

**Key terms before and after Attorney General’s Office negotiations — sample provisions**

Change	Original Asset Purchase Agreement	Amended Asset Purchase Agreement	Section Number
HCA extended its commitment to provide services at local hospitals from five years to 10 years.	... for a period of <b>five (5)</b> years immediately following the Closing Date, Buyer shall not discontinue the provision of the services set forth on Schedule 7.13(b)...	... for a period of <b>ten (10) years</b> immediately following the Closing Date, Buyer shall not discontinue the provision of the services set forth on Schedule 7.13(b) ...	APA 7.13(b)
The list of services that HCA must provide at local hospitals is now much more specific.	The McDowell Hospital, Inc. <ul style="list-style-type: none"> <li>• OB/GYN Services</li> </ul>	The following addition: <b>“OB/GYN Services” means providing the following capabilities and minimum services:</b> (1) identification of high-risk mothers and fetuses; (2) continuous electronic fetal monitoring; (3) cesarean delivery capability within 30 minutes of decision; (4) blood or fresh frozen plasma for transfusion; (5) anesthesia on a 24-hour or on-call basis; (6) radiology and ultrasound examination; (7) stabilization of unexpectedly small or sick neonates before transfer; (8) neonatal resuscitation; (9) laboratory services on a 24-hour or on-call basis; (10) consultation and transfer agreements; (11) assessment and care for the neonates; and (12) nursery or other appropriate space for care of the neonates.	Schedule 7.13(b)

<p>The list of services that HCA must provide at local hospitals is now much more specific.</p>	<p>For each regional hospital, the schedule listed only the words “Emergency Services.”</p>	<p>The following additions:</p> <p>“<u>Emergency Services</u>”, with respect to The McDowell Hospital, Inc., means 24-hour emergency services required to be provided by a general acute care hospital pursuant to 10A NCAC 13B .4102 through .4110 at least at the same classification level (as defined in 10A NCAC 13B. 4102) as provided on the Closing Date.</p> <p>“<u>Emergency Services</u>”, with respect to Angel Medical Center, Inc., Blue Ridge Regional Hospital, Inc., Highlands-Cashiers Hospital, Inc. and Transylvania Community Hospital, Inc., means requiring that facility personnel are capable of initiating life-saving measures at a first-aid level of response for any patient or person in need of such services on a 24-hour basis. This shall include:</p> <ol style="list-style-type: none"> <li>(1) initiating basic cardio-respiratory resuscitation according to American Red Cross or American Heart Association standards;</li> <li>(2) availability of first-line emergency drugs as specified by the medical staff;</li> <li>(3) availability of IV fluids and supplies required to establish IV access; and</li> <li>(4) establishing protocols or agreements for the transfer of patients to a facility for a higher level of care when these services are not available on site.</li> </ol>	<p>Schedule 7.13(b)</p>
<p>The list of services that HCA must provide at local hospitals is now much more specific.</p>	<p>For each regional hospital, the schedule listed only the words “Surgical Services.”</p>	<p>The following addition:</p> <p>“<u>Surgical Services</u>” means, with respect to any Member Hospital Facility, providing surgical procedures that require one or more incisions in operating rooms or procedure rooms that comply with applicable hospital licensure codes and standards of NC Gen Stat 131E-175 et seq. (the “Hospital Licensure Act”) at a level of service determined by Buyer in its reasonable discretion, with reasonableness determined by (i) the ability to provide such services at such Member Hospital Facility at a Level of Safety and Quality that is at least equal to, or better than, the median Level of Safety and Quality at any other similarly situated facilities owned and operated by Buyer or any of its Affiliates and (ii) the active medical staffs in good standing of the applicable Member Hospital Facility having qualified, available physicians and/or clinical staff necessary for Buyer or any of its Affiliates to provide such services.</p>	<p>Schedule 7.13(b)</p>

