

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

FILED

IN THE MATTER OF:

2015 NOV -4 PM 4:08

CABELL HUNTINGTON HOSPITAL, INC.'S
ACQUISITION OF ST. MARY'S
MEDICAL CENTER,
Huntington, West Virginia

J. F. HOOD
CIRCUIT CLERK
CABELL CO. WV

Misc No. 15-C-542

COPY

ASSURANCE OF VOLUNTARY COMPLIANCE

The Attorney General of West Virginia ("Attorney General") has been investigating certain acts and practices of Cabell Huntington Hospital, Inc. ("CHH"), in connection with its proposed acquisition of St. Mary's Medical Center ("SMMC"). In accordance with the West Virginia Antitrust Act, W. Va. Code §§ 47-18-22 and, federal antitrust laws, 15 U.S.C. § 1 *et seq.*, CHH, without in any way admitting that any of its prior practices were in violation of the West Virginia Antitrust Act, or other applicable state and federal laws, has consented to observe the following terms, conditions, and agreements in the future conduct of its business from and after the date of this ASSURANCE OF VOLUNTARY COMPLIANCE ("ASSURANCE").

CHH and SMMC in a good faith effort to demonstrate their willingness to cooperate with the Attorney General and in the interest of establishing and promoting appropriate standards of conduct within the health care industry, voluntarily and without in any way admitting that any of their prior practices were or the acquisition of SMMC by CHH is in violation of any state and federal laws, agree to undertake the following activity from and after the date of this ASSURANCE.

DEFINITIONS

1. "90% Market Service Area" means the area by which the hospital draws 90% of its total patients.
2. "Benchmark Rates" means the rates set by West Virginia Health Care Authority through a mathematical process that computes a charge increase based on a provider charge and cost comparison within a peer group.
3. "BPOE" means Business Plan of Operational Efficiencies dated November 12, 2014, prepared by Camden Group and submitted to the Attorney General.
4. "Centers of Excellence" means a designation by the Joint Commission, governmental entity, or managed care organizations for a certain service or services based on achievement of specific measurable criteria including but not limited to hospital experience levels as measured in volumes, clinical quality requirements, specific pieces of program infrastructure, data submission to an outcomes measuring database, or any other applicable criteria established by said organizations.
5. "Community Wellness Programs" means structured programs that incorporate systematic approaches to assess, and respond to, the health needs of a community, and then create plans to address those needs.
6. "Delivery System" means the combination of providers, institutional settings, and health care benefit resources by which healthcare services are provided.
7. "Faith Based Organization" means an organization operated in a manner that complies with the Ethical and Religious Directives for Catholic Health Care Services.

8. “Final Offer Arbitration” means a manner of arbitration whereby each party in a disputed matter submits its best and final offer to an arbitrator who is then required to choose what he or she believes is the best offer (sometimes referred to as “baseball style arbitration”).

9. “Fully Interactive Medical Record System” means a system where physicians or other Healthcare Providers can access patient health records electronically and instantaneously at either CHH or SMMC.

10. “General Acute Care Hospital” means a health care facility, licensed as a 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 and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

11. “Healthcare Provider” means hospitals, laboratories, physicians, physician networks and other healthcare professionals.

12. “Hospital Rates” means the prices set by CHH and SMMC’s hospitals for their individual inpatient and outpatient services.

13. “Inpatient Medicaid Patients” means those patients covered by Medicaid and admitted to the hospital and receiving as services room and board, medical or surgical diagnostic and treatment services, around-the-clock monitoring and observation, nursing care, and laboratory, x-ray and support services for physically injured or sick persons with short-term or episodic health problems or infirmities.

14. “Medically Under-served Areas” has the same definition proscribed by the Health Resources and Services Administration of the U.S. Department of Health and Human Services.

