU's and CMC's retained experts concluded that $110 million was a "fair market value" as proceeds for CMC's assets.

[24] RSA 7:19-a.
[25] RSA 7:19-a, II.

CTU's retained expert BRG reviewed extensive CMC financial and operational information, toured CMC's facilities, and interviewed CMC's senior leadership, as well as board representatives. BRG also spoke with CMC's retained experts, VMG Health and Chartis, regarding their work and conclusions. BRG applied the three traditional approaches to value in its fairness opinion analysis: asset-based (Adjusted Balance Sheet method); market (Guideline Transactions method); and income (Discounted Cash Flow method). After completing its analysis, BRG determined that a reasonable and supportable range of fair value for CMC's assets is $92 million to $102 million.[26]

Given these expert opinions, CTU found no reason to believe that the proceeds which CMC will receive for its assets were not fair value. Indeed, CTU's expert concluded the $110 million purchase price is *above* fair market value. This fact, plus the required $200 million capital expenditure as well as HCA's necessary state and local tax payments shows that HCA has committed itself to investing the substantial resources necessary to ensure the hospital remains a fixture on Manchester's west side for the foreseeable future.

E. RSA 7:19-b, II(e), Use of Charitable Assets

RSA 7:19-b, II(e) provides:

> The assets of the health care charitable trust and any proceeds to be received on account of the transaction shall continue to be devoted to charitable purposes consistent with the charitable objects of the health care charitable trust and the needs of the community which it serves;

The net proceeds of the transaction will ultimately benefit the Foundation whose purposes, as described above, will be consistent with the charitable objects of CMC, including Catholic teachings and the needs of the greater Manchester community. Considering the Foundation's purposes, the proposed deal satisfies this legal requirement.

F. RSA 7:19-b, II(f), Control of the Proceeds

RSA 7:19-b, II(f), states that control of any proceeds from a transaction "shall be independent of the acquirer" if it is other than a New Hampshire charitable organization. HCA is not a New Hampshire healthcare charitable trust. The proceeds of the transaction will be held first by CMC and then by the Foundation as CMC's successor. The proposed transaction satisfies this legal requirement.

[26] The Holy See conducted an independent review of the transaction and also concluded that proceeds are fair value.

G. RSA 7:19-b, II(g), Notice and Hearing

RSA 7:19-b, II(g), provides:

> Reasonable public notice of the proposed transaction and its terms has been provided to the community served by the health care charitable trust, along with reasonable and timely opportunity for such community, through public hearing or other similar methods, to inform the deliberations of the governing body of the health care charitable trust regarding the proposed transaction.

The purpose of the "reasonable public notice" requirement is to ensure that prior to finalizing and voting in favor of an acquisition or change of control transaction, the board considers input from the public. This requirement recognizes that the ultimate beneficiary of a healthcare charitable trust is the public and that a board should consider the interests of the communities served by the healthcare charitable trust in its deliberations.

On September 27, 2023, CMC issued a press release announcing its letter of intent with HCA regarding the proposed sale. On October 11, 2023, CMC created a landing page on its website discussing the proposed sale.

CMC scheduled a public listening session for May 29, 2024. It announced the listening session's date and time on May 22 by placing notice in the New Hampshire *Union Leader* and further publicized the listening session on its website and by sending an email to all CMC staff. CMC's notice was also published in the *Union Leader* on May 23 through May 29.

On May 29, CMC held the listening session in Manchester to inform the public about the proposed asset sale to HCA. During the listening session, Bishop Libasci spoke to the attendees about the CMC Board's decision to sell the hospital to HCA. In addition to Bishop Libasci, some but not all of CMC's Board also attended. Approximately 140 people attended the listening session and about 16 community members raised questions or provided feedback.

On May 30, the CMC Board and the Bishop met to discuss the feedback but they made no changes to the transaction as a result. Given the listening sessions offered by CMC and opportunity provided for public comment and feedback, this requirement is satisfied.

VIII. Conclusions and Determination

Based on the evidence, the Director determined that the APA, as executed, failed to comply with the minimum legal requirements set forth in RSA 7:19-b, II. First, the deal, as proposed, raised a number of antitrust concerns. Second, the APA lacked sufficient protection of healthcare services and community programs for the transaction to be in the best interest of the community. At the same time, CMC's deteriorating

financial circumstances and the risk of bankruptcy were key factors in CTU's understanding of the process undertaken by CMC's Board.

Given the accelerating pace of CMC's financial losses, its nearly $160 million debt, and the ongoing attrition of healthcare providers to competitors, it is highly unlikely that any action by CMC's Board short of selling the hospital would have ended CMC's financial deterioration. The lack of investment and continuing instability created a feedback loop that could only be stopped with a significant investment from an outside acquirer. And the only realistic alternative to sale, bankruptcy, carries with it a real risk that the hospital could close entirely, an unacceptable outcome for the community. In short, there were no viable avenues through which CMC could maintain its operation of the hospital in the same manner as it has in the past.

While the Catholic mission of CMC will remain, HCA's ownership will very likely lead to significant changes in the hospital's operations. Nonetheless, HCA has committed to making the substantial investment necessary to restore the hospital to sustainability and profitability, which will end the years of instability and eliminate concerns about the hospital closing. The hospital will also become a substantial tax anchor for the community, furthering the City of Manchester's and the State's abilities to continue reinvesting in the community.

On top of those community benefits, HCA, CMC, and DOJ have agreed to a reasonable set of conditions that resolve DOJ's legal concerns with the transaction but permit HCA to operate CMC without unnecessary interference from the State. These conditions include commitments to address DOJ's antitrust concerns, and additional protections for labor and delivery, which mitigate CTU's concerns about HCA's past actions with respect to labor and delivery at Frisbie Memorial Hospital and fulfill the community need for continued labor-and-delivery services on Manchester's west side. They also include financial commitments to supporting important community programs and commitments to expanding behavioral health services in New Hampshire. Finally, violations of these commitments, as well as violations of other key commitments of community interest, are enforceable by DOJ without attached strings.

Considering all of the above, CTU will take no further action with respect to the proposed transaction if and only if the following Representations and Conditions are satisfied.

IX. Representations and Conditions

Definitions.

For purposes of these Representations and Conditions, "MHS" refers to Manchester Health Services, LLC, and any successors thereof. "Hospital" refers to the 330-bed acute-care hospital located in Manchester, New Hampshire, presently known as Catholic Medical Center.

Representations.

1. Completeness of Notice and Representations to CTU and Public. CMC, HCA, MHS, and all other parties to the transaction and Notice represent that the written information and documents made or provided in the Notice to CTU, as well as the presentations made at the recorded public hearing of October 23, 2024, are true and correct. MHS represents that, to its knowledge, it has not omitted any material information about the transaction from the statements and documents provided to CTU. CMC represents that, to its knowledge, it has not omitted any material information about the transaction from the statements and documents provided to CTU.

2. Completeness of APA. The Asset Purchase Agreement, as amended, and the ancillary agreements and other documents referenced therein constitute the entire agreement of the parties relating to the transaction.

3. Conflicts of Interest. CMC represents that the transaction does not implicate any conflicts of interest or pecuniary benefit transactions involving trustees or officers of CMC or its affiliates.

4. Transition of Community Programs. CMC represents that Poisson Dental Facility and Healthcare for the Homeless will fully transfer to New Hampshire Catholic Charities in accordance with the Memorandum of Understanding, dated October 16, 2024, and there will be no discontinuance of operations to either program during the transition.

Conditions.

1. DRF Beds. Prior to the second anniversary of the closing of the transaction, HCA shall add an aggregate amount of 10 additional Designated Receiving Facility ("DRF") beds at HCA's hospitals in New Hampshire, as determined by HCA in its discretion. Any capital expended to add these DRF beds with respect to the operations of the Hospital will count towards HCA's $200 million capital commitment as provided in the APA.

    a. The operation of the 10 DRF beds in New Hampshire shall be a "Core Service" under the APA and is subject to the terms and conditions of Core Services, including contingencies that would apply to the DRF beds at each HCA hospital in New Hampshire; provided, however, that the financial loss contingency in the APA shall not apply during the four-year period after the beds are available to patients.

2. Community Support Payments. During the three-year period immediately following the closing of the transaction, MHS shall make Community Contributions in the aggregate amount of $2 million. MHS shall make Community Contributions in the aggregate amount of no less than $300,000 each year during such three-year period to Healthcare for the Homeless and/or Poisson Dental Clinic. "Community Contributions" means, any contributions,

donations, financial support or other expenditures made, by MHS or any of its affiliates during the applicable year (a) to Healthcare for the Homeless or Poisson Dental Clinic, or (b) for activities, programs or services, provided by MHS or any of its affiliates directly to communities or residents within the greater Manchester area, or to any not-for-profit or charitable organization that provides or sponsors activities, programs or services, in each case, to (i) improve the health or wellness of any communities or residents within the greater Manchester area, or (ii) address the social determinants of health within the greater Manchester area.

a. Any charity care payments and Medicaid or Medicare shortfall shall not be considered part of the Community Contributions.

3. Core Services.

a. The Core Service "pregnancy services" shall be amended to "pregnancy services (including labor and delivery)" to confirm that MHS is agreeing to an explicit commitment to labor and delivery services.

b. MHS shall include "emergent behavioral health services" as a new Core Service.

c. MHS shall maintain pregnancy services, including labor and delivery, for at least 10 years after the closing, subject to a Contingency (as defined in the APA); provided, however, that the financial loss contingency in the APA shall not apply to pregnancy services during the five-year period after the closing.

d. Prior to the delivery of an Event Notice (as defined in the APA) in connection with a Contingency, MHS shall have engaged in good faith efforts to adjust its operation of the applicable Core Service to resolve the adverse impact of the applicable Contingency and reasonably determined that satisfactory resolution of the applicable Contingency is not feasible using good faith efforts.

e. If MHS delivers an Event Notice to Foundation Representative (defined in the APA) under Section 7.12(d) of the APA, then MHS shall also deliver to DOJ a copy of such Event Notice. MHS shall make available the CEO of the Hospital or other senior executive of the Hospital to meet with DOJ during the 30-day period after the delivery of the Event Notice to discuss the Event Notice.

4. Notice of Arbitration or Notice Upon Discontinuance of a Core Service. During the Commitment Period (as defined in the APA), MHS and the Foundation shall provide DOJ with written notice upon the initiation of any arbitration provisions in the APA with respect to an allegation of non-compliance with a Continuing Obligation (as defined in the APA). At least 45

days prior to MHS discontinuing a Core Service in accordance with the APA, MHS shall provide notice to DOJ. In addition, MHS shall publish public notice and notify impacted patients at least 45 days prior to the discontinuance of a Core Service.

5. Reimbursement of Expenses. If MHS exercises a Contingency (as defined in the APA), MHS shall reimburse the Foundation up to $15,000 in consulting, attorneys, accountants or other professional fees that are incurred by the Foundation in connection with its review of MHS's compliance with the terms of the APA.

6. Notice of Closing. MHS shall provide notice to DOJ of the closing of the transaction within five business days of closing.

7. Annual Reporting. MHS shall provide the Annual Report (as defined in the APA) to DOJ when it provides the Annual Report to the Foundation. In addition, the Annual Report shall also include a status update on the addition of the DRF beds required by these Conditions. MHS shall also make available the Hospital's CEO or other Hospital senior executive to meet with DOJ to discuss the Annual Report and progress on the growth of clinical services in the Manchester area.

8. Assurance of Discontinuance for CPAB Terms. Pursuant to RSA 358-A:7, the parties shall enter the Assurance of Discontinuance which is attached as Exhibit C in Merrimack Superior Court. HCA shall abide by all terms of the Assurance of Discontinuance.

9. Community Needs Assessment. During the three-year period after the closing date, MHS shall cause the Hospital to participate with the City of Manchester with respect to Community Needs Assessments (RSA 7:32-f) in the Manchester community. Such participation would consist of reasonable cooperation in reviewing and providing input on a draft of the Community Needs Assessment and also reimbursing a portion of the out-of-pocket costs of the City of Manchester consultant to prepare the Community Needs Assessment, in each case, consistent with CMC's participation with the most recent Community Needs Assessment prepared by the City of Manchester.

10. DOJ Enforcement.

    a. A condition of this Report is that MHS shall comply with its obligations set forth in Sections 7.12, 7.13, 7.14, 7.15 and 7.20 of the APA. Both MHS and CMC agree that CTU has the ability to enforce the Conditions and Representations in a New Hampshire state court of competent jurisdiction.

    b. If MHS seeks indemnification from CMC and/or the Foundation under the APA and there are insufficient funds to cover the Losses (as

defined in the APA) due to MHS, only then shall the Continuing Obligations be subject to Section 7.17 of the APA.

11. Purpose of Foundation. The Catholic Health Care Foundation of Greater Manchester shall be established as a New Hampshire voluntary corporation with its purpose to improve health, health outcomes, and access to high-quality healthcare for the residents of greater Manchester and the State of New Hampshire in accordance with the healing mission of Jesus Christ. The Foundation shall operate in a charitable manner within the meaning of § 501(c)(3) of the Internal Revenue Code and shall carry out its purpose through grant making to nonprofit organizations to improve health and wellness consistent with the teaching of the Roman Catholic Church and through the awarding of scholarships to those pursuing health care professions. The Foundation and any successor shall comply with its obligations and commitments as set forth in the APA, the applicable conditions in this Report, and any court order related to use of the transaction proceeds and CMC's donor-restricted assets.

12. CMC *Cy Pres* Petition. CMC filed a Petition for *Cy Pres* Relief and Charitable Trust Deviation pending in the 6th Circuit Court – Probate Division, Trust Docket. The Petition requests that the Court allow CMC to fully consummate the APA with MHS, with the net proceeds of the sale to be transferred to the Foundation. Within 120 days following the closing, CMC shall amend its current Petition to address the management of the current donor-restricted funds held by CMC.

13. CMC Donor-Restricted Assets. Subject to a confirmatory court order, CMC's donor-restricted funds were valued at $5.998 million as of January 6, 2025, and are not included in the assets purchased by HCA.

14. UPMIFA and Investments. The Foundation or its successor may invest and spend the proceeds as an institutional fund subject to the Uniform Prudent Management of Institutional Funds Act, RSA 292-B, except that for 10 years from the closing, the balance of such fund (plus any amounts held in escrow pursuant to the APA, if any) may not decline below the balance of such fund (plus the amounts held in escrow pursuant to the APA) as required by APA Section 7.17 as modified by these conditions and the Assurance of Discontinuance. Within 90 days of closing, CMC and the Foundation are to establish an investment policy to their assets. If the Foundation is replaced by another charitable organization, in accordance with the APA, after the review by the Director of Charitable Trusts and approval of the probate or superior court, the successor organization may invest the proceeds in accordance with its generally applicable investment policy, subject to UPMIFA and the limitations of APA Section 7.17 as modified by these conditions and the Assurance of Discontinuance.

This Report concerns the Charitable Trust Unit's review pursuant to RSA 7:19-b and does not implicate the jurisdiction of any state agency which may also have a role in reviewing this proposed transaction.

BerryDunn

Acquisition of Catholic Medical Center by HCA Healthcare

Review for the New Hampshire Attorney General Charitable Trusts Unit

Submitted By:

BerryDunn Health Analytics Practice Group
Tyler Brannen, Senior Health Economist
Amanda Henson, Health Policy Manager

Submitted: December 27, 2024

BerryDunn

Table of Contents

1.0 Executive Summary

Catholic Medical Center (CMC) submitted notice to the New Hampshire Attorney General Director of Charitable Trusts of plans to sell its assets to Manchester Health Services, LLC (MHS), a Delaware limited liability company, which is a subsidiary of HCA Healthcare, Inc. (HCA). Although HCA is not directly a party to the transaction, it is the ultimate parent entity of MHS, and throughout the remainder of the document HCA will be referenced. The proposed transaction is an acquisition of CMC's assets by HCA, and HCA will have authority over CMC's governance and operations.