<p>The list of services that HCA must provide at local hospitals is now much more specific.</p>	<p>For each regional hospital, the schedule listed only the words “Acute Medicine Services.”</p>	<p>Same, but with the following addition:  “Acute Medical Services” means the provision by a licensed hospital of diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons requiring an inpatient admission to the hospital at a level of service determined by Buyer in its reasonable discretion, with reasonableness determined by (i) the ability to provide such services at such Member Hospital Facility at a Level of Safety and Quality that is at least equal to, or better than, the median Level of Safety and Quality at any other similarly situated facilities owned and operated by Buyer or any of its Affiliates and (ii) the active medical staffs in good standing of the applicable Member Hospital Facility having qualified, available physicians and/or clinical staff necessary for Buyer or any of its Affiliates to provide such services.</p>	<p>Schedule 7.13(b)</p>
<p>HCA may not close facilities or cease providing services unless both the Independent Monitor and the Local Advisory Board agree.</p>	<p>Unless otherwise consented to in writing by the applicable Local Advisory Board...</p>	<p>Unless otherwise consented to in writing by both the applicable Local Advisory Board and the Independent Monitor...</p>	<p>7.13(b); 7.13(c) contains same change</p>

<p>HCA is much more constrained in its ability to claim a “force majeure” exception to its promises – such a claim would have potentially allowed HCA to cite government actions or economic downturns as a way to default on its promises.</p>	<p>“Force Majeure” means an event or effect that cannot be reasonably controlled by the Party affected, including ... acts or omissions of any Governmental Authority or rules, regulations or orders issued by any Governmental Authority.</p> <p>...Buyer shall not discontinue the provision of the services set forth on Schedule 7.13(b) (the “Member Hospital Facility Services”) at any Member Hospital Facility, subject to Force Majeure making the provision of such services impossible or commercially unreasonable (but only for the period of Force Majeure and the applicable Remediation Period)...</p>	<p>“Force Majeure” means an event or effect that cannot be reasonably controlled by the Party affected <b>and was not in existence as of the Effective Time</b>, including ... acts or omissions of any Governmental Authority or rules, regulations or orders issued by any Governmental Authority.</p> <p>...Buyer shall not discontinue the provision of the services set forth on <u>Schedule 7.13(b)</u> (the “Member Hospital Facility Services”) at any Member Hospital Facility, subject to Force Majeure making the provision of such services impossible or commercially unreasonable (but only for the period of Force Majeure and the applicable Remediation Period)...</p> <p><b>For, and only for, acts or omissions of any Governmental Authority; rules, regulations or orders issued by any Governmental Authority; or changes in local, domestic, foreign, and/or international economic conditions; Force Majeure based on commercial unreasonableness shall not be deemed to have occurred under this <u>Section 7.13</u> unless (a) the circumstances giving rise to the asserted Force Majeure caused an actual (or, solely in the event of a Reimbursement Change, an actual or projected) material Financial Loss for the applicable service or facility (or, if the applicable service or facility was operated at a Financial Loss immediately prior to the occurrence of the asserted Force Majeure, caused such actual (or, solely in the event of a Reimbursement Change, an actual or projected) Financial Loss to increase by a material amount) for a period of at least twenty-four (24) consecutive months after those circumstances came into existence, and (b) such Financial Loss was not projected or expected by Buyer as of the Effective Time (or, if the applicable service or facility was projected by Buyer as of the Effective Time to be operated at a Financial Loss, such material increase in such Financial Loss was not projected as of the Effective Time)....</b></p> <p style="text-align: right;"><i>(continued on next page)</i></p>	<p>APA definitions</p> <p>7.13(b)</p> <p>7.13(k)(i)</p>