15. "Most Favored Nations Clause" means a contract provision which one party agrees to give to the other party terms which are the best terms it makes available to any third party.
16. "Operating Margins" means operating expenses subtracted from operating revenue divided by operating revenue.
17. "Patient Encounters" means all cases where a physician or other healthcare provider has a physical encounter with a patient in which the physician provides a service to the patient.
18. "PHO" means physician-hospital organization which is a management service organization in where the partners are physicians and hospitals. The PHO organization contracts for physician and hospital services.
19. "Population Health Goals" means those goals incorporated into a community health needs assessment as required by the Affordable Care Act.
20. "Quality Goals" means those goals developed annually in conjunction with CHH's hospital board and the medical staff.
21. "Quantitative Benchmarks" means national comparative benchmarks for best practices at other high performing Delivery Systems.
22. "Service Line" means a specified group of services for a specific procedure or disease category.
23. "Statement of Proposed Activities" means the statement to be created under Paragraph 4 of this ASSURANCE.
24. "Third Party Payor" means any person, corporation or entity that pays, or arranges for payment, for all or any part of any Hospital Services for itself or for any other person, corporation or entity. Third Party Payor includes any person, corporation or entity that develops,

leases, or sells access to networks of hospitals or provides healthcare insurance. The term does not include government payors for public health insurance programs, such as Medicare and Medicaid.

25. "Treating Physician" means the physician who provides or has provided consultation or treatment to a patient for a specific medical problem, and who uses the results of diagnostic tests in the management of the patients medical problem.

BACKGROUND

1. CHH is a not for profit West Virginia corporation which operates a 303 bed tertiary care hospital inHuntington, West Virginia.

2. SMMC is a not for profit West Virginia corporation which operates a 393 bed hospital inHuntington, West Virginia.

3. In 2014, Pallottine Health Systems, Inc., ("PHS") the sole member of SMMC, determined it was necessary to withdraw as a member of SMMC and circulated a request for proposals for the purchase of St. Mary's Medical Center to a number of corporations and organizations located within and without the State of West Virginia.

4. CHH received SMMC's request for proposal and submitted a response thereto and, following a period of negotiations, entered into an agreement dated November 7, 2014 with Pallottine Health Systems, Inc. and SMMC providing for the transfer of PHS' membership in SMMC to CHH (the "Transaction").

5. Pursuant to the provisions of West Virginia Code Section 47-18-1, *et seq.*, and the federal antitrust laws, 15 U.S.C. § 1 *et seq.*, the Attorney General is vested with the authority and charged with the responsibility of enforcing antitrust laws of the State of West Virginia as well as federal antitrust laws and is specifically authorized to pursue injunctive relief to prevent and

restrain violations of Article 18 of Chapter 47 of the West Virginia Code and Chapter 15 of the United States Code.

6. Pursuant to such authority and in the exercise of such responsibility, the Attorney General has conducted a thorough review and investigation of the Transaction and has determined that with the agreements and commitments by CHH and SMMC set forth below, the benefits of the transaction to citizens of West Virginia and the greater Huntington region (Huntington, Ashland, Kentucky and Ironton, Ohio), the Transaction is in the best interests of the State.

AGREEMENT

1. In order to facilitate continued and robust competition with respect to service lines provided by the two hospitals, CHH and SMMC agree that for a period of ten (10) years following consummation of the Transaction:

(a) Neither CHH nor SMMC will oppose the award of a certificate of need by the West Virginia Health Care Authority to any Healthcare Provider seeking to provide outpatient services similar to or competitive with services provided by either or both hospitals in the geographic area identified by CHH and SMMC as being their 90% Market Service Area in this investigation. In addition thereto, neither CHH nor SMMC will oppose the award of a certificate of need by the West Virginia Health Care Authority to any health care provider seeking to provide inpatient services similar to or competitive with services provided by either or both hospitals in the geographic area identified by CHH and SMMC as being 90% Market Service Area unless the applicant for the certificate of need does not accept inpatient Medicaid patients and uninsured patients.