The New Hampshire Department of Justice (DOJ) Charitable Trust Unit (CTU) retained BerryDunn to provide consulting services in support of the CTU's review.

CMC has represented that the acquisition by HCA will give CMC the best chance to ensure the long-term viability of Catholic healthcare in Manchester with the ability to expand services and capacities and meet community needs.[1]

CMC has struggled financially in recent years and has had negative total and operating margins, except for 2021, even with assistance from federal pandemic-related funding.

Although ratings have varied over the years, third parties have generally given satisfactory ratings to CMC based on quality and patient safety. CMC received four out of five stars for overall quality measures and patient survey ratings from the Centers for Medicare & Medicaid Services (CMS) and most recently received a **C** grade from the Leapfrog Group for patient safety. These rankings are equal to or better than the hospitals in the greater Manchester area and the HCA hospitals in New Hampshire.

Substantial concerns have been raised regarding support for community needs if the HCA transaction occurs. The asset purchase agreement (APA) indicates that a foundation will be created, and HCA anticipates that the foundation will provide grants for continued access to services considered a priority for the community, including those that generally result in low margins for a healthcare organization. HCA has stated its intent to continue with labor and delivery services and make enhancements to other service lines that would elevate CMC's clinical offerings. Trauma services, emergent care, oncology, and the New England Heart & Vascular Institute are provided as examples.

HCA has agreed to pay CMC $110 million for the sale, but the Foundation will ultimately receive the remaining portion of those sale proceeds after CMC's creditors are paid and other obligations are fulfilled. Additionally, the foundation may also be funded from CMC's restricted assets. We expect the actual amount to be substantially less based on a letter provided to parties on October 22, 2024, which indicated that "…the ongoing nature of the financial pressures facing CMC and its affiliates, they continue to lose significant amounts of funds, all of which will reduce the amount that will be transferred to the nonprofit foundation as a result of the

[1] Joint Notice to the Director of Charitable Trusts Pursuant to New Hampshire RSA 7:19-b. Charitable Trusts, Office of the Attorney General, New Hampshire Department of Justice. Accessed December 4, 2024. https://www.doj.nh.gov/sites/g/files/ehbemt721/files/inline-documents/sonh/cmc-joint-notice-of-change-of-control.pdf.

Transaction."[2] Specific plans are not provided, but HCA's capital commitment is $200 million over 10 years.

Hospital acquisitions typically result in reduced local control, and there have been concerns about HCA's influence on CMC. Among others, they include potentially higher healthcare prices, access to labor and delivery and other healthcare services, and ensuring the continuation of CMC's charitable contributions to the community. The APA and creation of a foundation are intended to be responsive to the needs of the Manchester community, but specific provisions are limited, and overall funding levels might not be adequate.

HCA is an enormous, well-funded for-profit health system that has 186 hospitals and dates back to 1968. Such a large system benefits from substantial economies of scale and expertise that will offer a range of opportunities for CMC and Manchester, but HCA is also likely to make substantial changes to the local healthcare delivery system.

[2] CMC-supplemental-response-to-rfi-2-to-joint-notice-to-ctu-response-1-public-version. Charitable Trusts, Office of the Attorney General, New Hampshire Department of Justice. Accessed December 12, 2024. https://www.doj.nh.gov/sites/g/files/ehbemt721/files/inline-documents/sonh/cmc-supplemental-responses-to-rfi-2-to-joint-notice-to-ctu-response-1-public-version.pdf.

2.0 Introduction

On June 28, 2024, CMC submitted notice to the New Hampshire Attorney General Director of Charitable Trusts of plans to sell all of its assets to Manchester Health Services, LLC (MHS), a Delaware limited liability company, which is a subsidiary of HCA Healthcare, Inc. (HCA).[3] The notice, submitted pursuant to New Hampshire RSA 7:19-b III,[4] includes CMC as a New Hampshire nonprofit corporation together with its affiliates:

- Alliance Ambulatory Services (AAS):
- Catholic Medical Center Physician Practice Associates (CMCPPA)
- Alliance Resources, Inc. (Alliance Resources)
- Alliance Enterprises, Inc. (Alliance Enterprises)
- McGregor Street Office Building, LLC (McGregor Street MOB)

The acquisition of CMC by HCA will cause HCA to assume some of CMC's liabilities, although a number of liabilities may be excluded by the agreement.

The CTU retained BerryDunn to provide consulting services in support of the CTU's review. BerryDunn produced this report, developed a fact sheet, and presented at the CTU-hosted hearing on October 23, 2024, regarding the potential transaction.

The purpose of the report is to support the CTU's review, as the DOJ will make a decision to take no action, take no action if certain conditions are met, or oppose the transaction. BerryDunn is supporting the CTU and its scope of work does not include the analysis by the DOJ's Consumer Protection and Antitrust Bureau. Included is an overview of the organizations involved in the potential transaction and an analysis informed by research, interviews, and information obtained from public and confidential documents submitted by the parties. The APA provides extensive details on the agreements between the parties and is one of the key documents used to guide expectations about the future organizational structure, operations, and priorities of the new entity.

Because the APA is legally binding, information about the potential transaction provided in the APA is considered factual. BerryDunn does not provide an opinion about whether these requirements will be satisfied, but, in some cases, BerryDunn has identified challenges and opportunities that might not be fully addressed in the APA or supporting documentation.

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[3] Catholic Medical Center. June 28, 2024. "In Re: Acquisition Transaction Involving Catholic Medical Center, Alliance Ambulatory Services, and Catholic Medical Center Physician Practice Associates. Joint Notice to the Director of Charitable Trusts Pursuant to New Hampshire RSA 7:19-b,III." Charitable Trusts, Office of the Attorney General, New Hampshire Department of Justice. Accessed November 25, 2024. https://www.doj.nh.gov/sites/g/files/ehbemt721/files/inline-documents/sonh/filing-letter-cmc-joint-notice-of-change-of-control-2024.06.28.pdf.

[4] Office of the Attorney General, Charitable Trusts Unit. 2022. *Guidebook for New Hampshire Charitable Organizations. Fifth Edition*. *New Hampshire Department of Justice.* Accessed November 25, 2024. https://mm.nh.gov/files/uploads/doj/remote-docs/guidebook-non-profit-organizations.pdf.

2.1 New Hampshire Parties to the Potential Transaction

2.1.1 CMC

CMC is a nonprofit acute-care hospital and one of New Hampshire's largest health systems with 330 licensed beds, over 400 affiliated medical staff providers, and more than 3,000 employees based in Manchester.[5] CMC has a religious history with its goal being to "…carry out Christ's healing ministry by offering health, healing and hope to every individual who seeks our care."[6] CMC is a Catholic hospital, and oversight and stewardship of its assets is governed by the CMC Board of Trustees, the CMC Healthcare System, and the Roman Catholic Bishop of Manchester.[7] As a Catholic hospital committed to the furtherance of its Catholic healthcare ministry, CMC adheres to the Ethical and Religious Directives for Catholic Health Care Services as promulgated by the United States Conference of Catholic Bishops (the "ERDs"), the Code of Canon Law, and Catholic moral teaching.

2.1.2 CMC Affiliates

- AAS is a New Hampshire nonprofit corporation that owns and operates interests in various ambulatory and urgent care facilities.
- CMCPPA is a New Hampshire nonprofit corporation that employs the physicians who provide healthcare services to patients of CMC and other facilities within the CMC Healthcare System (CMCHS).
- Alliance Resources is a nonprofit real estate holding company that owns parcels of land for the benefit of CMC.
- Alliance Enterprises is a for-profit entity that owns the interests in McGregor Street Office Building, LLC.
- McGregor Street MOB owns properties across the street from CMC.

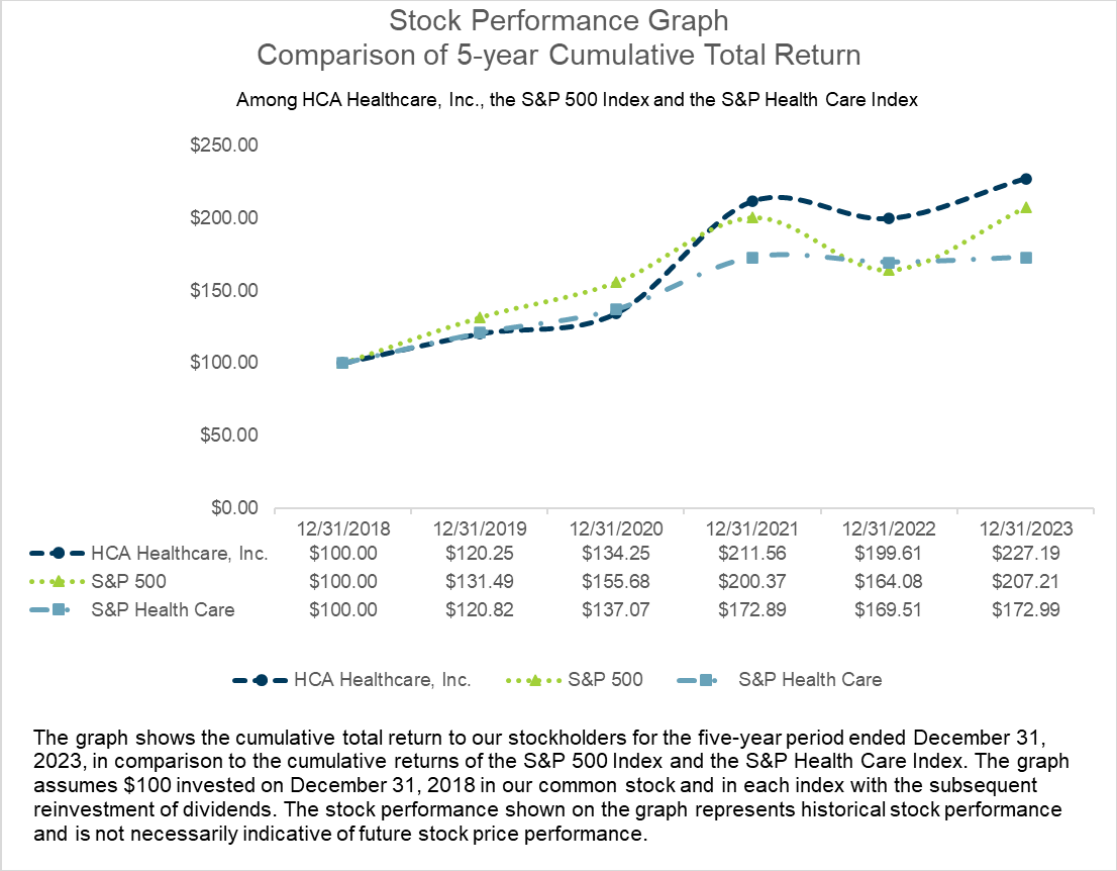
2.2 HCA

With its corporate office in Nashville, TN, HCA is a for-profit provider of healthcare services that owns and operates facilities in 20 states and the United Kingdom, including 186 hospitals and approximately 2,400 sites of care (surgery centers, free-standing emergency rooms, urgent care centers, home health and hospice agencies, and physician clinics).[8] In 2023, HCA had over 300,000 employees and more than 43 million patient encounters,[9] with a reported patient

[5] CMC. About CMC. Accessed December 3, 2024. https://www.catholicmedicalcenter.org/about-cmc.
[6] CMC. Careers. About Us. Accessed December 3, 2024. https://careers.catholicmedicalcenter.org/creative/about.
[7] Joint Notice to the Director of Charitable Trusts Pursuant to New Hampshire RSA 7:19-b. Charitable Trusts, Office of the Attorney General, New Hampshire Department of Justice. Accessed December 4, 2024. https://www.doj.nh.gov/sites/g/files/ehbemt721/files/inline-documents/sonh/cmc-joint-notice-of-change-of-control.pdf.
[8] HCA Healthcare Fact Sheet. Accessed December 3, 2024. https://hcahealthcare.com/util/documents/2024/508_2024-august-hca-healthcare-fact-sheet_digital-a.pdf.
[9] Ibid.

service revenue of $64,968,000, representing a 7.8% increase over 2022.[10] HCA's stock performance from 2018 to 2023 is displayed in Figure 1.[11]

Figure 1. Stock Performance



There are three other hospitals within the HCA system in New Hampshire: Portsmouth Regional Hospital, Parkland Medical Center, and Frisbie Memorial Hospital. Frisbie Memorial Hospital became part of the HCA system in 2020, and the decision process and outcomes of that transaction have been considered during this analysis.

2.3 Reasons Indicated for the Proposed Transaction

The June 28 Joint Notice to the Director of Charitable Trusts states that with HCA's resources, CMC "…will have the opportunity to expand its existing capabilities with access to data-empowered clinical and operational tools that enable residents of Manchester, New Hampshire

[10] 2023 Annual Report to Shareholders. HCA Healthcare. Sources of revenue, page 5. Accessed December 2, 2024. https://s23.q4cdn.com/949900249/files/doc_financials/2023/ar/hca-healthcare-2023-annual-report-to-shareholders-final.pdf.
[11] 2023 Annual Report to Shareholders. HCA Healthcare. Stock Performance Graph, page 55. Accessed December 2, 2024. https://s23.q4cdn.com/949900249/files/doc_financials/2023/ar/hca-healthcare-2023-annual-report-to-shareholders-final.pdf.

to receive high quality, cost-effective healthcare services they deserve." The transaction documents state the following key partnership criteria considered were:

1. The CMC's Catholic Identity
2. HCA's Financial and Operational Expertise
3. Access to Care and Essential Services
4. Increased Access to Primary Care and Specialty Services
5. Access to High-Quality Patient Care Close to Home
6. A Local Voice for Catholic Healthcare
7. Advancement of Research and Teaching Opportunities

According to CMC, HCA was selected as the acquirer primarily based on its willingness to maintain the Catholic identity of CMC, its financial and operational expertise, and its access to high-quality care and teaching opportunities. CMC has attempted to partner with other healthcare systems in recent years, but the stress of its current weak financial condition has raised concerns about its ability to survive.

2.4 Standards for Acquisition Transactions

New Hampshire RSA 7:19-32 defines seven standards for review of transactions "involving Health Care Charitable Trusts" that require review by the Director of Charitable Trusts:

1. The proposed transaction is permitted by applicable law, including, but not limited to, RSA 7:19-32, RSA 292.
2. Due diligence has been exercised in selecting the acquirer; in engaging and considering the advice of expert assistance; in negotiating the terms and conditions of the proposed transaction; in determining that the transaction is in the best interest of the health care charitable trust and the communities it serves.
3. Conflicts of interest have been disclosed and have not affected the decision to enter into the transaction.
4. Proceeds from the transaction constitute fair value.
5. Assets and any proceeds from the transaction continue to be devoted to charitable purposes, including access, quality, and affordability of physical and mental health care services.
6. If acquirer is not a NH nonprofit, control of proceeds shall be independent of acquirer.
7. Process has included reasonable public notice, comment period, and deliberations.

This report to the Director of the CTU of the New Hampshire Attorney General focuses on three of the standards directly tied to questions of the charitable mission of the corporation:

- Due diligence in determining that the transaction is in the best interest of the health care charitable trust and the communities it serves.
- Assets and any proceeds from the transaction continue to be devoted to charitable purposes, including access, quality, and affordability of physical and mental health care services. If the acquirer is not a NH nonprofit, control of proceeds shall be independent of acquirer.