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		<p>Notwithstanding the foregoing, and for the avoidance of doubt, none of the following events shall constitute Force Majeure: (a) changes in corporate income tax rates; (b) Medicaid expansion under the Affordable Care Act, whether complete or partial, in the State of North Carolina; (c) any routine reduction in reimbursement levels by any Government Program that is consistent with the average of such reductions during the prior three (3) year period prior to the Effective Time; and/or (d) changes to reimbursement levels under the North Carolina State Health Plan proposed as of the Effective Time by the North Carolina State Treasurer; (e) changes to local, domestic, foreign, and/or international economic conditions where there has not been a U.S. national economic recession declared by the National Bureau of Economic Research (or its successor) that caused an actual material Financial Loss for the applicable service or facility for a period of at least thirty-six (36) consecutive months.</p>	7.13(k)(ii)
<p>Both the existing local hospital foundations and Dogwood Health Trust have the right to bid on hospitals if they are ever sold or closed. HCA cannot sell or close any hospital facility until 2029.</p>	<p>If Buyer or any of its Affiliates receive no proposals in connection with a Sale Process other than from Seller Representative, Seller Representative shall have the right to purchase the applicable Hospital in cash from Buyer or any of its Affiliates for an amount equal to the Fair Market Value of such Hospital...</p>	<p>...Seller Representative may, at its election, exercise its rights under this <u>Section 7.20</u> to purchase a Hospital by arranging for the purchase to occur by a nonprofit entity that is an Affiliate of Seller Representative. Seller Representative may assign the relevant portion of its rights under this <u>Section 7.20</u> to the applicable Regional Foundation related to the Hospital to be sold or closed; if rights are so assigned, pertinent references to “Seller Representative” in this <u>Section 7.20</u> shall refer instead to the applicable Regional Foundation. Seller Representative shall assign the relevant portion of its rights under this <u>Section 7.20</u> to the applicable Regional Foundation if Seller Representative would not exercise those rights, but the applicable Regional Foundation requests assignment of those rights and would exercise those rights.</p> <p>If Buyer or any of its Affiliates receive no proposals in connection with a Sale Process other than from Seller Representative, Seller Representative shall have the right to purchase the applicable Hospital in cash from Buyer or any of its Affiliates for an amount equal to the Fair Market Value of such Hospital...</p>	<p>7.20(a)</p> <p>7.20(b)</p>

<p>HCA committed to build a new replacement facility for Angel Medical Center consistent with the Certificate of Need developed before the Mission-HCA transaction was announced.</p>	<p>Angel Medical Center Project. Buyer shall construct a facility generally consistent with the Certificate of Need for such replacement facility for Angel Medical Center: Project ID# A-11427-17, effective March 17, 2018, unless otherwise consented to by the applicable Local Advisory Board, and pursuant to a plan, budget, design and specifications determined by Buyer in its sole discretion....</p>	<p>Angel Medical Center Project. Buyer shall construct a facility generally consistent with the Certificate of Need for such replacement facility for Angel Medical Center: Project ID# A-11427-17, effective March 17, 2018, unless otherwise consented to by the applicable Local Advisory Board, and pursuant to a plan, budget, design and specifications determined by Buyer in its sole discretion; <b>provided that Buyer shall not use this discretion to construct a facility with fewer beds or able to provide fewer services than described in the Certificate of Need....</b></p>	<p>7.14(e)(ii)</p>
<p>HCA committed to build a 120-bed inpatient behavioral health hospital in Asheville. It may not reduce the scale of those plans.</p>	<p>Behavioral Health Hospital Project. Buyer shall construct a one hundred twenty (120) bed inpatient behavioral health hospital in Asheville, North Carolina pursuant to a plan, budget, design and specifications determined by Buyer in its sole discretion....</p>	<p>Behavioral Health Hospital Project. Buyer shall construct a one-hundred twenty (120) bed inpatient behavioral health hospital in Asheville, North Carolina pursuant to a plan, budget, design and specifications determined by Buyer in its sole discretion; <b>provided that Buyer shall not use this discretion to construct fewer than the number of beds listed in this Section 0....</b></p>	<p>7.14(e)(iii)</p>
<p>HCA stated in the contract that it has no current intention to discontinue support for community service programs.</p>	<p>(Not present)</p>	<p>Buyer represents that: (i) <b>Buyer has no present intent to discontinue any of the community activities, programs or services provided, operated or otherwise supported on November 21, 2018 by any of the Sellers,</b> except for retail pharmacies and the Sellers' adult day care and expanded bereavement support programs.</p>	<p>7.13(j)(i)</p>