(b) Each hospital will release any physician or Healthcare Provider employed by

it during the term of this ASSURANCE from any covenant, agreement or obligation not to compete with such hospital in any service line or lines upon termination of their employment;

(c) Except for hospital based specialty groups which have historically operated under exclusive agreements, such as radiologists, anesthesiologists, pathologists and emergency department physicians, CHH and SMMC will maintain open staffs granting privileges to all qualified physicians, and will not terminate privileges to those who start offering health care services in competition with CHH and SMMC.

(d) Non-employed physicians with privileges at either CHH or SMMC may obtain privileges at other hospitals or providers and join competing PHO's, networks and Delivery Systems, and not jeopardize their privileges with CHH and SMMC.

(e) Each hospital will release any non-physician employee, whether or not providing direct health care services, employed by it from any covenant, agreement or obligation not to compete with such hospital in any service line or lines upon termination of their employment.

2. In order to assure that the Transaction does not result in noncompetitive rate or price increases, CHH and SMMC agree that for a period of ten (10) years (unless otherwise expressly stated) following consummation of the Transaction:

(a) Neither CHH nor SMMC will seek an increase in Hospital Rates beyond Benchmark Rates established by the West Virginia Health Care Authority. In the event the West Virginia Health Care Authority should cease to establish Benchmark Rates, the methodology previously utilized by the Health Care Authority will be utilized to establish a cap for rate increases.

(b) If the combined Operating Margins of CHH and SMMC exceed an

average of 4% during any three (3) year period, rates at the hospitals will be reduced by the amount of such excess during the following three (3) years in an amount approved by the Office of Attorney General.

(c) Existing contracts with Third Party Payors negotiated prior to the Transaction which are subject to automatic renewal absent notice of termination by either party will not be terminated by either CHH or SMMC. CHH and SMMC agree to honor all termed contracts with Third Party Payors and not unilaterally terminate these contracts before their expiration, to the extent either hospital has that ability.

(d) If a Third Party Payor decides to unilaterally terminate an existing contract with CHH or SMMC (including contracts through Tri-State Health Partners Physician Hospital Organization, Inc.) or an existing contract expires and the third party elects to negotiate a new contract, then CHH and SMMC agree for a period of five (5) years following consummation of the Transaction not to negotiate for a reduction in the amount of the discount off charges contained in the prior third party payor contact. Thereafter, for an additional period of three (3) years, CHH and SMMC agree that they will negotiate the terms of all third party payor contracts in good faith and in the event of an impasse in the contract negotiations lasting more than sixty (60) days that the third party payor may submit any disputes as to prices and terms:

(1) first to mediation under the Commercial Mediation Rules of the American Arbitration Association (“AAA”), and, if the dispute cannot be settled by mediation, at the request of the Third Party Payor to a single arbitrator, mutually agreed upon by CHH, SMMC, and the Third Party Payor, who shall conduct binding arbitration in accordance with the Commercial Arbitration Rules of the AAA at a location mutually agreed upon by CHH, SMMC, and the Third

Party Payor, in order to determine fair and reasonable prices and/or terms;

(2) arbitration shall be conducted as Final Offer Arbitration, unless CHH, SMMC, and the Third Party Payor agree to an alternative manner of arbitration;

(3) costs of the arbitration (other than attorneys fees, which shall be borne by the party that incurs them) shall be borne by the loser if Final Offer Arbitration; if a manner other than Final Offer Arbitration or if the parties settle the matter prior to issuance of the final decision by the arbitration, the arbitrator shall assess costs, unless the parties agree as to the allocation of costs;

(e) CHH and SMMC may not condition contracts on a Third Party Payor's agreement not to contract with other Healthcare Providers, nor may they condition contracts on a Third Party Payor's agreement to contract with all affiliates of the health system.

(f) CHH and SMMC will not contract with Third Party Payors on behalf of any non-employed physicians for the duration of the ASSURANCE.