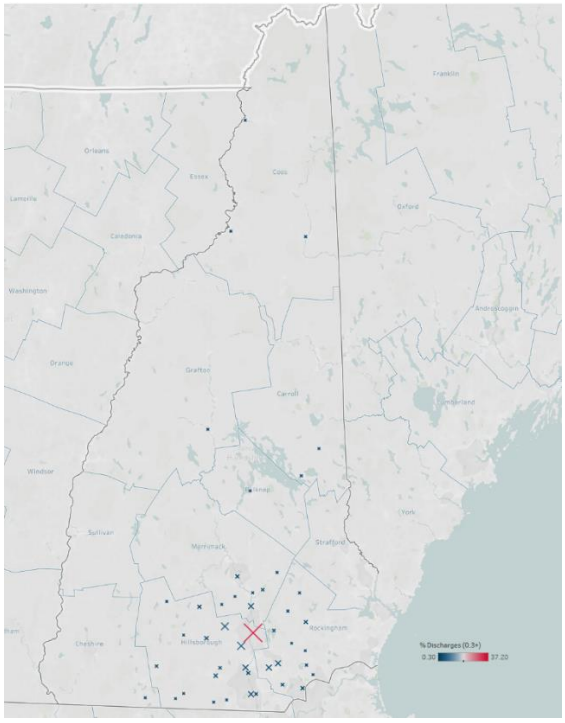
BerryDunn's analysis considers the current circumstances of the parties, the community CMC serves, and the characteristics of the healthcare system more generally.

3.0 CMC Background

3.1 Scope of Services and Service Area

According to documents provided by CMC and publicly available data, CMC serves Manchester and the surrounding communities, providing medical and surgical care, various subspecialty care, outpatient rehabilitation services, a 24-hour emergency department, outpatient behavioral health services, and diagnostic imaging. Figure 2 below reflects the service area based on the origin of patients discharged from CMC in 2022.[12,13] The relative size and color of the X reflects percentage of discharges to locality. Discharges represent inpatient admissions and include all service types. The distribution would be substantially different for specialized services, such as cardiovascular care. Figure 3 displays the physical location of CMC and the other HCA hospital facilities in New Hampshire.

Figure 2. CMC Hospital Service Area



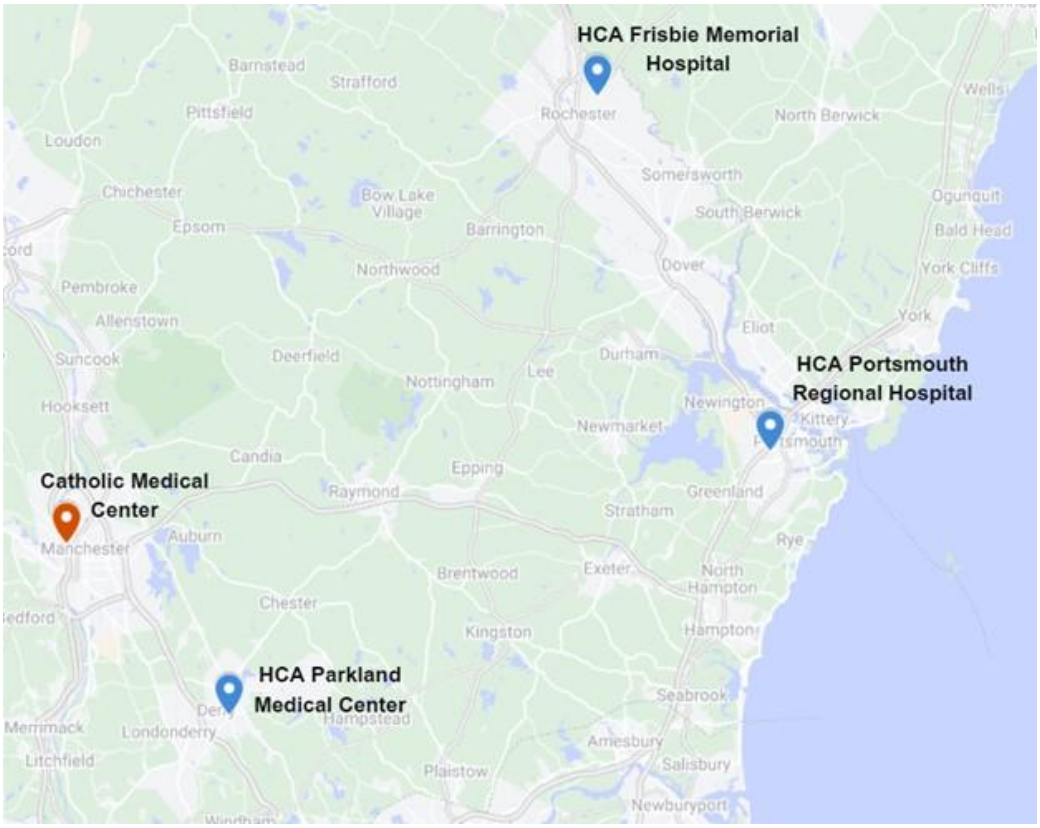
*Discharges include all inpatient services, but do not include communities with discharges below the 0.30% threshold. CMC services may vary by inpatient service line.

[12] New Hampshire Hospital Association. October 28, 2024. *Data Insights: New Hampshire Acute Care Hospital Patient Origin Report, Inpatient 2022*. New Hampshire Hospital Association. Accessed November 25, 2024. https://www.nhha.org/wp-content/uploads/2024/10/Patient-Origin-Report-CY2022-Inpatient.pdf.

[13] This map is based on updates that became available on October 28, 2024. The maps used for the fact sheet and presentation at the public hearing on October 23, 2024 were based on 2021 inpatient data. New Hampshire Hospital Association. July 31, 2023. *Data Insights: New Hampshire Acute Care Hospital Patient Origin Report, Inpatient 2021*. New Hampshire Hospital Association. Accessed November 25, 2024. https://www.nhha.org/wp-content/uploads/2023/08/Patient-Origin-Report-CY2021-Inpatient.pdf.

Adding CMC to the HCA system in New Hampshire would provide a strategic advantage to HCA by influencing referrals and the continuum of care received in the south-central part of the state. In addition to adding a hospital located in the state's largest city, CMC performs a range of surgical services, and these are typically higher margin or more profitable service lines. About half of the hospitals in New Hampshire are small and considered critical access hospitals by CMS.

Figure 3. CMC in Relationship to Other HCA Hospital Facilities in New Hampshire



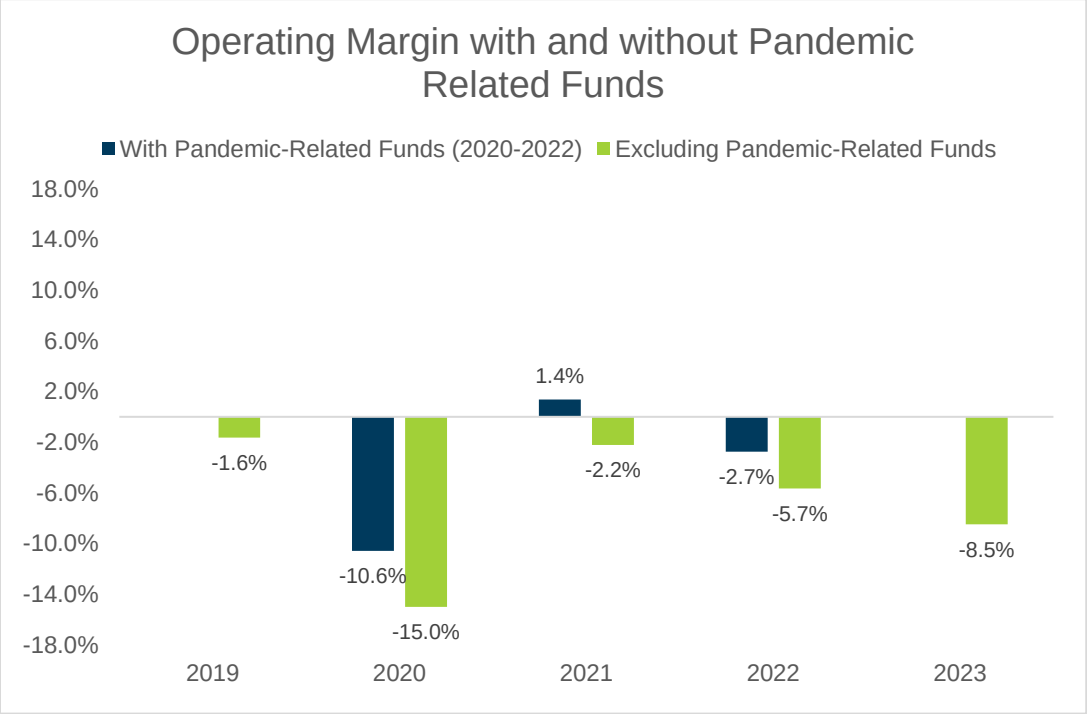
Such a strong presence within the state's more populated region is likely to increase the bargaining power for both CMC and the other HCA hospitals with commercial health insurance companies and other payers that negotiate prices paid for services at the HCA hospitals. This dynamic exists because of the challenge health insurance companies would face with attempting to sell health insurance products without several of the key hospitals in the region as in-network providers. An insurance product offering without HCA would require members to seek care at other hospitals for the patient to obtain the highest level of coverage, and perhaps any insurance coverage at all. In most cases, the insurance company would be willing to pay higher prices for hospital care to offer insurance products with the HCA hospitals listed as in-network.

3.2 CMC Financial Position[14]

The financial stresses facing CMC were exacerbated by the COVID-19 pandemic and the subsequent workforce and staffing challenges. As a result, except for 2021, CMC has faced a financial loss over the past five years, shown through negative operating and total margins. These losses existed even with federal pandemic-related support funds totaling $50,418,500. The breakdown includes $15.1M in 2022, $18.3M in 2021 ($17.6M + $618,500 from the Forgiveness of Paycheck Protection Program [PPP] Loan), and $17.1M in 2020.

Figures 4 and 5 show the operating margins at CMC over the last few years. Operating margin reflects core healthcare operations and is often presented as an indicator of a hospital's financial condition, but it does not include additional revenues available to the organization, such as those associated with investment returns. Pandemic-related funding was made available to hospitals nationally, and studies have shown that the funding was adequate to offset the reduced revenues associated with fewer people using hospital services during this time.[15] Both the operating margins and total margins reflect an unfavorable financial experience at CMC in recent years.

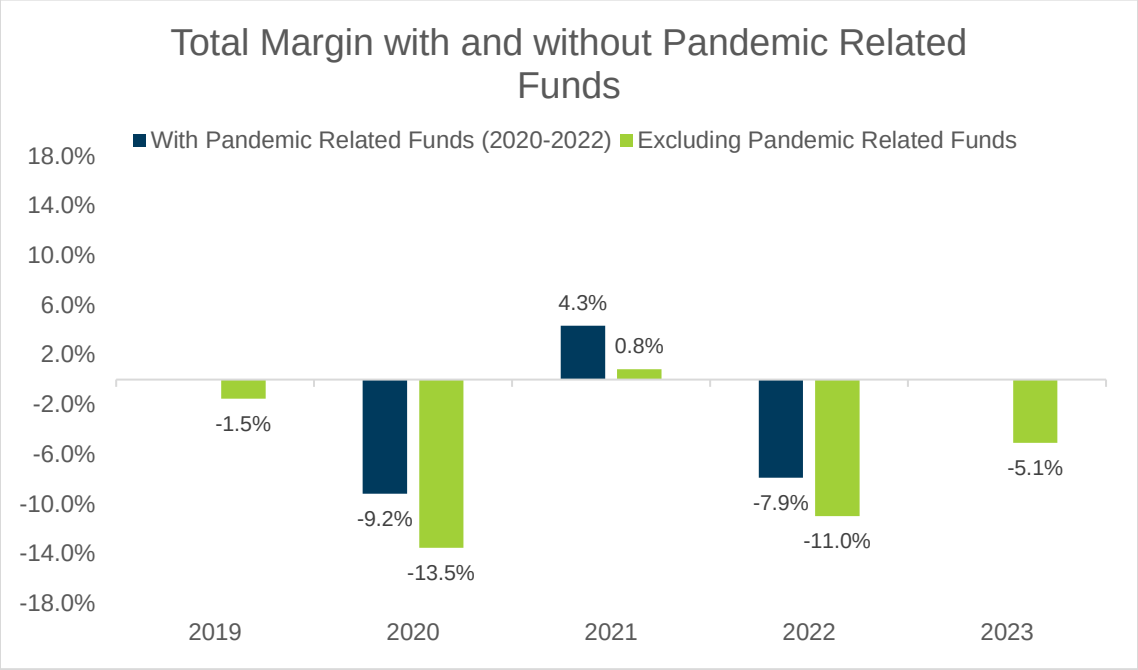
Figure 4. CMC Operating Margin With and Without Pandemic-Related Funds



[14] Data sourced from CMC-provided Consolidated Statements of Operations for years ending 2019-2023 and the United States HHS's Tracking Accountability in in Government Grants System website. Accessed December 4, 2024. https://taggs.hhs.gov/Coronavirus/Providers.

[15] COVID-19 and Hospital Financial Viability in the US. JAMA Health Forum. 2022;3(5):e221018. Accessed December 234, 2024. https://doi.org/10.1001/jamahealthforum.2022.1018.

Figure 5. CMC Total Margin With and Without Pandemic-Related Funds



CMC has represented that the primary advantage of an acquisition by HCA is the opportunity to improve the financial position of CMC. A substantial body of research has shown that hospital mergers and acquisitions often result in higher commercial payer prices,[16] and this may be one outcome associated with the potential transaction. Higher prices will put upward pressure on health insurance premiums and additional financial burden on patients through cost sharing, such as with deductibles, coinsurance, and copays. In addition to higher prices paid through cost sharing, cost sharing levels are likely to increase faster as employers and individuals seek opportunities to avoid premium increases. Higher prices also mean additional pressure on Medicaid budgets when the benefits are administered by private companies that negotiate with hospitals. This is true for Medicare Advantage products that are administered by private companies as well. The additional pressure of higher prices could make these public-private policy initiatives less likely to be successful, resulting in additional stresses on state budgets and fewer choices for consumers.

In addition to higher prices, a strategy to increase revenues at the expense of commercial payers and patients is the use of facility fees. Facility fees are typically associated with hospital services and stem from a history of hospitals and physicians operating as separate entities, each needing to bill for their relevant services. Facility fees are considered a controversial practice when they are added to services that would typically just have a professional fee, often when treatment is provided in settings not at the hospital. Facility fees add to the total cost of care and can trigger additional cost sharing when insurance benefit designs have higher patient liabilities for hospital services. Research shows that when hospitals become part of a larger

[16] Ten Things to Know About Consolidation in Health Care Provider Market. April 19, 2024. Accessed December 26, 2024. https://www.kff.org/health-costs/issue-brief/ten-things-to-know-about-consolidation-in-health-care-provider-markets/.

system, the use of facility fees is likely to increase.[17] HCA and Parkland Medical Center might be making use of questionable facility fees in New Hampshire, as reported in a story in the Boston Globe in October: "Why routine doctor visits in N.H. are costing patients thousands more."[18]

Research has shown mixed results with healthcare systems' ability to lower internal costs (not prices) after a merger or acquisition, but HCA has more experience than most other systems with acquisitions and might be more likely to see the internal cost savings at CMC once operations are integrated.