<p>HCA committed to spend at least \$14.28 million for community service programs Mission supports: at least \$6.78 million in the year after closing and an additional at least \$7.5 million over ten years.</p> <p>HCA committed to at least one year of full financial support for EMS in Madison, Mitchell, and Yancey Counties. This will minimize disruption as these counties transition EMS services away from being supported by Mission.</p>	<p>(Not present)</p>	<p>Between the first (1<sup>st</sup>) anniversary and tenth (10<sup>th</sup>) anniversary of the Closing, Buyer and/or any of its Affiliates shall collectively make or incur Community Contributions of at least \$750,000 per Annual Period.</p> <p>“Community Contributions” means, with respect to any applicable Annual Period, the aggregate amount of the following: (i) any Financial Loss incurred by Buyer or any of its Affiliates during such Annual Period arising out of or attributable to the provision or operation of any of the activities, programs or services set forth on Schedule 7.13(i)....</p> <p>Buyer shall continue the community activities, services and programs set forth on Schedule 7.13(i), to the extent such programs were included on MHP’s Form 990 for the 2017 fiscal year, for at least twelve (12) months immediately following the Closing Date. If Buyer desires to terminate any such community activity, service or program after the first anniversary of Closing, it shall provide the Foundation with no less than 90 days’ prior written notice.</p> <p><u>SCHEDULE 7.13(i) – Community Programs</u></p> <ol style="list-style-type: none"> <li>1. <u>Cancer Program</u>. Community Health Improvement Program for Cancer administration...</li> <li>2. <u>Genetic Center Education</u>. Community Health Improvement Program for Genetics Education.</li> <li>3. <u>Lifeline</u>. 24/7 personal emergency monitor...</li> <li>4. <u>Medication Assistance Program</u>. Assistance with medication for uninsured patients.</li> <li>5. <u>Safe Kids</u>. Outreach program to promote Children’s safety.</li> <li>6. <u>Sports Medicine</u>. Services to High School Athletes McDowell County.</li> <li>7. <u>Health Education Center</u>. Nicotine dependence program, community health enhancement, diabetes center.</li> <li>8. <u>Madison EMS</u>. EMS in Madison County.</li> <li>9. <u>Mitchell EMS</u>. EMS in Mitchell County.</li> <li>10. <u>Yancey EMS</u>. EMS Services in Yancey County.</li> </ol>	<p>7.13(g)</p> <p>APA definitions</p> <p>7.13(i)</p> <p>Schedule 7.13(i)</p>
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<p>Dogwood Health Trust will spend \$25 million over five years to address opioid use disorder, consistent with the DHHS opioid plan.</p>	<p>(Not present)</p>	<p>Dogwood will provide \$5,000,000 per year for five years for the purpose of funding programs and services dedicated to addressing substance use disorder for residents of western North Carolina in conjunction with programs developed or to be developed by the Secretary of the North Carolina Department of Health and Human Services.</p>	<p>Dogwood letter agreement, pp. 3-4</p>
<p>For ten years, HCA must maintain the improved charity care policy Mission negotiated – which provides assistance for patients at up to 400% of the federal poverty line.</p>	<p>Uninsured and Charity Care Policies. Between the Effective Time and the tenth (10th) anniversary of the Effective Time, Buyer will implement and maintain at the Hospitals the Uninsured and Charity Care Policy (subject only to such revisions as (i) are approved by (A) with respect to any Material Facility other than the Local Hospital Facilities, the Advisory Board, or (B) with respect to any Local Hospital Facility, its applicable Local Advisory Board, (ii) provide no less access to necessary medical care regardless of ability to pay for services rendered than the Uninsured and Charity Care Policy, or (iii) are necessary to comply with applicable Law). Thereafter, and for so long as Buyer continues to operate the Hospitals, Buyer will maintain policies for the treatment of indigent patients at the Hospitals that (i) comply with applicable Law and (ii) provide the greater amount of access to necessary medical care regardless of ability to pay for services rendered as between (x) individuals who are at or below 200% of the federal poverty line, pursuant to the poverty guidelines then published by the United States Department of Health and Human Services (or the successor organization thereto), or (y) the policies maintained by the then largest North Carolina nonprofit healthcare system.