(g) Neither CHH nor SMMC will bargain for or insist on a "Most Favored Nations" clause in contracts with Third Party Payors or any vendors.

(h) Neither CHH nor SMMC will bargain for or insist upon anti-tiering or anti-steering clauses in contracts with Third Party Payors.

(i) Neither CHH nor SMMC will bargain for or insist upon restrictions on their vendors preventing or impairing the vendors from doing business with entities competing with CHH and SMMC, nor requiring "Most Favored Nations" clauses.

3. To enhance quality and improve access to healthcare, CHH and SMMC agree that for a period of ten (10) years following consummation of the Transaction:

(a) The hospitals shall develop Quality Goals and Population Health Goals

including Centers of Excellence with Quantitative Benchmarks and a proposed timeline which shall be provided to the Attorney General within six (6) months following the closing of the Transaction.

(b) The two hospitals will implement Community Wellness Programs reaching out to Medically Under-served Areas, the details of which will be communicated to the Attorney General annually.

(c) In the manner set forth in the BPOE, CHH and SMMC will establish a Fully Integrated and Interactive Medical Record System at both hospitals so that Patient Encounters at both hospitals will be readily available to Treating Physicians at either hospital.

(d) CHH and SMMC will provide to the Attorney General ninety (90) days written notice of any proposed addition or deletion of any Service Line.

(e) CHH and SMMC will continue to accept Medicaid patients residing in Ohio and Kentucky at payment rates established by such states for in-state providers.

4. After Closing, CHH and SMMC shall develop a Statement of Proposed Activities that it will perform in order to achieve projected efficiencies and quality enhancements from the Transaction. Once completed, but no later than ninety (90) days, the Statement of Proposed Activities shall be submitted to the Attorney General who shall review and either (a) approve such Statement of Proposed Activities or (b) provide notice to CHH and SMMC of the deficiencies in the Statement of Proposed Activities and work with CHH and SMMC to correct such deficiencies. The Attorney General shall not unreasonably withhold approval of the Statement of Proposed Activities, provided that any deficiencies identified by the Attorney General are corrected by the parties. The Statement of Proposed Activities shall include: (a) descriptions of proposed clinical integration; (b) proposed Quality Goals, including Quantitative

Benchmarks that may be used to assess whether those Quality Goals have been met; (c) Population Health Goals, including Quantitative Benchmarks that may be used to assess whether those goals have been met; (d) proposed measures by which CHH and SMMC will prevent unwarranted price increases, achieve savings, and realize transactional efficiencies, including any anticipated participation by CHH or SMMC in shared-risk arrangements with Third Party Payors; (e) proposed implementation of payment methodologies that control excess utilization and costs, while improving outcomes; and (f) a proposed time line for implementation of the plan contained in the Statement of Proposed Activities. CHH and SMMC shall report each year on the anniversary of the ASSURANCE becoming final (along with the report required under paragraph 6 of this ASSURANCE) to the Attorney General on implementation of the Statement of Proposed Activities. Such reporting obligation shall continue for ten (10) years, unless CHH and SMMC demonstrate in writing, and the Attorney General agrees, that CHH and SMMC have obtained their projected efficiencies and Quality Goals. CHH and SMMC agree that should the Attorney General determine to engage the services of a health care consultant of his selection to assist in the evaluation of the Statement of Proposed Activities and advise him as to the performance of the hospitals in meeting the quality objectives and projected efficiencies described herein, they will reimburse the Office of the Attorney General for the fees and expenses paid to such consultant in an amount not to exceed One Hundred Thousand Dollars (\$100,000.00) per year.

5. CHH agrees that St. Mary's Medical Center will be maintained as a free standing General Acute Care Hospital operated as a Faith Based Organization for a minimum period of ten (10) years following consummation of the Transaction.