CMC's financial position could be influenced by several advantages associated with HCA, including economies of scale, purchasing power for supplies and materials, specialized administrative and clinical expertise, advanced equipment, information technology such as electronic medical record systems, and financial capital that can be invested with a high rate of return. In addition to an inability to maintain operations while suffering ongoing losses, CMC would need to have resources to make facility, technological, and operational improvements to remain competitive in the healthcare market. Assumptions are made that HCA is willing and able to make these investments to improve CMC's financial position.

Regardless of the potential transaction, CMC is unlikely to be able to continue operating with the financial losses indicated in the audited financials without making major operational changes. Hospital representatives, community members, policymakers, and other healthcare providers have expressed concern with CMC's ability to survive and the risk of bankruptcy. Bankruptcy would represent a major setback for the organization's future and is typically only seriously considered when the liabilities of an organization exceed its assets. At the time of this analysis, CMC's assets are greater than its liabilities and therefore may not qualify for bankruptcy at the time of a proposed closing on the transaction.

3.3 Quality and Cost of Care

CMC performs well on the CMS Hospital Quality Initiative for both its Overall Star Rating and Patient Survey Rating,[19] earning a four-star rating on quality-of-care measures. Table 1 displays CMC quality ratings compared to nearby local community hospitals, and Table 2 displays CMC's CMS quality ratings compared to other hospitals in New Hampshire owned by HCA. Compared to the local community hospitals, CMC is the only hospital with a Patient Survey Rating of four stars, and St. Joseph Hospital in Nashua is the only other hospital with an Overall Star Rating of four stars. All the hospitals owned by HCA in New Hampshire earned three stars

[17] Fuse Brown, E. NASHP. State Strategies to Address Rising Prices Caused by Health Care Consolidations. Published September 2017. https://www.oldsite.nashp.org/wp-content/uploads/2017/09/Consolidation-Report.pdf.

[18] Why routine doctor visits in N.H. are costing patients thousands more. Boston Globe. October 22, 2024. Accessed December 26, 2024. https://www.bostonglobe.com/2024/10/22/metro/nh-hospital-facility-room-fees-increasing-healthcare-costs-doctor/.

[19] CMS.gov. Hospital Quality Initiative Public Reporting. Accessed December 26, 2024. https://www.medicare.gov/care-compare/results?searchType=Hospital&page=1&city=Manchester&state=NH&zipcode=&radius=25&sort=closest&tealiumEventAction=Landing%20Page%20-%20Search&tealiumSearchLocation=search%20bar.

for the Patient Survey Rating and only Portsmouth Regional Hospital with five stars exceeded CMC's Overall Star Rating.

Table 1. CMS Hospital Public Quality Reporting Data[20]

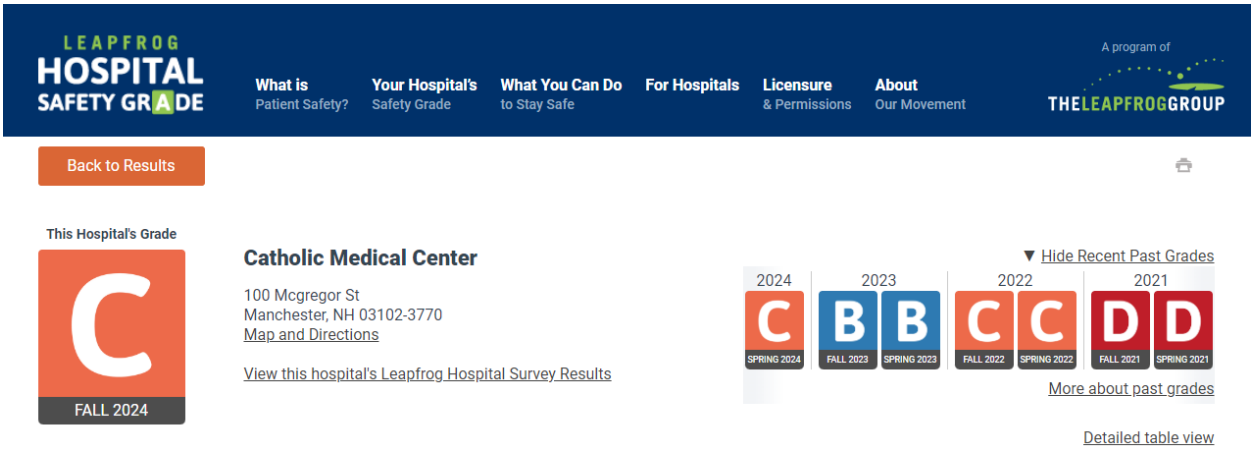
Table 2. CMS Hospital Public Quality Reporting Data – CMC Compared to Other Hospitals Owned by HCA[21]

[20] CMS.gov. Hospital Quality Initiative Public Reporting. Accessed December 26, 2024. https://www.medicare.gov/care-compare/results?searchType=Hospital&page=1&city=Manchester&state=NH&zipcode=&radius=25&sort=closest&tealiumEventAction=Landing%20Page%20-%20Search&tealiumSearchLocation=search%20bar.

[21] CMS.gov. Hospital Quality Initiative Public Reporting. Accessed December 26, 2024. https://www.medicare.gov/care-compare/compare?providerType=Hospital&providerIds=300017,300014,300029&city=Manchester&state=NH&zipcode=.

An independent rating system focused on patient safety is produced by the Leapfrog Group. CMC earned an overall patient safety grade of **C** in 2024, and **B, C,** and **D** grades in 2023, 2022, and 2021, respectively (Figure 6).[22] The CMC **C** grade is comparable to the grade earned by Concord Hospital but is lower than the **B** grade earned by Elliot and St. Joseph Hospitals. For the hospitals owned by HCA in New Hampshire, the CMC **C** grade is comparable to the grade earned by Frisbie Memorial Hospital but is lower than the **B** grade reported for Parkland and the **A** grade reported for and Portsmouth Regional Hospital.

Figure 6. Patient Safety Grades for CMC

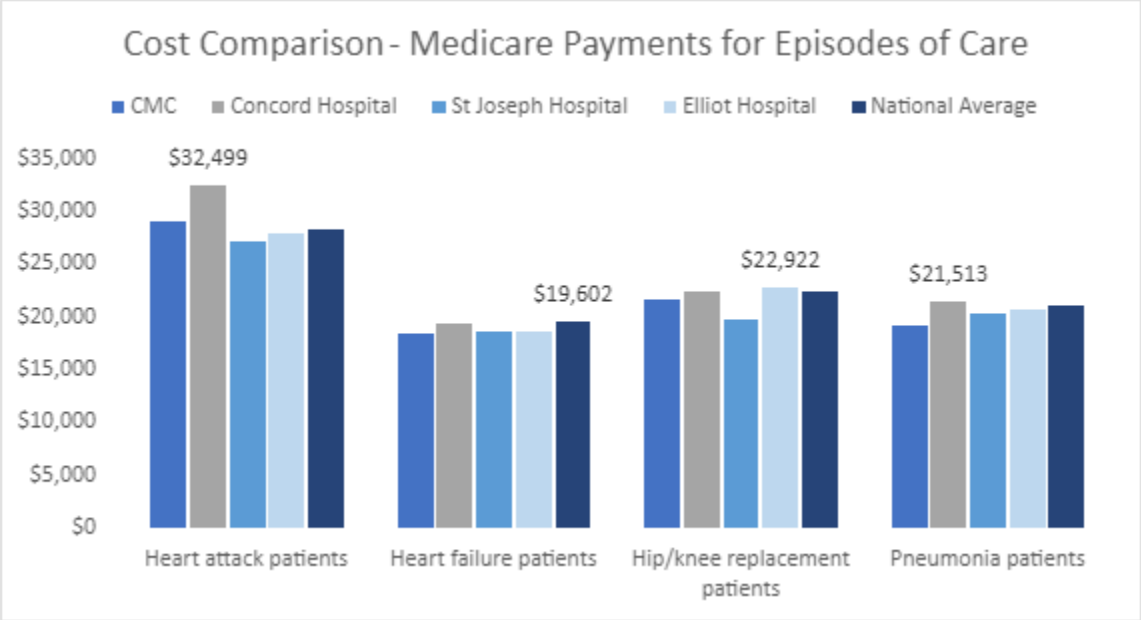


Research shows mixed results with healthcare quality when hospitals become part of larger systems. Indicators of quality usually do not improve and sometimes deteriorate.[23]

[22] Leapfrog Hospital Safety Grade. Accessed December 23, 2024. https://www.hospitalsafetygrade.org/h/catholic-medical-center?findBy=hospital&hospital=Catholic+Medical+Center&rPos=200&rSort=grade.
[23] Beaulieu ND, Dafny LS, Landon BE, Dalton JB, et al. Changes in Quality of Care after Hospital Mergers and Acquisitions. N Engl J Med. 2020. Accessed December 24, 2024. https://pubmed.ncbi.nlm.nih.gov/31893515/.

With general interest among payers in moving hospital reimbursement methods from a fee-for-service system to value-based care, CMS reports on a limited number of episode bundles and the associated payments. Overall, Medicare payments at CMC did not substantially differ from the national average or from neighboring hospitals for the four services reported (Figure 8).[24] Of note, Medicare payments at Concord Hospital were higher for heart attack patients.

Figure 8. Cost Comparison – CMC to Concord, St. Joseph, and Elliot Hospitals

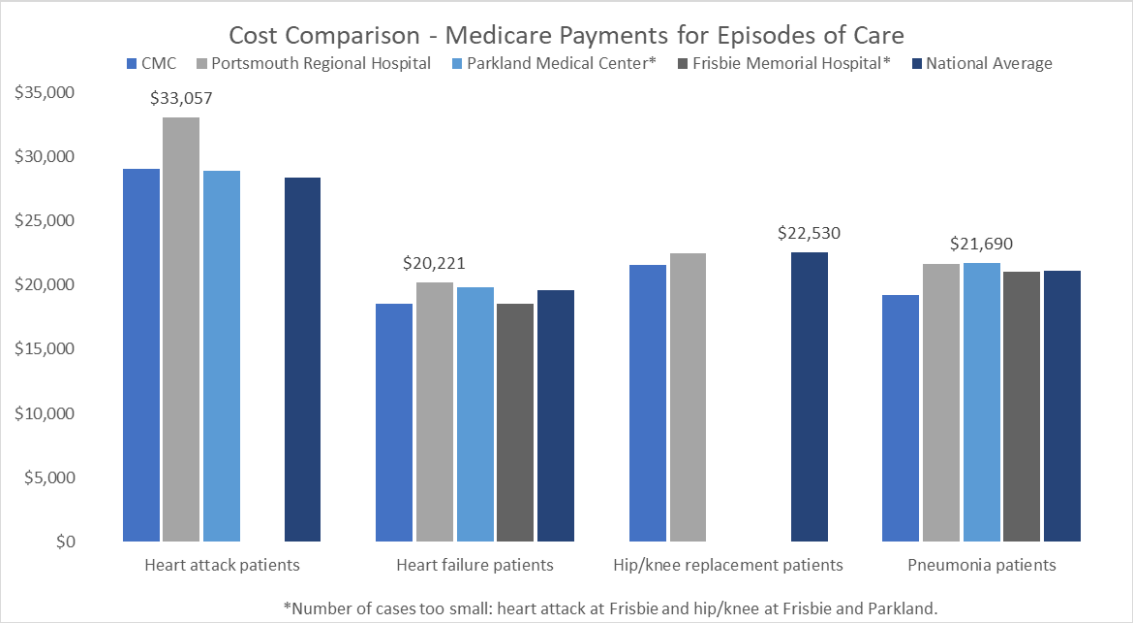


When using the same CMS reporting tool to compare CMC to other HCA-owned hospitals, CMC payments were lower than the other HCA-owned hospitals in New Hampshire (Figure 9).[25] Payments for patients at Portsmouth Regional Hospital were higher for both heart attack and heart failure, and there was no data for hip/knee replacements for Parkland and Frisbie hospitals because the number of cases is too small.

[24] CMS.gov. Hospital Quality Initiative Public Reporting. Accessed December 3, 2024. https://www.medicare.gov/care-compare/compare?providerType=Hospital&providerIds=300034,300001,300011&city=Manchester&state=NH&zipcode=03104.

[25] CMS.gov. Hospital Quality Initiative Public Reporting. Accessed December 23, 2024. https://www.medicare.gov/care-compare/compare?providerType=Hospital&providerIds=300029,300014,300017&city=Portsmouth&state=NH&zipcode=.

Figure 9. Cost Comparison – CMC to Other Hospitals Owned by HCA



While traditional Medicare and Medicaid have fixed provider payment levels, healthcare prices paid by commercial insurance companies are negotiated. The negotiations and the contracts that determine payment levels are usually confidential, and the public is often poorly equipped to evaluate a healthcare provider based on price. Various state and federal regulatory requirements exist to encourage price transparency by healthcare providers and insurance companies.

Negotiated healthcare prices are an important driver of healthcare expenditures in the United States. In 2003, a groundbreaking article called “It’s the Prices, Stupid: Why the United States is so Different from Other Countries” was published and concluded the primary reason healthcare is more expensive in the United States is the price paid for healthcare services.[26] To the extent that hospitals become part of larger systems and prices increase faster, we can expect the problems with affordability to become worse. Hospital systems that seek to raise their negotiated prices at increasing levels also risk creating provider network disruptions that will require patients to seek care at an alternative hospital or healthcare provider site. Disruptions like these will result in confusion, frustration, and greater expenditures for patients.

A publicly available healthcare price transparency website produced by the New Hampshire Insurance Department is known as NH HealthCost. The website provides consumer prices for

[26] Anderson GF, Reinhardt UE, Hussey PS, et al. It’s The Prices, Stupid: Why The United States Is So Different From Other Countries. Health Affairs. May/June 2003. Accessed December 24, 2024. https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.22.3.89.

over 200 services and shows the negotiated rates between insurance companies and healthcare providers, including CMC and the HCA hospitals. There are also more than 1,000 services with rates available at the procedure code level that can be used by providers and payers for competitive purposes. The website creates a level of competition among providers, and patients would benefit from using the tool, but the current CMC prices are likely to change after the transaction. The website can provide insight about healthcare prices with an entity, but it cannot provide accurate generalized prices overall for services at the organization. Therefore, website users cannot use the website to broadly conclude how CMC's negotiated prices compare to other hospitals.