</p> <p>(For the Uninsured and Charity Care Policy, see Exhibit C to the Asset Purchase Agreement. The section discussing assistance to persons between 0-400% of the federal poverty line is on pages 5 and 6 of Exhibit C.)</p>	<p>Uninsured and Charity Care Policies. Between the Effective Time and the tenth (10th) anniversary of the Effective Time, Buyer shall implement and maintain at the Hospitals the Uninsured and Charity Care Policy (subject only to such revisions as (i) are approved by (A) with respect to any Material Facility other than the Local Hospital Facilities, both the Advisory Board and Independent Monitor, or (B) with respect to any Local Hospital Facility, both its applicable Local Advisory Board and Independent Monitor, (ii) provide no less access for necessary medical care regardless of ability to pay for services rendered than the Uninsured and Charity Care Policy, or (iii) are necessary to comply with applicable Law). Thereafter, and for so long as Buyer or an HCA Affiliate continues to operate the Hospitals, Buyer or that HCA Affiliate shall maintain policies for the treatment of indigent patients at the Hospitals that (i) comply with applicable Law and (ii) provide the greater amount of access for necessary medical care regardless of ability to pay for services rendered as between (x) a policy for indigent patients that provides access to individuals who are at or below 200% of the federal poverty line, pursuant to the poverty guidelines then published by the United States Department of Health and Human Services (or the successor organization thereto), or (y) the policies maintained by the then largest North Carolina nonprofit healthcare system.</p> <p>(For the Uninsured and Charity Care Policy, see Exhibit C to the Asset Purchase Agreement. The section discussing assistance to persons between 0-400% of the federal poverty line is on pages 5 and 6 of Exhibit C.)</p>	<p>7.15</p>

<p>HCA agreed that the promises listed in this document can be enforced not only by Mission or Dogwood, but also by the Attorney General.</p>	<p>(Not present)</p>	<p>In the event the North Carolina AG determines that Seller Representative has failed to adequately exercise its right to enforce any obligation of Buyer set forth in Sections 7.1(a), 7.1(b)(iv), 7.1(d), 7.12, 7.13, 7.14(e)(ii), 7.14(e)(iii), 7.15, 7.17, 7.18, 7.20 or 7.25 (collectively, the “AG-Enforceable Obligations”), it shall so notify Seller Representative. If Seller Representative has not cured such failure by taking appropriate action to enforce such obligation within forty (40) days of receipt of such notice, the North Carolina AG shall have the right to enforce such obligation on behalf of and in the name of the Seller Representative, notwithstanding Section 13.13(a) but subject to any and all other terms, conditions and limitations in this Agreement relating to such right to enforce, and shall become a third-party beneficiary of such right.</p>	<p>13.13(b)</p>
<p>Dogwood will roll off two current board members over the next year and an additional current board member in 2020. Dogwood has committed that by January 1, 2020, its board will include no more than five members from any one county, and by January 1, 2021, its board will include no more than four members from any one county.</p>	<p>(Not present)</p>	<p>First, by July 1, 2019, the Dogwood Board will have not more than 50% of its members residing in any one county. This will be accomplished by the election of at least three new directors residing outside of Buncombe County....</p> <p>We have assurances from two of our Board members who reside in Buncombe County that they will not seek re-election at the expiration of their current term of office ending December 31, 2019, and from a third from Buncombe County to not seek re-election at the expiration of such member’s current term ending December 31, 2020. Thus, by January 1, 2020, the Dogwood Board will include no more than five members from any one county, and by January 1, 2021, the Dogwood Board will include no more than four members from any one county.</p>	<p>Dogwood letter agreement, p. 2</p>