6. Within ninety (90) days after the date this ASSURANCE becomes final, and annually thereafter on the anniversary of the ASSURANCE becoming final (until the term of this

ASSURANCE expires), CHH and SMMC shall submit to the Attorney General a verified written report setting forth in detail the manner and form in which they have complied, are complying, and will comply with each provision of this ASSURANCE. CHH and SMMC expressly agree that should the Attorney General require additional information and/or documentation for its determination as to whether CHH and/or SMMC are in compliance with the ASSURANCE, upon receipt of a written request from the Attorney General at any time, CHH and/or SMMC shall provide any additional information requested by the Attorney General without requiring a subpoena. It is expressly understood and agreed that should such a request by the Attorney General be made, such request is made in the investigation of a potential violation of state and/or federal antitrust laws and as such both the request and any response thereto, including documents or things produced, are subject to confidentiality provisions contained in state and/or federal law.

7. In consideration of the commitments and agreement of CHH and SMMC above set forth, the Attorney General hereby agrees that the Office of Attorney General will not commence, undertake or pursue any action to restrain or enjoin the consummation of the Transaction.

8. The agreements and the obligations and undertakings of the parties above set forth may be enforced by the Attorney General in the Circuit Court of Kanawha County or any other court of general jurisdiction in the State of West Virginia.

9. CHH and SMMC, their employees, agents and servants do hereby promise and voluntarily assure the Attorney General that they will comply with the provisions of the Antitrust Act, W. Va. Code § 47-18-1 *et seq.*, the Sherman Act, 15 U.S.C. § 1 *et seq.* and other applicable state and federal laws in their business practices.

10. CHH and SMMC agree to fully and promptly cooperate with the Attorney

General with regard to other health care industry investigations or litigation and related proceedings and actions, of any other person, corporation or entity.

11. CHH and SMMC shall comply fully with the terms of this ASSURANCE. If CHH and SMMC violate the terms of this ASSURANCE in any material respect, as determined solely by the Attorney General, the Attorney General may, after first having consulted with CHH and SMMC and allowing them a reasonable period of not more than thirty (30) days to cure any perceived violation, may pursue a civil action against any entity for any violation it has committed.

12. This ASSURANCE is not intended to disqualify CHH or SMMC, or any current employees of CHH and SMMC, from engaging in any business in West Virginia or in any other jurisdiction. Nothing in this ASSURANCE shall relieve CHH's and SMMC's obligations imposed by any applicable federal or state health care laws or regulations or other applicable law.

13. If compliance with any aspect of this ASSURANCE proves impracticable, CHH and SMMC reserve the right to request that the parties modify the ASSURANCE accordingly.

14. This ASSURANCE shall be governed by the laws of the State of West Virginia without regard to conflict of laws principles.

15. All provisions of this ASSURANCE shall apply to all successors and assigns of CHH and SMMC.

16. This ASSURANCE may be executed in counterparts.

17. Following closing of the Transaction CHH and SMMC shall distribute executed copies of this ASSURANCE to all Third Party Payors currently contracting with CHH and SMMC, and to all

of their physicians and management employees who are engaged, directly or indirectly, in the operation of CHH's and SMMC's business.

18. CHH and SMMC further promise not to represent directly or indirectly, or in any manner whatsoever, that the Attorney General has sanctioned, condoned or approved, in any manner whatsoever, any part or aspect of their business operations, unless written authorization is obtained from the Attorney General, and then only to the extent of said written authorization.

19. It is agreed and understood that the contents of this ASSURANCE are and shall be public information, and shall be filed with the Circuit Court of Cabell County pursuant to W. Va. Code § 47-18-22.

20. It is further agreed and understood that the parties to this ASSURANCE presently intend to cooperate in securing and obtaining compliance with the terms of this ASSURANCE.