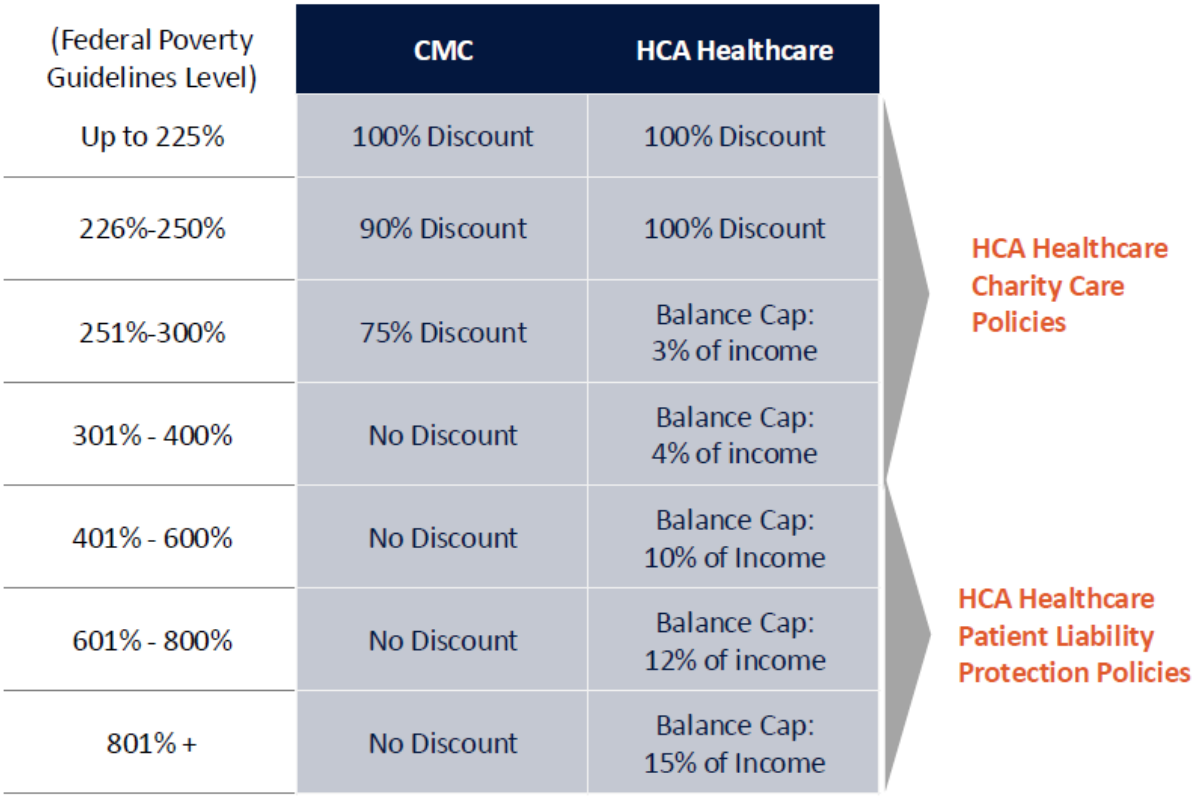
Overall medical expenditures are influenced by the provider payment systems in use. For many years, there have been efforts to move away from a purely fee-for-service system to an alternative payment model that does not financially reward healthcare providers for just performing more services. Fee-for-service systems are generally inflationary, especially when the consumer cannot make informed decisions. Alternative models, sometimes referred to value-based care models, intend to reward better health or positive outcomes. Ideally, the models encourage appropriate levels of care without unnecessary or even harmful interventions. The alternative payment models also hold the opportunity to reduce the inflationary pressure on healthcare expenditures overall, but many providers are reluctant to adopt the new models due to concerns about changing existing practices or taking the risk of reduced revenues.

Medicare has created an array of payment models that are often released on a pilot basis, but many are now well established and offer opportunities for better outcomes and reduced medical expenditures. Commercial insurance companies frequently adopt Medicare models or create their own to meet objectives that may differ with a commercially insured population. Ultimately, the successful adoption of value-based care or other alternative payment models is going to depend on the willingness of payers and providers to engage in good faith negotiations to move from the historical fee-for-service system. This presents an opportunity for CMC and HCA in the future.

Beyond the price of healthcare services, appropriate charity care and financial assistance policies play an important role in affordability of hospital care for many patients. Federal law requires that all nonprofit hospitals have financial assistance policies. A comparison of HCA and CMC financial assistance programs was provided at the public hearing on October 23, 2024. For individuals with income up to 225% of the Federal Poverty Guidelines Level (FPGL), both CMC and HCA provide a 100% discount. After these FPGLs, the programs differ with HCA offering a 100% discount compared to a 90% discount at CMC for individuals at the 226% – 250% FPGL. Figure 10 reflects the comparison of the financial assistance programs as presented at the public hearing.[27]

[27] CMC/HCA Public Hearing Powerpoint Presentation. Office of the Attorney General, Charitable Trusts Unit. Accessed December 12, 2024. https://www.doj.nh.gov/sites/g/files/ehbemt721/files/inline-documents/sonh/final-hearing-deck-11.21.24-.pdf.

Figure 10. HCA and CMC Financial Assistance Programs



In addition to the financial assistance program set forth above, HCA has stated that it provides an uninsured discount to those who do not qualify for financial assistance, and that amount averages 92%. However, in North Carolina (NC), several concerns have been raised regarding the implementation of charity care after the acquisition of Mission Health by HCA as outlined in a letter sent by the NC Attorney General.[28]

3.4 Community Needs Assessment and Benefits Report

Federal and state laws require CMC, as a nonprofit hospital, to conduct a periodic community health needs assessment. The Greater Manchester Community Health Needs Assessment was developed by the City of Manchester in partnership with CMC, Dartmouth Health, and Elliot Health System.[29] These requirements would not continue after CMC is part of the HCA for-profit system, but HCA/CMC could choose to participate voluntarily.

As a nonprofit, CMC is also required to report to the NH DOJ on its provision of community benefits. The hospital-specific community benefits allow comparison to the community needs

[28] Attorney General Josh Stein Letter to Greg Lowe, President, North Carolina Division, HCA Healthcare. March 11, 2020. NC Department of Justice. Accessed December 12, 2024. https://ncdoj.gov/wp-content/uploads/2020/02/Stein-Letter-to-HCA-_02252020.pdf.
[29] 2022 Greater Manchester Community Health Needs Assessment. Accessed December 5, 2024. https://www.doj.nh.gov/sites/g/files/ehbemt721/files/inline-documents/sonh/exhibit-25-community-needs-assessment-report-for-greater-manchester-2022.pdf.

and the benefits provided by other hospitals in New Hampshire. While CMC would no longer be required to report on community benefits when part of the for-profit HCA system, virtually all for-profit hospitals provide what could be considered community benefits according to the reporting definitions, and HCA is not an exception.

Table 3 lists the high-priority needs identified in the most recent health needs assessment, 2022, along with the provision of hospital community benefits reported for fiscal year (FY) 2023[30] that relate to those identified needs.

Table 3. Community Needs Assessments and Investments – CMC

Greater Manchester Community Health Needs Assessment (2022)	Community Health Programs/Resources
Reduce and Prevent Substance Misuse Need for elder services	The Doorway of Greater Manchester
Improve Access to Quality Preventive Care, Medical Care, & Behavioral/Mental Healthcare	Healthcare for the Homeless Maternity Services Roots for Recovery
Financial Barriers: Lack of health insurance or cost of deductible/copays Cost of dental services	Healthcare for the Homeless Poisson Dental Program Medication Assistance Program Financial Assistance
Access barriers: Transportation Lack of providers in a geographic area	CMC is on Manchester's Transit Authority's bus route CMC's Specialty and Primary Care Services

As stated in the FY 2023 Community Benefits Plan Report, "The heart of Catholic Medical Center is to carry out Christ's healing ministry by offering health, healing, and hope to every individual who seeks our care."[31]

This report identifies $3.7 million in net expenses provided for community health improvement activities outside of direct health services (Table 4). This amounts to 0.6% of CMC total operating expenses. CMC identifies an additional $4.1 million as subsidized health services, bringing CMC's total community health improvement expenses to 1.5% of total expenses.

CMC also reports $31.8 million to cover costs that exceed payments received for patients covered by Medicaid and other financial assistance—for a total of approximately $39.6 million in community benefit expenses. These amounts, often referred to as Medicaid shortfalls, are

[30] CMC Community Benefit Report FY 2023. Accessed December 5, 2024. https://www.catholicmedicalcenter.org/CatholicMedicalCenter/media/CMCE-Media-Library/AboutUs/CMC_Community_Benefit_Report_FY23.pdf.
[31] Ibid.

measured by the difference between the cost of hospital services and the amounts received for payments. These amounts typically represent most hospital community benefits when measured in dollars and as a percent of expenses, and Medicaid shortfalls exist at for-profit hospitals as well.

CMC's reported distribution of community benefits funding differs from the distribution across New Hampshire hospitals statewide, with approximately 80% of charitable funds attributable to costs exceeding payments received from Medicaid and other financial assistance costs compared to 67% statewide.[32] This means, that compared to the average across the state, CMC has a higher proportion of its community benefits recorded as Medicaid shortfalls than direct programmatic or financial support for community initiatives.

Table 4. CMC Community Health Benefits Report, Community Improvement Expenses, 2023

CMC Community Benefit Category and Spending	
Community health improvement services	$1,800,761
Health professions education	$1,230,581
Cash and in-kind contributions	$598,769
Research	$6,476
Community-building activities	$89,537
Total community benefit – not direct health services	**$3,726,124**
Subsidized health services	$4,069,372
Total, including subsidized health services	**$7,795,496**

CMC provides community benefits and reports that it contributed $3,726,124 in community benefit that is not direct health services and an additional $4,069,372 in subsidized health services. Table 4 details the reported community benefits by category.

CMC also reports combined shortfalls from Medicaid financial assistance and other unpaid costs of $31,770,627 to cover costs that exceed payments. The additional $7,795,496 in other community benefit expenses yields a total of approximately $39,533,123 in community benefit expenses[33] (Figure 11)**Error! Reference source not found.**. As such, direct outlays account for about 20% of CMC's reported community benefit expenses, with the remaining 80% resulting from CMC's reported costs exceeding payments received from Medicaid, financial assistance, and other unpaid costs (Figure 12).

[32] Community Benefit Report. 2023. Foundation for Healthy Communities. Accessed December 5, 2024. https://healthynh.org/wp-content/uploads/2024/04/FINAL-Community-Benefit-Report-2023.pdf.
[33] CMC Community Benefit Report FY 2023. Accessed December 5, 2024. https://www.catholicmedicalcenter.org/CatholicMedicalCenter/media/CMCE-Media-Library/AboutUs/CMC_Community_Benefit_Report_FY23.pdf.

Figure 11. Community Benefit Report, CMC Net Expenses 2023

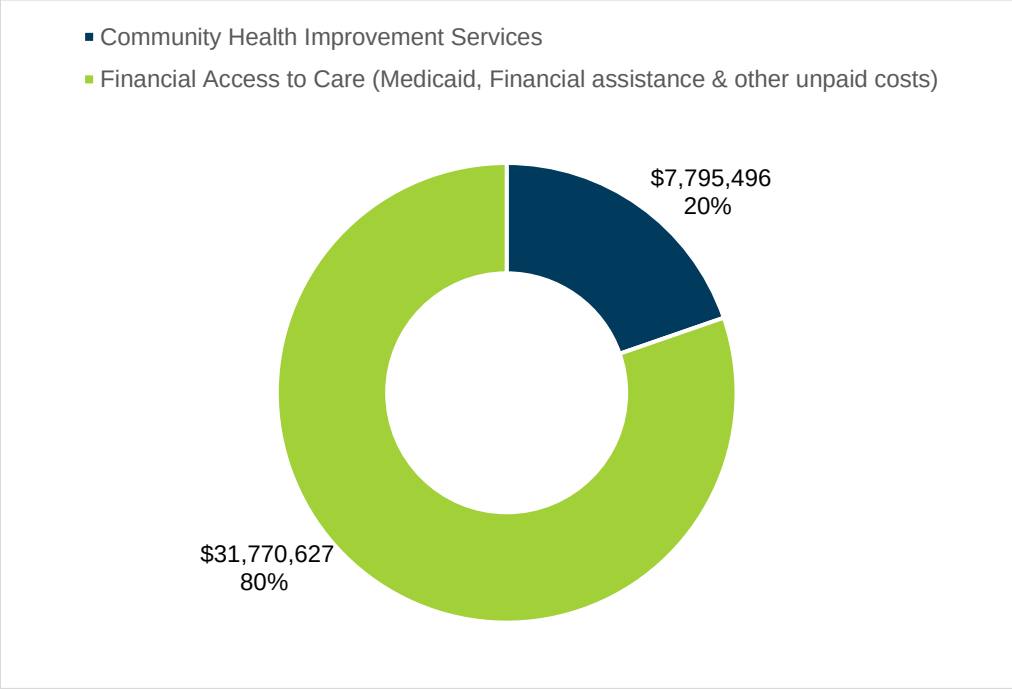
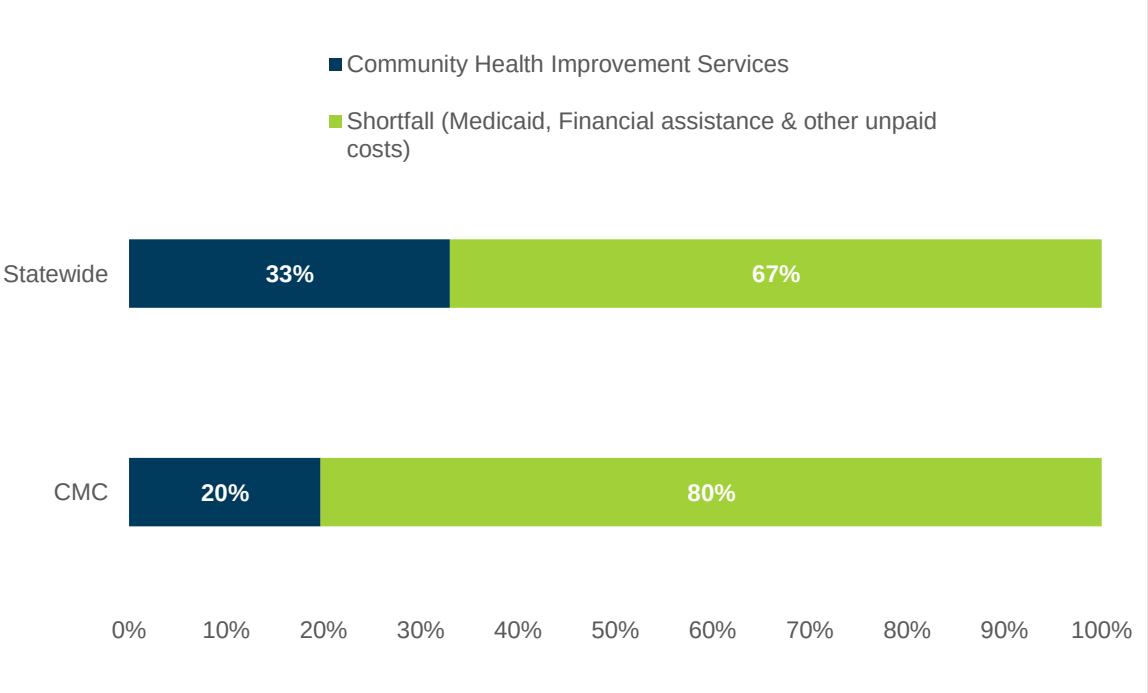


Figure 12. Distribution of Reported Community Benefits Funding: CMC and Statewide Averages



4.0 Potential Effects of the Acquisition Transaction

BerryDunn reviewed a range of information and interviewed stakeholders to assess their confidence in the transaction plan as stated and structured. The essential question was: *Would the plan be implemented as described and advance the best interests of the community?* Among the information reviewed was the APA, public and confidential financial statements, changes to bylaws, financial assistance policies, information from public forums, public transparency websites, analyses and reports from consultants that contributed to the transaction decision, and meeting agendas, minutes, and notes. Among the interviews performed by BerryDunn were individuals representing local community healthcare and social service providers, health policy experts, current and former elected officials, consumer advocates, and members of the boards of trustees of both Frisbie Memorial Hospital and CMC.

Table 5 lists the major points of focus for potential community impact from the interviews and submitted comments. All parties and stakeholders voiced interest in and concern for the major goals of healthcare improvement—access, quality, and cost containment. CMC operates as a charitable trust in the community, and the transaction raises questions about its process and structure for continuing in that role:

- What changes might be ahead for the governance and decision-making processes?
- What about disruption with CMC providers and employees, increased limits on charity care, reduced community benefit services, and loss of charitable assets?