<p>Dogwood has agreed that its board will fairly reflect the diversity of the population of western NC by 01/01/2020.</p>	<p>(Not present)</p>	<p>The Dogwood Board is committed to having a board that, by January 1, 2020, will be fully and fairly representative of western North Carolina, across all dimensions, including ethnic, gender, and geographic dimensions.</p>	<p>Dogwood letter agreement, p. 1</p>

<p>Dogwood must include at least one member from each of the five regions with a regional hospital and a second member from the McDowell Hospital region by 01/01/2020.</p>	<p>(Not present)</p>	<p>Second, by January 1, 2020, the Dogwood Board will include at least one member from each of four sub-regions of western North Carolina in the Eastern and Central areas of western North Carolina and two from the Western region (consisting of Cherokee, Clay, Graham, Jackson, Macon and Swain Counties), for a total of six (6) directors. The two sub-regions in the Eastern area comprise Avery, Mitchell and Yancey Counties (referred to as sub-region E-1) and Burke, McDowell, Polk, and Rutherford Counties (E-2). The two sub-regions in the Central area comprise Henderson and Transylvania Counties (C-3) and Buncombe, Haywood, and Madison Counties (C-4). In addition, by January 1, 2020, the Dogwood Board will include a second member from the E-2 sub-region. (A map of the regions and sub-regions is attached.)</p>	<p>Dogwood letter agreement, p. 2</p>
<p>Dogwood has agreed to hold public meetings across the region to determine how it will interpret its mission to improve social determinants of health.</p> <p>Dogwood will hold an open meeting with the public each year to receive community input, and it will provide an annual report to the people of western North Carolina detailing how it is using its funds.</p>	<p>(Not present)</p>	<p>During 2019, Dogwood commits to host one meeting in each of the three western North Carolina regions (East, Central, and West). These meetings will be open to the public and the purposes of each will be to discuss the needs of the region and development of the areas of focus related to the social determinants of health, provide education and obtain input on the priorities for addressing social determinants of health throughout western North Carolina. Dogwood will endeavor to bring in national experts and facilitators for these meetings.</p> <p>Dogwood also commits to conduct at least one annual open meeting with the public each year to receive community input. These meetings will be timed so that Dogwood can take into account any insights it receives from the meeting as it plans its next grant cycle.</p> <p>Dogwood will provide an annual report to the western North Carolina region, detailing the social determinants of health areas of its focus, the programs it is funding within those areas, the metrics Dogwood is using to evaluate the programs and its own success, compliance by HCA with its obligations under the Asset Purchase Agreement, and other matters relevant to Dogwood’s mission and the people it serves. Dogwood will post the annual reports on its website to assure they are available to the public.</p>	<p>Dogwood letter agreement, p. 3</p>

<p>The Dogwood board will not include any member who is an employee of or who has a material business relationship with HCA. Immediately following this transaction, the Dogwood board will not include any member who is a member of the Mission board.</p>	<p>(Not present)</p>	<p>Dogwood recognizes that its independence is critical. For that reason, the Dogwood Board will not include any member who is an employee of or who has a material business relationship with HCA. Finally, immediately following the closing of HCA's acquisition of Mission's assets, the Dogwood Board will not include any member who is a member of the Mission board.</p>	<p>Dogwood letter agreement, p. 2</p>
<p>For the next 10 years, Dogwood cannot change its mission without approval of the Attorney General.</p>	<p>(Not present)</p>	<p>Immediately following the closing of the Transaction, the Dogwood Board will amend its articles of incorporation to provide that, for a period of 10 years after the closing of HCA's acquisition of Mission assets, Dogwood will not amend the charitable purpose contained in its articles without the prior written approval of the North Carolina Attorney General and, thereafter, Dogwood will be required to provide the North Carolina Attorney General 30-days' notice prior to any change in its charitable purpose. A copy of such amendment is attached. Notice to the North Carolina Attorney General will be provided in accordance with the attached notice instructions.</p>	<p>Dogwood letter agreement, p. 3</p>