

## Position Statement

This transaction provides a unique opportunity, through what is expected to be the largest healthcare foundation in the nation per capita, to improve health outcomes and shore up rural economies in Western North Carolina for generations. It will also establish the template for future nonprofit conversions. Decades hence, North Carolina residents will have reason to cheer or rue the actions or inaction of the attorney general.

To realize the full benefit of this unprecedented opportunity, we urge the attorney general to condition his approval of the sale of Mission to HCA upon the satisfactory resolution of the critical deficiencies discussed below. Each recommendation has a solid basis in both legal precedent and best practices as evidenced by previous nonprofit conversions. Although specific modifications are proposed here, we recognize that the Attorney General's Office will use its expertise in developing solutions.

### The Conversion Foundation

The proposed membership of the conversion foundation board flies in the face of best practices, which say that successful boards are drawn from all sectors of the communities to be served. Additionally, the closed process by which the structure was drafted and the prospective members chosen is the antithesis of a fair, equitable, sustainable process. Let stand, these actions will destroy trust in the foundation and its intentions, undermining its effectiveness from the start.

Therefore, we urge the attorney general to condition his approval on these correctives:

- The creation of governance documents and the board selection process should start de novo, using a model established in previous successful conversions. The governance structure must be transparent and sustainable, as well preventing board members from becoming entrenched. The board must be diverse in terms of gender, socioeconomic interests, geographic residence, race and ethnicity, and members must possess the requisite skills and abilities to grapple with complex social issues. If the attorney general deems it necessary, we recommend that he retain, at Mission's expense, a qualified consultant to design the governance and board selection process.
- The foundation must have the ability to effectively enforce the agreement by seeking redress through the courts of North Carolina, using North Carolina law and including the right to trial by jury.
- The agreement should provide for independent oversight by a commission or special master appointed by the AG. This body or individual would be responsible for auditing the contract performance of HCA annually for a period of five years. It would also evaluate any foundation grants that have the potential to deliver financial benefits to HCA in disproportion to other regional hospitals. Its reports would be made public, and it would have the right to institute proceedings before the AG's office or the North Carolina courts. The cost would be borne by HCA, with sufficient funds, as determined by the AG's office, escrowed at closing.

- The foundation should be subject to disclosure requirements mirroring those found in the state's open records and open meetings laws. Those requirements should be incorporated into its governing documents, with the stipulation that they cannot be amended without approval from the AG. The foundation is not a public agency, there is no right to public comment, but scrutiny by the public is essential.

### Rural Hospitals

Rural hospitals safeguard the economic health of their communities as well as of the individuals who live there. In funneling patients to the central Mission campus in Asheville, the hospitals also contribute to the financial performance of the overall system – a service for which they receive no financial recognition. Mission has repeatedly cited HCA's "guarantees" of the continued operation of rural hospitals and the continuity of essential services.

In the name of solidifying those guarantees, we urge the attorney general to condition his approval upon the following:

- HCA should make the protected period for rural hospitals equal to that for Mission Hospital: 10 years. During the protected period, no individual or body should have power to abrogate the protection (a power conferred by the agreement on "Local Advisory Boards" created for that sole purpose.) Finally, the definition of Force Majeure should conform to North Carolina law.
- Services guaranteed at Member Hospital Facilities (Schedule 7.13(b)) should be described in detail, with as much specificity as those listed for Mission Hospital/Care Partners Services (Schedule 7.13(a)).
- No conditions should be imposed on the promised transfer by Mission of \$15 million to each of six local hospital foundations. Each foundation should receive the funds without exception, to be used at the discretion of its board.
- A designated entity from each local hospital community should be given an option to acquire any part or all of the local hospital properties before HCA otherwise offers them for sale. Based on evidence of the community's historic investment in the facilities, HCA should agree not to preclude the option of conveying them to the local entity at no cost. In no instance should the option price exceed the lesser of fair market value or HCA's depreciated cost of the assets in question.

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