21. The investigation of CHH's acquisition of SMMC commenced by the Attorney General is resolved by the execution of this ASSURANCE. The Attorney General may reopen the investigation of the Transaction for the purpose of enforcing the specific terms of this ASSURANCE, when and if he determines that it is in the public interest to do so. W. Va. Code § 47-18-22. Before re-opening any of the matters covered in this ASSURANCE, the Attorney General shall contact CHH and SMMC in writing and inform CHH and SMMC of the reasons that support the decision to reopen. Upon receipt of this notice, CHH and SMMC shall have a reasonable opportunity to respond within thirty (30) days.

22. No part of this ASSURANCE constitutes or shall constitute evidence or liability against CHH or SMMC in any action brought by any person(s) or entity or other party of any violation of any federal or state statute or regulation or the common law except in an action brought to enforce the terms of this ASSURANCE.

23. In the event the Attorney General brings an action to enforce the terms of this ASSURANCE, CHH and SMMC agree not to challenge jurisdiction of any court of competent jurisdiction in West Virginia. In the event the Attorney General prevails in such an enforcement proceeding, CHH and SMMC recognize they could be subject to injunctive relief, and an award of damages, civil penalties, and reasonable costs and attorneys' fees to the extent permitted by law.


24. This ASSURANCE memorializes the entire agreement by and between CHH, SMMC and the Attorney General regarding the scope of the respective rights and obligations of CHH and the Attorney General with respect to this transaction.

25. The agreements above contained and the obligations of the parties therein set forth are expressly conditioned upon and applicable only in the event the Transaction provided for in the Agreement of November 7, 2014 is consummated.

26. The parties hereto recognize that, upon closing of the Transaction, PHS, the sole member of SMMC, will be replaced by CHH which will become the sole member of SMMC. Therefore, it is understood and agreed that PHS and its officers, directors and employees shall have no responsibility for the promises, undertakings and obligations of SMMC set forth above to be performed following closing of the Transaction.

IN WITNESS WHEREOF, CHH has caused this ASSURANCE to be executed.

CABELL HUNTINGTON HOSPITAL, INC.

BY 
ITS President & CEO
President & CEO

Chief Executive Officer

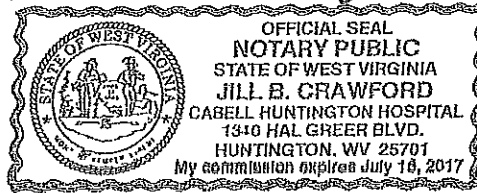
DATED: Nov. 4, 2015

STATE OF WEST VIRGINIA
COUNTY OF CABELL

Taken, subscribed and sworn before the undersigned authority this 4th day of
November, 2015

My commission expires July 16, 2017

Jill B. Crawford
Notary Public



IN WITNESS WHEREOF, SMMC has caused this ASSURANCE to be executed.

ST. MARY'S MEDICAL CENTER

BY Michael S. Reardon

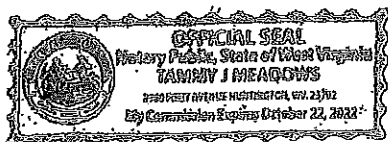
ITS _____
President

DATED: November 4, 2015

STATE OF WEST VIRGINIA
COUNTY OF CABELL

Taken, subscribed and sworn before the undersigned authority this 4th day of
November, 2015

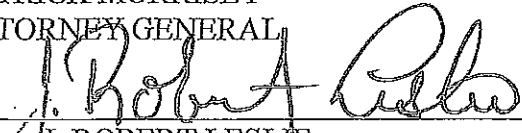
My commission expires 10/22/2022



APPROVED BY:

PATRICK MORRISEY
ATTORNEY GENERAL

BY


J. ROBERT LESLIE
SENIOR DEPUTY ATTORNEY GENERAL

DATED: 11/4, 2015

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, TO WIT

Taken, subscribed, and sworn to before me in the County and State aforesaid this 4
day of November, 2015

My commission expires October 12, 2022


NOTARY PUBLIC