Table 5. Points of Focus for Potential Community Impact

• Access to services	• Change from local governance and decision-making to a national for-profit entity
• Quality of care	• Changes in charity care and community benefit services
• Cost of care	• Retention of charitable assets in local communities
• Changes in program and services	• Support for community-based programs and services such as Healthcare for the Homeless, Poisson Dental, and Doorways

The parties and stakeholders identified a range of potential benefits and concerns. They are listed below as provided, with further detail throughout this report:

Potential Benefits

- Long-term financial and operational stability and viability for CMC and its affiliates
- Continued commitment to community-focused practice and mission
- Creation of a foundation to maintain the charitable assets in the local community

- Preservation of the continued provision of Catholic healthcare at CMC
- Maintained access for services close to home for all communities in Manchester
- Investments in clinical programming, workforce development, and infrastructure
- More support for the clinical staff in pursuing continuous quality improvement, population health management, and adoption of best practices
- Expanded capacity at CMC by offering more services, specialties, and sub-specialties

Potential Concerns

- Impact of for-profit healthcare entity on the community and extraction or redirection of local resources for previous charitable mission and purposes
- Reduction in existing scope of services, with a special concern regarding labor and delivery, primary care, and behavioral health
- Effect on community members with low incomes or who are uninsured, charity care policies and eligibility, and collaboration with local safety-net providers, including the Amoskeag Health, Healthcare for the Homeless, Poisson Dental, and Doorways
- Foundation created will be underfunded to sustain current community programs, and there could be a gap in services during transition to foundation
- Potential change in referral relationships and providers, including a possible incentive to use other hospitals owned by HCA in NH
- Healthcare price increases, health insurance premium pressures, and payer network disruptions
- No guarantees of maintaining or improving upon current healthcare quality and patient outcomes

Broadly, these potential changes fall within three categories:

1) Changes in control and ownership of assets
2) Changes in clinical services
3) Investment in (or extraction of) resources from the community

The transaction documents, including the APA, Notice to the Attorney General, and other collateral materials, address these potential benefits and concerns.

4.1 Changes in Control and Ownership of Assets

The proposed transaction fundamentally changes the ownership and governing structure of CMC. The proposed transaction is an acquisition transaction and will cause substantially all of the assets of the CMC transaction parties to be acquired by HCA, resulting in CMC being fully

owned by HCA. HCA will have authority over CMC's governance and operations and, indirectly, powers over CMC's subsidiaries. Once owned by HCA, CMC and the existing operating affiliates will become a for-profit, paying taxes, but exempt from federal and state nonprofit requirements. However, the transaction does not involve certain assets, including St. Peter's Home and CMC's interest in the Bedford Ambulatory Surgery Center.

4.2 Changes in Clinical Services

HCA identified service line enhancements that it feels would elevate the hospital's clinical service offerings, including trauma and emergent care, oncology services, and the hospital's nationally recognized heart center.

The parties have represented that "with HCA's resources, the Hospital will have the opportunity to expand its existing capabilities with access to data-empowered clinical and operational tools that enable residents of Manchester, New Hampshire to receive high quality, cost-effective healthcare services they deserve."[34]

Stakeholders shared questions and concerns about specific healthcare services—particularly for mental health and substance use disorders and for obstetrical care—and how this transaction might affect healthcare costs more generally. Input received through interviews and submitted comments/letters emphasized the need to monitor adherence to the APA, require approval conditions, provide ongoing accountability after the transaction takes effect, and include stipulations regarding the foundation.

The APA and supporting documents do not include detailed information about HCA's intentions to maintain service lines, and HCA would have substantial flexibility to discontinue offerings if the profitability and outcomes do not meet internal standards. Regardless, it would not be unusual for a hospital to rely upon, or at least consider, independent objective recommendations or standards when considering the viability of a healthcare service line. A number of rural hospitals have decided to close maternity labor and delivery service line offerings based on low volume and their ability to maintain quality, retain staff, and manage expenses. Offering a service like labor and delivery in a larger population center would have different dynamics when quality, access, cost, and community needs are considered, but heightening concerns about HCA's influence is Frisbie Memorial Hospital's closure of labor and delivery services in 2022, two years after the acquisition by HCA.

[34] Joint Notice to the Director of Charitable Trusts Pursuant to New Hampshire RSA 7:19-b. Charitable Trusts Unit, New Hampshire Department of Justice. Accessed December 4, 2024. https://www.doj.nh.gov/sites/g/files/ehbemt721/files/inline-documents/sonh/cmc-joint-notice-of-change-of-control.pdf.

4.3 Investment in (or Extraction of) Community Resources

HCA states a commitment to make substantial investments in CMC and its subsidiaries including:

A. Capital Commitments of $200 Million

B. Other Charitable Commitments – Creation of Foundation

C. Operating Commitments

HCA's capital investment of $200 million is expected to be implemented over 10 years. HCA has asserted that its short-term plans include infrastructure investment, strategic service line growth, and integration of HCA systems at CMC. In the long-term, HCA plans to provide financial support for graduate medical and nursing education, investment in research, and expanded service lines.[35] The foundation will use the funds resulting from the transaction "…to support healthcare in the Manchester area and New Hampshire in the Catholic tradition."[36] The foundation is also expected to support community programming like Healthcare for the Homeless, Poisson Dental, and Doorways. Further, the parties assert that HCA's resources are expected to allow the expansion of CMC's existing capabilities with "…data-empowered clinical and operational tools."[37]

[35] CMC/HCA Public Hearing Powerpoint Presentation. Office of the Attorney General, Charitable Trusts Unit. Accessed December 12, 2024. https://www.doj.nh.gov/sites/g/files/ehbemt721/files/inline-documents/sonh/final-hearing-deck-11.21.24-.pdf.
[36] Joint Notice to the Director of Charitable Trusts Pursuant to New Hampshire RSA 7:19-b. Charitable Trusts, Office of the Attorney General, New Hampshire Department of Justice. Accessed December 4, 2024. https://www.doj.nh.gov/sites/g/files/ehbemt721/files/inline-documents/sonh/cmc-joint-notice-of-change-of-control.pdf.
[37] Ibid.

5.0 Analysis: Best Interest of the Health Care Charitable Trust and the Communities It Serves

This section returns to the three standards defined in RSA 7:19-b, specific to community benefit and the charitable mission of the corporation:

- Due diligence in determining that the transaction is in the best interest of the healthcare charitable trust and the communities it serves.
- Assets continue for charitable purposes, including access, quality, and affordability of physical and mental healthcare services.
- If acquirer is not a NH nonprofit, control of proceeds remain independent of acquirer.

5.1 Due Diligence

Due diligence requires that, throughout the transaction, CMC adhere to this standard:

- In selecting the acquirer
- In engaging and considering the advice of expert assistance
- In negotiating the terms and conditions of the transaction
- In determining that the transaction is in best interests of affected communities

With the guidance of the Chartis Group, CMC conducted an extensive and deliberate process to identity HCA as its acquirer. Led by the CMC Board's Strategic Planning Committee, the process to discuss the expectations, options, and goals in seeking a transaction partner continued through the fall of 2022. In addition to identifying a transaction partner to meet the needs of the CMC and the communities it serves, CMC also needed a partner that would maintain CMC's Catholic identity. The ERDs include "…when considering partnership, Catholic healthcare providers should first attempt to collaborate with other Catholic institutions to ensure conformity with Catholic teaching." CMC reached out to local, regional, and national Catholic health systems and had discussions with 11 Catholic healthcare systems.

Documents submitted by CMC demonstrate that multiple partner organizations were considered, and that HCA was preferred, regardless of the for-profit status and nature of the proposed transaction. The negotiating position of CMC was weaker than a hospital that might otherwise have a strong financial position, but the CMC board with guidance from the Chartis Group expressed their support for the arrangement with HCA regardless of CMC's financial position.

Section 3.3 reviews the potential investments in (or extraction of) community resources. The transaction offers a range of potential investments and resources that could help to address community needs.

5.2 Assets Remain for Charitable Purposes and Proceeds Remain Independent of Out-of-State Acquirer

Pursuant to the APA, CMC shall form a New Hampshire charitable nonprofit corporation as a foundation. According to the APA, "the Foundation's principal purpose will be to improve health, health outcomes, access to high quality healthcare, and life-longevity for the residents of Greater Manchester and the State of New Hampshire in accordance with Christ's healing ministry."[38] The "Foundation is expected to accomplish its goals through such activities as grant making to nonprofit organizations improving health and wellness consistent with the teaching of the Catholic Church, support of programs that encourage and support recruitment and retention of healthcare workers, support of healthcare education and support the health needs of the most vulnerable."[39]

The APA does not provide many details about requirements or expectations for the foundation. The Internal Revenue Service provides information on multiple options for setting up a foundation and the tax implications, and additional clarity about the administration of the foundation would have been helpful. When Portsmouth Regional Hospital became part of the HCA system, the foundation was given responsibilities that could have substantial influence on operations at the hospital, but these opportunities do not exist with the proposed transaction. The larger question is about how grants will be distributed and whether the foundation will be adequately funded. These are recurring concerns among community members and healthcare providers.

The value of the assets distributed to the foundation from CMC's sale is estimated to be $110 million but will differ depending on the valuation when the transaction takes place. We expect the actual amount to be substantially less based on a letter provided to parties on October 22, 2024, which indicated that "…the ongoing nature of the financial pressures facing CMC and its affiliates, they continue to lose significant amounts of funds, all of which will reduce the amount that will be transferred to the nonprofit foundation as a result of the Transaction."[40] Specific plans are not provided, but HCA's capital commitment is $200 million over 10 years.

During many of the interviews, concerns about the funding level associated with the foundation were raised. These concerns were based on the existing costs of the programs that HCA would not otherwise continue to support, but also recognition of the vast resources associated with HCA and the value of acquiring a hospital in an urban setting with financially lucrative service offerings.

An additional consideration is the ability to enforce the provisions of the APA. Since CMC will no longer be a nonprofit hospital, absent agreeing to conditions established by CTU, the hospital

[38] Exhibit 1 – Parties to the Transaction. Charitable Trusts, Office of the Attorney General, New Hampshire Department of Justice. Accessed December 6, 2024. https://www.doj.nh.gov/sites/g/files/ehbemt721/files/inline-documents/sonh/exhibit-1-parties-to-the-transaction.pdf.
[39] Ibid.
[40] CMC-supplemental-response-to-rfo-2-to-joint-notice-to-ctu-response-1-public-version. Charitable Trusts, Office of the Attorney General, New Hampshire Department of Justice. Accessed December 12, 2024. https://www.doj.nh.gov/sites/g/files/ehbemt721/files/inline-documents/sonh/cmc-supplemental-responses-to-rfo-2-to-joint-notice-to-ctu-response-1-public-version.pdf.

will fall outside of the oversight provided by the CTU, and the foundation will be independently responsible for seeking legal action if expectations are not met.

6.0 Key Expectations with the Proposed Transaction

6.1 Community Expectations

Interviews were conducted and comments were received from several interested parties during the review phase, and recurring themes were observed. The creation of the foundation and continued support for community initiatives were mentioned repeatedly.

There is a clear expectation that a healthcare system like HCA will be able to bring large economies of scale and shared clinical resources that will improve financial status and future opportunities with CMC. HCA is expected to invest in the existing facilities, services, and programs and maintain services and structural resources more efficiently. There are substantial concerns but also expectations about maintaining maternity and labor and delivery services, the emergency department, and access to mental health and substance use disorder services.

A transaction like this is required by statute to offer access to quality and affordable physical and mental healthcare services.

New Hampshire is a leader in the area of price transparency and use of healthcare data more generally, and the New Hampshire Insurance Department and other parties have communicated the expectation for HCA to support these activities by supplying data as appropriate.

Regardless of the change to a for-profit status, there is the expectation for appropriate financial assistance policies, at least as generous as what CMC currently offers.

One of the key advantages represented by CMC and HCA is the ability to maintain specialized services in New Hampshire and locally in Manchester. While healthcare delivery will continue to evolve, the expectation for specialized services locally is clear.

7.0 Conclusion

The proposed transaction seeks to address many of the identified priorities of CMC and the Manchester community, and HCA is well positioned to provide support and opportunities for CMC. Local control will be weakened, and substantial concerns about HCA's influence on CMC exist, but CMC will most likely need to make significant changes to its operations regardless of whether the transaction proceeds.

BRG Transaction and Valuation Opinions, LLC
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January 5, 2025

New Hampshire Department of Justice
Office of the Attorney General
Charitable Trust Unit
1 Granite Place South
Concord, NH 03301

Greetings:

BRG Transaction and Valuation Opinions, LLC ("BRG") understands that Manchester Health Services, LLC, an affiliate of HCA Healthcare, Inc. (collectively, "HCA") and Catholic Medical Center ("CMC") have entered into an Asset Purchase Agreement dated June 21, 2024 pursuant to which HCA will (i) acquire certain assets of CMC and (ii) assume certain liabilities of CMC on a cash-free, debt-free basis, for an aggregate purchase price of $110 million (the "Consideration") in an all-cash transaction (the "Transaction"), subject to adjustments.

Pursuant to New Hampshire statue NH RSA 7:19-b *Standards for Acquisition Transactions Involving Health Care Charitable Trusts and Review by Director of Charitable Trusts*, the New Hampshire Department of Justice, Charitable Trust Unit ("NHDOJ") has requested that BRG render to it a written opinion as to the fairness, from a financial point of view, of the Consideration to be paid in the Transaction (the "Opinion"). We have not been requested to, and did not solicit, third party indications of interest in acquiring all or any part of CMC. Furthermore, we have not negotiated the Transaction or advised NHDOJ with respect to alternatives to it.

In connection with the Opinion, we have made such reviews, analyses and inquiries as we have deemed necessary and appropriate under the circumstances. Our review included, but was not limited to, the following documents and sources of information:

1. Reviewed the draft Asset Purchase Agreement dated June 21, 2024, by and among Catholic Medical Center, Catholic Medical Center Physician Practice Associates, Alliance Enterprise, Inc., Alliance Resources, Inc., Alliance Ambulatory Services and McGregor Street Medical Office Building, LLC (collectively, the "Sellers") and Manchester Health Services, LLC (the "Buyer") (the "Purchase Agreement") and other documents related thereto;

2. Reviewed audited financial statements for CMC for the fiscal years ended September 30, 2018 through September 30, 2023, and draft unaudited financial statements for CMC for the fiscal year ended September 30, 2024;

3. Reviewed certain financial forecasts and other information and data relating to CMC which were provided to and discussed with BRG by the management of CMC, including financial forecasts and adjustments thereto relating to CMC prepared by CMC management, in conjunction with their third party advisors;

4. Reviewed analyses and presentations prepared by VMG Health on behalf of its client CMC, including: "VMG Fairness Opinion Report dated June 17, 2024" and "Discussion Schedules and Cash Flow Comparisons dated November 12, 2024";

5. Reviewed CMC's fixed asset listings for the personal property to be included in the Transaction as of September 30, 2024, and other pertinent information related to CMC's personal property;

6. Reviewed relevant property and lease information for real property to be included in the Transaction, including description, function, age, square footage, lease terms and other pertinent information related to CMC's real property;

7. Reviewed presentations to CMC's Board of Trustees, including: Board presentations entitled "Partnership Selection: HCA dated September 25, 2023", "Partner Overviews dated January 2023", and "Partnership Selection & Future of GraniteOne, dated September 19, 2022" as well as minutes from numerous Board meetings;

8. Conducted a site visit to CMC's campus located in Manchester, NH on October 7, 2024;

9. Held discussions with certain senior officers, directors and other representatives and advisors of CMC concerning the businesses, operations and prospects of CMC, as well as the transaction rationale and process. This included discussions with The Chartis Group, a national healthcare advisory firm that CMC retained to assist in the process of searching for and evaluating potential parties with which to explore a possible transaction or partnership;

10. Reviewed a timeline of the activities which were conducted by CMC and their external advisors during the process of soliciting potential partner or affiliate candidates;

11. Reviewed certain publicly available business and financial information relating to CMC and HCA;

12. Analyzed certain financial, stock market and other publicly available information relating to the businesses of other companies whose operations BRG considered relevant in evaluating those of CMC;

13. Considered, to the extent publicly available, the financial terms of certain other M&A transactions which BRG considered relevant in evaluating the Transaction; and

14. Conducted such other analyses and examinations and considered such other information and financial, economic and market criteria as BRG deemed to be appropriate in arriving at its opinion.

We have relied upon and assumed, without independent verification, the accuracy and completeness of all information that was furnished to or discussed with us by CMC or otherwise reviewed by or for us. We have conducted an independent appraisal of the properties and assets of CMC that will be included in the Transaction. Management of CMC have advised us, and we have relied upon and assumed, without independent verification, that the financial forecasts and projections provided to us have been reasonably prepared in good faith and reflect the best currently available estimates of the future financial results and condition of CMC; that there has been no change in the assets, liabilities, financial condition, results of operations, cash flows, business or prospects of CMC since the date of the most recent financial statements and other information made available to us; and that there is no information or any facts that would make any of the information reviewed by us incomplete or misleading in any material respect. We express no opinion with respect to the financial forecasts or the assumptions on which they are based.

We have relied upon and assumed, without independent verification, that (a) the representations and warranties of all parties to the agreements, documents and instruments provided to us by CMC and all other related documents and instruments that are referred to therein are true and correct, (b) each party to all such agreements and other related documents and instruments will fully and timely perform all of the covenants and agreements required to be performed by such party, (c) all conditions to the consummation of the Transaction will be satisfied without waiver thereof, (d) the Transaction will be consummated in a timely manner in accordance with the terms described in all such agreements and other related documents and instruments, without any amendments or modifications thereto. We have relied upon and assumed, without independent verification, that (i) the Transaction will be consummated in a manner that complies in all respects with all applicable federal and state statutes, rules and regulations, and (ii) all governmental, regulatory, and other consents and approvals necessary for the consummation of the Transaction will be obtained and that no delay, limitations, restrictions or conditions will be imposed or amendments, modifications or waivers made that would have an effect on the Transaction, HCA or CMC that would be material to our analyses or this opinion. In addition, we have relied upon and assumed, without independent verification, that the final forms of any draft documents identified above will not differ in any material respect from the drafts of said documents.

The Opinion does not consider, and should not be interpreted to consider, whether the terms offered in the Transaction represent the best terms attainable.

The Opinion is necessarily based on business, economic, market and other conditions as they exist and can be evaluated by us at the date of this letter. Subsequent developments may affect the Opinion, however, and we do not have any obligation to update, revise, reaffirm or withdraw the Opinion. The Opinion is only to be used by NHDOJ as one input to consider in its review of the Transaction under NH RSA 7:19-b. The Opinion is limited to the fairness, from a financial point of view, of the financial terms of the Transaction and we express no opinion with respect to (i) the underlying business decision of CMC to proceed with or effect the Transaction, (ii) the legal (as opposed to business) terms of any arrangements, understandings, agreements or documents related to, or the form of, the Transaction or otherwise (other than to the extent expressly specified in the Opinion), (iii) the fairness of the Transaction to any party other than as set forth in the Opinion, (iv) the relative merits of the Transaction as compared to any alternative business strategies that might exist for CMC or any other party or the effect of any other transaction in which CMC or any other party might engage, (v) the tax structure or consequences of the Transaction to CMC, or any other party, (vi) the solvency or fair value of CMC or any other participant in the Transaction, under any applicable laws relating to bankruptcy, insolvency, fraudulent conveyance or similar matters, (vii) the appropriate capital structure of CMC or whether CMC should pursue the Transaction, (viii) how the NHDOJ or stakeholders or any other party should act or vote with respect to the Transaction, and (ix) the fairness, financial or otherwise, of the amount, nature or any other aspect of any compensation to consideration payable to or received by any officers, directors or employees of any party to the Transaction, any class of such persons or any other party. No opinion, counsel or interpretation is intended in matters that require legal, regulatory, accounting, insurance, tax or other similar professional advice. It is assumed that such opinions, counsel or interpretations have been or will be obtained from the appropriate professional sources. Furthermore, we have relied, with the consent of NHDOJ, on the assessments by CMC and their respective advisors, as to all legal, regulatory, accounting, insurance and tax matters with respect to CMC and the Transaction or otherwise.

We will receive a fee from one of the parties to the Transaction, as directed by NHDOJ, for rendering the Opinion, for which payment is not contingent on either the conclusions expressed in the Opinion or the consummation of the Transaction. In addition, NHDOJ has agreed to reimburse certain of our expenses arising out of our engagement. BRG may provide financial advisory services to parties in the Transaction in the future, for which BRG may receive compensation.

The issuance of the Opinion has been approved by a fairness opinion committee of BRG. This letter is provided to NHDOJ in connection with the Transaction and may not be used for any other purpose without our prior written consent. The Opinion should not be construed as creating any fiduciary duty on BRG's part to any party. The Opinion may not be disclosed, reproduced, disseminated, quoted, summarized, referred to, or communicated (in whole or in part) to any third party for any purpose whatsoever except with our prior written approval. Notwithstanding the foregoing, the Opinion may be included in its entirety in any document required by law or regulation to be filed with the U.S. Securities and Exchange Commission in connection therewith, and NHDOJ may summarize or otherwise reference the existence of the Opinion in such documents; provided that any such summary or reference language will be subject to our prior approval (not to be unreasonably withheld).

Based upon and subject to the foregoing, and in reliance thereon, it is our opinion that, as of the date hereof, the Consideration to be paid by HCA to CMC pursuant to the Transaction is fair, from a financial point of view.

BRG TRANSACTION AND VALUATION OPINIONS, LLC

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS SUPERIOR COURT

In re Proposed Acquisition of Catholic Medical Center by Manchester Health Services, LLC

ASSURANCE OF DISCONTINUANCE

This Assurance of Discontinuance ("Assurance") is entered into by the State of New Hampshire, by and through the Office of the Attorney General ("AGO"), Consumer Protection and Antitrust Bureau ("CPAB"); Manchester Health Services, LLC ("MHS" or "Buyer"), a Delaware limited liability company and a wholly owned Affiliate of HCA Healthcare, Inc. ("HCA"); and Catholic Medical Center ("CMC," separately each a "Party" and together with MHS, the "Parties") to resolve an investigation into a proposed transaction, whereby Buyer plans to acquire substantially all of the assets of CMC (the "Proposed Transaction"), and in particular whether the Proposed Transaction allegedly would constitute an unfair method of competition or otherwise harm competition in violation of the State's consumer protection laws (N.H. Rev. Stat. Ann. § 358-A:1, *et seq.*) and State and Federal antitrust laws. (*See* N.H. Rev. Stat. Ann. § 356:1, *et seq.*)

In consideration of their mutual agreements to the terms of this Assurance, and other consideration described herein, the sufficiency of which is hereby acknowledged, the AGO, MHS and CMC hereby enter this Assurance and agree as follows:

I. BACKGROUND

1. The Parties, along with certain CMC Affiliates, have entered into an Asset Purchase Agreement (the "APA") dated June 21, 2024, pursuant to which Buyer will acquire substantially all of the assets of CMC.

2. CMC is the owner of a 330-bed nonprofit acute-care Catholic hospital located in Manchester, New Hampshire, as well as certain other facilities, operations, business, services and practices described in the APA.

3. HCA is the owner of three other hospitals in New Hampshire: Parkland Medical Center in Derry; Frisbie Memorial Hospital in Rochester; and Portsmouth Regional Hospital in Portsmouth.

4. On June 28, 2024, CMC filed a notice of a proposed transaction with the New Hampshire Charitable Trusts Unit ("CTU"). In accordance with N.H. Rev. Stat. Ann. § 7:19-b, IV (a), CTU subsequently requested and obtained from CMC and MHS additional documentation and information regarding the APA. The deadline for CTU to issue its report is January 9, 2025.

5. CPAB conducted a contemporaneous investigation. CPAB's investigation identified concerns that the Proposed Transaction may: (1) substantially lessen competition for certain inpatient cardiac services in Southern New Hampshire; (2) increase the total cost of Health Care Services in the State of New Hampshire; and (3) have an adverse effect on access to Health Care Services, particularly for vulnerable populations, in violation of the State's consumer protection laws and State and Federal antitrust laws.

6. To resolve CPAB's concerns about the Proposed Transaction, the Parties have agreed to enter into and comply with this Assurance so as to avoid significant expense, inconvenience, and uncertainty, and to permit the Proposed Transaction to close without further delay.

7. CPAB represents that in the circumstances of this case, and particularly recognizing CMC's financial condition and the importance of CMC to the Manchester community, the terms

and remedies described herein are appropriate and in the public interest and, therefore, the CPAB is willing to accept this Assurance to resolve its concerns.

8. The Parties do not admit to nor agree with the allegations set forth by the CPAB and do not admit to any violation of law or liability arising from any federal, state, or local laws in stipulating to the entry of this Assurance, nor is such stipulation an admission to any of the concerns identified by the CPAB's investigation.

II. JURISDICTION AND VENUE

9. Pursuant to N.H. Rev. Stat. § 358-A:7, the AGO is authorized to enter into this Assurance and grants jurisdiction to this Court over the subject matter and the Parties hereto.

III. DEFINITIONS

For purposes of this Assurance, the following definitions apply:

10. "**Affiliate**" means any Person (other than an individual) that through one or more intermediaries controls, is controlled by, or is under common control with, another Person (other than an individual). As used in this definition, "control" includes the power to direct or cause the direction of the management and policies of a Person (other than an individual).

11. "**Anti-Tiering**" or "**Anti-Steering Clause**" means any agreement between a Health Care Provider and a Payor that prohibits the Payor from steering its members to a Hospital or Health Care Provider, including offering a tiered plan product. This includes a gag clause that would prevent a Payor from disclosing cost, provider network participation status, or quality information to its enrollees, patients or employers.

12. "**Asset Purchase Agreement**" or "**APA**" means the contractual agreement by and among the Parties, and titled Asset Purchase Agreement, dated June 21, 2024, and any amendments thereto.

13. "**Catholic Medical Center**" means that certain hospital known as Catholic Medical Center, a 330-bed acute-care licensed hospital located in Manchester, New Hampshire

14. **"CMC"** means Catholic Medical Center, a New Hampshire nonprofit corporation with its headquarters in Manchester, New Hampshire, its successors and assigns, and Affiliates, and their respective directors, officers, managers, agents, and employees. Its Affiliates include Alliance Ambulatory Services and Catholic Medical Center Physician Practice Associates, as well as CMC real-estate holding companies, which include Alliance Resources, Inc.; Alliance Enterprises, Inc.; and McGregor Street Office Building, LLC.

15. "**Center of Excellence**" means a highly specialized program that aggregates expertise and resources for a particular category of Health Care Services to improve patient care and clinical outcomes or as that term otherwise is defined by a Payor or Health Care Provider for purposes of Payor-Provider Contracts.

16. "**Closing Date**" means the effective date when the Proposed Transaction is consummated pursuant to the APA.

17. "**Exclusivity Clause**" or "**Exclusive Contract**" means any agreement or provision in an agreement between a Health Care Provider and a Payor that makes any HCA facility in New Hampshire an exclusive Health Care Provider for a particular Payor in a region or prohibits the Payor from contracting with another Health Care Provider.

18. "**Facility Fee**" means an additional fee separate and distinct from a fee charged by a Health Care Provider for Health Care Services to cover the overhead costs or operational expenses of providing the Health Care Service.

19. "**Foundation**" means the New Hampshire charitable nonprofit corporation to be formed by CMC and its Affiliate sellers as described in the Recitals to the APA.

20. **"HCA Healthcare, Inc."** or **"HCA"** means HCA Healthcare, Inc., a Delaware corporation with its headquarters in Nashville, Tennessee.

21. **"Health Care Facility"** means any facility located in New Hampshire where Health Care Services are provided, and includes, but is not limited to, ambulatory surgical centers, birthing centers, freestanding emergency rooms, hospitals and specialty hospitals, non-emergency walk-in or urgent care clinics, outpatient clinics, skilled nursing facilities, laboratories, freestanding imaging facilities, and freestanding radiation therapy facilities.

22. **"Health Care Provider"** means a Person who provides Health Care Services and includes but is not limited to Mid-Level Providers, Physicians, other health care professionals, practices, networks, and other individuals providing Health Care Services, and Health Care Facilities.

23. "**Health Care Services**" means the provision of health or medical care by a Health Care Provider, including but not limited to inpatient and outpatient hospital services, physician and non-physician professional medical services, outpatient medical services, behavioral and mental health services, and ancillary services including but not limited to, laboratory, pharmacy, and imaging.

24. "**Hospital**" means a licensed acute care or other hospital, having a duly organized governing body with overall administrative and professional responsibility and an organized professional staff that provides 24-hour inpatient care, that may also provide outpatient services, and that has as a primary function the provision of inpatient services for medical diagnosis, treatment, rehabilitation, and care of the injured, disabled, or those with short-term or episodic health problems or infirmities.

25. "**Hospital-Based Outpatient Department**" or "**HOPD**" means a Hospital unit providing Health Care Services to registered hospital outpatients, that is reimbursed under Medicare as an HOPD pursuant to Centers for Medicare & Medicaid Services ("CMS") regulations.

26. "**Manchester Health Services**" or "**MHS**" or "**Buyer**" means Manchester Health Services, LLC, a Delaware limited liability company and a wholly owned Affiliate of HCA.

27. "**Mid-Level Provider**" means a non-physician provider who performs professional Health Care Services that can be billed independently from that of a Health Care Facility or Physician, including but not limited to advanced practice registered nurses, physician assistants, physical therapists, licensed clinical social workers, psychologists, and other behavioral health counselors, as applicable.

28. "**Most Favored Nations Clause**" means any agreement or provision in an agreement between a Health Care Provider and a Payor that allows the Payor to receive the benefit of a better payment rate that the Health Care Provider gives to another Payor, that requires a Payor to pay a Health Care Provider a payment rate at least as high as the highest rate paid by the Payor to any other Hospital or Health Care Provider, or that requires a Health Care Provider to accept a payment rate at least as low as the lowest rate paid to the Health Care Provider by any other Payor.

29. "**Net Worth Threshold**" shall have the meaning assigned to it in Section 7.17(a) of the APA.

30. "**Payor**" means any organization or entity that contracts with Health Care Providers and other health care organizations to provide or arrange for the provision of Health Care Services to any person or group of persons and that is responsible for payment to such Health

Care Providers and other health care organizations of all or part of any expense for such Health Care Services, including but not limited to commercial insurance companies, health maintenance organizations, preferred provider organizations, union trust funds, multiple employer trusts and self-insured health plans. For the avoidance of doubt, "**Payor**" shall not include any government program, government payor or managed care organization contracted to administer the government program, including but not limited to Medicare, Medicaid, the Veterans Administration, TRICARE, Medicare Advantage, or NH Medicaid Care Management.

31. **"Payor-Provider Contract"** means a contract or agreement for Health Care Services between a Health Care Provider and a Payor, including but not limited to rates, definitions, terms, conditions, policies, and pricing methodologies (*e.g.*, per diem, discount rate, and case rate) that relates to the payment of or reimbursement for the Health Care Provider's provision of Health Care Services to the Payor's members or enrollees.

32. "**Person**" means any individual, partnership, association, corporation, business trust, legal representative, any organized group of persons, or government entity, and any subsidiaries, divisions, groups, or Affiliates thereof.

33. "**Physician**" means a doctor of allopathic medicine ("M.D.") or a doctor of osteopathic medicine ("D.O.").

34. "**Physician Practice**" means a practice of Physicians enrolled as a Medicare Part B group practice on form CMS-855B.

35. "**Population Health Arrangement**" means a Payor-Provider Contract involving capitated or other form of risk sharing taken across a population of defined members or as that term otherwise is defined by a Payor or Health Care Provider for purposes of Payor-Provider Contracts.

36. "**Pre-Existing Contract**" means a Payor-Provider Contract between a Payor and HCA or its Affiliates that is in effect on the date that this Assurance is entered.

37. "**Proposed Transaction**" means the proposed acquisition of substantially all of the assets of CMC by MHS as provided for in the APA.

38. "**Third Party**" means a Person other than the State of New Hampshire, CPAB or the Parties.

39. "**Tying Clause,**" "**Must Have Clause,**" or "**All-or-Nothing Clause**" means any agreement or provision between a Health Care Provider and a Payor that requires the Payor to contract with one or more, or all, of such contracting Health Care Provider's Affiliates or requires such Health Care Provider to contract with one or more of all of the contracting Payor's Affiliates.

40. "**Value-Based Payment Arrangement**" means a Payor-Provider Contract under which a Party or its Affiliates or subsidiaries are paid or assume risk based on patient health outcomes or some form of quality metrics, instead of being paid on a fee-for-service basis, including, but not limited to, alternative payment models, shared savings programs, pay for performance, bundled payments, capitation, or accountable care organizations or as that term otherwise is defined by a Payor or Health Care Provider for purposes of Payor-Provider Contracts.

IV. ASSURANCES

41. The duties, responsibilities, burdens, and obligations undertaken in connection with this Assurance shall apply to, and be binding upon, the Parties and their assigns and successors for a period of ten (10) years from the Closing Date, except for Paragraph 45 related to the payment of Funds to the State, which shall be for a period of twelve (12) years from the Closing

Date. In addition, the Parties shall cause their directors, officers, employees and Affiliates to comply with such Parties' obligations, and such Parties' Affiliates applicable obligations, under this Assurance.

CONVERSION TO PHYSICIAN PRACTICES

42. **Exhibit A** to this Assurance contains a list of all HOPDs operated by CMC as of the Closing Date.

43. As of the Closing Date, Buyer shall convert the HOPDs identified as "HOPDs: Physician Practices" set forth in **Exhibit A** to Physician Practices that will be separately enrolled as Medicare Part B group practices on a form CMS-855B.

44. For the ten (10) year period following the Closing Date, Buyer shall not charge a separate Facility Fee at any of Physician Practices identified as "HOPDs: Physician Practices" set forth on **Exhibit A** or at any future Physician Practice operated by Buyer.

FINANCIAL COMMITMENT TO THE STATE OF NEW HAMPSHIRE

45. The Parties agree the Foundation shall pay a total of seven million five hundred thousand dollars ($7,500,000.00) (the "Funds") directly to the State of New Hampshire and/or the AGO in equal installments of seven hundred fifty thousand dollars ($750,000.00) per year for ten (10) years (each, an "Installment Payment"). Each Installment Payment shall be due on the anniversary of the Closing Date with the first payment being due on the second anniversary of the Closing Date.

46. The applicable Net Worth Threshold shall be reduced dollar for dollar on the date that the Foundation makes each Installment Payment.

47. The Funds shall be held in the Health Care Consumer Protection Trust Fund established pursuant to N.H. Rev. Stat. Ann. § 7:6-g. The AGO shall distribute half of the Funds

to the Poisson Dental Clinic and Healthcare for the Homeless programs. The remaining half of the Funds shall be used and dispersed by the State in a manner consistent with applicable laws for the benefit of New Hampshire health care consumers.

PAYOR CONTRACTS / PROHIBITED PAYOR TERMS

48. Buyer would not assume the pre-existing CMC Payor-Provider Contracts. If HCA has a Pre-Existing Contract with a Payor governing payment for Health Care Services provided in New Hampshire, and such Pre-Existing Contract provides a process for transitioning Catholic Medical Center as a new HCA Affiliate, then the agreed-upon process set forth in the applicable Pre-Existing Contract shall apply.

49. If either (i) HCA has a Pre-Existing Contract with a commercial Payor that does not provide a process for transitioning Catholic Medical Center as a new HCA Affiliate, or (ii) HCA does not have a Pre-Existing Contract with a commercial Payor, then Buyer shall maintain Catholic Medical Center's contracted rates or fee schedules as of the Closing Date until the end of the remaining term in CMC's Pre-Existing Contract with the Payor or September 30, 2025, whichever is earlier, all of which would be subject to agreement between Buyer and each such commercial Payor.

50. Following the Closing Date, and solely with respect to Payor agreements governing payment for Health Care Services provided in New Hampshire, HCA and Catholic Medical Center shall not enter into any commercial Payor-Provider Contract, whether directly or through an HCA Affiliate, including any separate physician agreements, that includes the following terms or provisions:

A. Anti-Tiering or Anti-Steering Clause

B. Exclusivity Clause or Exclusive Contract

C. Most Favored Nation Clause

D. Tying Clause, "Must Have Clause," or "All-or-Nothing Clause"

Provided, however, that (i) HCA and Catholic Medical Center may enter into a commercial Payor-Provider Contract that contains the foregoing prohibited terms if HCA or Catholic Medical Center and a Payor mutually agree, and the clause is reasonably required to achieve a favorable discount based upon volume expectations for the purposes of effectuating a Population Health Arrangement or a Value-Based Payment Arrangement, or establishing a Center of Excellence, or other beneficial healthcare needs of the community and (ii) this paragraph shall not apply to HCA's or Catholic Medical Center's Payor-Provider Contracts with any government program, government payor or managed care organization contracted to administer the government program, including but not limited to Medicare, Medicaid, the Veterans Administration, or TRICARE.

CLAIMS DATA

51. No later than sixty (60) days after the Closing Date, and for the duration of this Assurance, CMC and HCA shall "opt in" and submit, or cause their third-party administrator to submit, all Payor claims data regarding its self-insured health benefits plan to the New Hampshire Comprehensive Health Care Information System ("NH CHIS") in accordance with N.H. Rev. Stat. Ann. § 420-G:11, related regulations including N.H. Code Admin R. Ins. 4005.03, guidance, and reporting forms (including any amendments or updates thereto).

V. ENFORCEMENT

52. The AGO, through CPAB, shall have exclusive authority to enforce the provisions of this Assurance.

53. In the event the AGO moves to enforce any provision of this Assurance, the AGO and the Parties agree to submit to the jurisdiction and transfer of the enforcement action to the New Hampshire Business and Commercial Dispute docket, provided such docket has jurisdiction; otherwise, such action shall be filed in Merrimack Superior Court.

54. By virtue of N.H. Rev. Stat. Ann. § 358-A:7, evidence of violation of this Assurance shall constitute prima facie evidence of an act or practice declared to be unlawful by New Hampshire Statutes Chapter 358 in any action thereafter commenced by the AGO. Matters thus closed may be reopened by the AGO at any time it is in the public interest.

VI. GENERAL PROVISIONS

55. This Assurance contains the complete agreement between the Parties and CPAB concerning the matters addressed herein. The Parties and CPAB have made no promises, representations, or warranties other than what is contained in this Assurance. This Assurance supersedes any prior agreement, understandings, or stipulations between the Parties and CPAB regarding the subject matter thereof. Provided, however, that this Assurance shall not be construed to supersede or preclude any other agreements, understandings or stipulations between the Parties and CTU.

56. **Exhibit A** is incorporated herein and is fully part of this Assurance and binding upon the Parties.

57. This Assurance should be construed pursuant to the laws of the State of New Hampshire; provided, however, that nothing contained herein shall be construed as amending Section 13.2 of the Asset Purchase Agreement with respect to the governing law of the Asset Purchase Agreement.

58. This Assurance should be construed to give full effect to the procompetitive purposes of consumer protection and antitrust laws and to protect against the harms that the AGO contends may be caused by the Proposed Transaction.

59. For purposes of construing the Assurance, this Assurance will be deemed to have been drafted collectively by the AGO and the Parties.

60. The titles in this Assurance have no independent legal significance and are used merely for the convenience of the Parties.

61. This Assurance shall be filed in Merrimack Superior Court, which shall retain jurisdiction over this Assurance.

62. This Assurance shall not create a private cause of action or confer any right to any Third Party for violation of any state or federal law by any Party except that the AGO, acting through CPAB, may file an action for a violation of this Assurance as described in Article V.

63. Nothing contained in this Assurance shall be construed to alter or modify any existing legal rights of any consumer or to deprive any person or entity of any existing private right under the law.

64. Nothing contained in this Assurance shall be construed to relieve the Parties of the obligation to comply with all state and federal laws, nor shall it be construed as approval by the AGO of any conduct or practices of the Parties.

65. Nothing in this Assurance shall be construed to limit the authority or ability of the AGO to protect the interests of the State of New Hampshire or the people of New Hampshire. This Assurance will not bar the AGO or any other governmental entity from enforcing laws, regulations, or rules against the Parties for conduct or practices not covered by this Assurance.

66. This Assurance may be executed by any number of counterparts and by different signatories on separate counterparts, each of which will constitute an original counterpart thereof and all of which together will constitute one and the same document. One or more counterparts of this Assurance may be delivered by facsimile or electronic transmission with the intent that it or they will constitute an original counterpart thereof.

67. This Assurance is entered into voluntarily and solely for the purpose of resolving potential claims and causes of action against the Parties relating to the Proposed Transaction. The Parties and each signatory to this Assurance represent that they are duly authorized to execute this Assurance and to bind the respective Party to all applicable provisions of this Assurance, and that on behalf of that Party they voluntarily enter into this Assurance without any degree of duress or compulsion.

68. This Assurance will not be construed to waive any claims of sovereign immunity the AGO may have in any action or proceeding.

69. If any portion of this Assurance is held invalid or unenforceable, the remaining terms of this Assurance will not be affected and will remain in full force and effect.

70. This Assurance shall be effective upon approval of the AGO. In the event the Parties notify the AGO that the Proposed Transaction will not occur and has been abandoned, this Assurance shall terminate, and the rights and obligations of the Parties hereto shall thereafter be null and void.

71. Except as otherwise provided herein, any notice or other documents to be sent to the Parties or any Party pursuant to this Assurance shall be sent by e-mail and United States Mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that

provides for tracking services and identification of the person signing for the documents and electronic mail. The notices and/or documents shall be sent to the following addresses:

For the New Hampshire Attorney General:
Brandon H. Garod
Senior Assistant Attorney General
Office of the New Hampshire Attorney General
One Granite Place South
Concord, NH 03301
PH: (603) 271-1217
brandon.h.garod@doj.nh.gov

For MHC:

c/o HCA Healthcare, Inc.
One Park Plaza, Bldg. 1
Nashville, TN 37203
Attention: General Counsel
Email: mike.mcalevey@hcahealthcare.com

With simultaneous copy (which shall not constitute notice) to:

HCA Healthcare, Inc.
One Park Plaza, Bldg. 1
Nashville, TN 37203
Attention: Chadd Tierney, Vice President, Legal Development
Email: chadd.tierney@hcahealthcare.com

For CMC:

Catholic Healthcare Trust (f/k/a Catholic Medical Center)
c/o Diocese of Manchester
153 Ash Street
Manchester, New Hampshire 03104
Attn: Meredith Cook, Esq., Chancellor

With simultaneous copy (which shall not constitute notice) to:

Devine, Millimet & Branch, Professional Association
111 Amherst Street
Manchester, New Hampshire 03101
Attn: Jon Sparkman, Esq.

[Signature pages follow]

CMC:

CATHOLIC MEDICAL CENTER

By: _____
Alexander J. Walker, its duly authorized
President & CEO

MHS:

MANCHESTER HEALTH SERVICES, LLC

By: _____
Name: _____
Title: _____

CMC:

CATHOLIC MEDICAL CENTER

By: _____
Alexander J. Walker, its duly authorized
President & CEO

MHS:

MANCHESTER HEALTH SERVICES, LLC

By: _____
Name: Monica Cintado
Title: Vice President

APPROVED:

THE STATE OF NEW HAMPSHIRE
JOHM M. FORMELLA
ATTORNEY GENERAL

By: _____ Date: 1/6/2025

Alexandra C. Sosnowski
Assistant Attorney General
Consumer Protection and Antitrust Bureau
New Hampshire Department of Justice
Office of the Attorney General
One Granite Place South
Concord, NH 03301-6397
Alexandra.C.Sosnowski@doj.nh.gov

Counsel for the State of New Hampshire

EXHIBIT A: CURRENT CMC HOPDS

HOPDS: PHYSICIAN PRACTICES

Practice Name	Practice Address
Pain Management	88 McGregor Street Suite 301 Manchester NH 03102
Behavioral Health Services	88 McGregor Street Suite 105 Manchester, NH 03102
New England Weight Management Institute	769 South Main Street Manchester, NH 03102
Bedford Center Internal Medicine & Pediatrics	188 Route 101 Bedford, NH 03110
Family Physicians of Manchester	57 Webster Street Suite 110 Manchester, NH 03104
Goffstown Family Practice	17A Tatro Drive Suite 201 Goffstown, NH 03045
Granite State Internal Medicine	188 Route 101 Bedford, NH 03110
Hooksett Internal Medicine	11 Kimball Drive Hooksett, NH 03106
Lakeview Internal Medicine	27 Londonderry Turnpike Hooksett, NH 03106
Willowbend Family Practice	5 Washington Place Suite 1A Bedford, NH 03110
North End Internal Medicine	1750 Elm Street Suite 201A Manchester, NH 03101
New England Heart and Vascular Institute	100 McGregor Street Level B Manchester, NH 03102
Center for Cardiometabolic Health & Preventive Cardiology	195 McGregor Street Suite 312 Manchester, NH 03102
New Hampshire Gastroenterology	9 Washington Place Suite 204 Bedford, NH 03110
Comprehensive Neurological Care	1 Highlander Way Manchester, NH 03103
Women's Wellness and Fertility Center	88 McGregor Street Suite 201 Manchester, NH 03110

OTHER HOPDS

Practice Name	Practice Address
Breast Care Center	9 Washington Place, Suite 203, Bedford, NH 03110
Infusion Services	87 McGregor Street, Suite 4100, Manchester, NH 03102
New England Sleep Center	2280 Brown Avenue, Manchester, NH 03103
Outpatient Physical Therapy at Bedford	188 Route 101, Bedford, NH 03110
Outpatient Physical Therapy of Hooksett	27 Londonderry Turnpike, Hooksett, NH 03106
Outpatient Rehab Services	769 South Main Street, Manchester, NH 03102
Wound Care Center	88 McGregor Street, Suite 101b, Manchester, NH 03102
Goffstown PT	558 Mast Road, Goffstown, NH 03045

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