



**MONITORING REPORT**  
**For Fifth Annual Compliance Review Cycle**

**To Assess the Compliance Activities of**  
**HCA Healthcare, Inc.**  
**operating under the *Asset Purchase Agreement***  
**for Mission Health System**  
**(January 19, 2019 – January 19, 2029)**

**JULY 12, 2024**

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## **SECTION I: INTRODUCTION AND BACKGROUND**

On or about April 1, 2024, Affiliated Monitors, Inc. (AMI) was engaged by Dogwood Health Trust (DHT), a non-profit organization, pursuant to a Request for Proposal (RFP) selection process to serve as the successor Independent Monitor of an Asset Purchase Agreement (APA), dated January 31, 2019 and entered into by HCA Healthcare, Inc. (HCA) for the purchase of Mission Health System (Mission Health), located in Western North Carolina.

This is the first report issued by AMI, the successor independent monitor following Gibbins Advisors. The report reflects the compliance activities of HCA, operating under the APA, for the period January 1 through December 31, 2023. Section outlines are contained in the *Table of Contents*.

Throughout this Report, the following terms and abbreviations are used:

APA –	Asset Purchase Agreement
Buyer –	Refers to the HCA Healthcare (HCA)
DHT –	Dogwood Health Trust
Reporting Year –	The “Reporting Year” for the current report is calendar year 2023
Seller –	Refers to the former Mission Health System

In addition, the phrase “Local or Community Hospitals” refers collectively to the five affiliated acute care hospitals which are part of HCA’s North Carolina Division: Angel Medical Center, Blue Ridge Regional Hospital, Highlands-Cashiers Hospital, Mission Hospital McDowell, and Transylvania Regional Hospital.

## **BACKGROUND**

### **Overview of HCA’s Purchase of Mission Health System**

In or about January 2019, HCA, a for-profit hospital corporation, purchased Mission Health System, Inc., a North Carolina non-profit corporation. The transaction consisted of the purchase of Mission Hospital, a Level II trauma center and related facilities, located in Asheville, and five affiliated acute care hospitals (Angel Medical Center, Blue Ridge Regional Hospital, Highlands-Cashiers Hospital, Mission Hospital McDowell, and Transylvania Regional Hospital) located in Western North Carolina.

## Asset Purchase Agreement (APA)

### *Development Stages of the APA*

To facilitate the purchase, the multiple sellers, buyer, and DHT entered into an *Asset Purchase Agreement* (the Original Agreement), dated August 30, 2018 which was replaced, amended, and restated pursuant to a January 31, 2019 *Amended and Restated Asset Purchase Agreement* (the APA).

The APA was subsequently amended twice. The *First Amendment to the APA* was executed in or about June 2020 and allowed communications to be received by telegraphic or other electronic (i.e., electronic mail or facsimile) means until midnight on December 31, 2020. The *Second Amendment* became effective in April 2022 and amended sections 1.1, 7.3, and 7.16 of the APA relative to certain funds, including the Western NC Health Innovation Fund, LLC.

### *Pertinent Itemized Requirements or Continuing Obligations of HCA*

In addition to the mechanics governing the sale, the APA contained various itemized requirements and continued obligations that would remain in place during the first ten (10) years following HCA’s purchase of Mission Health. As of this date, certain requirements and/or continued obligations have been satisfied by HCA, and those items are marked completed. The pertinent obligations, specific to Article 7, are summarized below and discussed in more detail in Section II of this report:

APA Article 7 & Sections	Requirement or Continuing Obligation	Completed or Continuing
7.10	Branding	Continue to use Mission Health or Mission Health System and CarePartners within the scope of marketing while allowing HCA to be incorporated, as well.
7.12(a)	Creation of Hospital Advisory Board and cooperation with delineated functions	Create and maintain an Advisory Board of individuals in a 4:4 ratio of seller to buyer and subject to responsibilities outlined in 7.12(a).
7.12(b)	Creation of Local Advisory Boards and cooperation with delineated functions	Create and maintain Local Advisory Boards established for each local hospital who shall have the responsibilities outlined in 7.12(b).
7.13(a)	Mission Hospital/Care Partners Services	Continuing
7.13(b)	Member Hospital Facility Services	Continuing
7.13(c)	Sale or Closure of Any Facility	Continuing
7.13(d)	Contingency	Continuing

APA Article 7 & Sections	Requirement or Continuing Obligation	Completed or Continuing
7.13(e)	LTAC Services (at St. Joseph Campus)	Expired 1/31/2021
7.13(f)	MHF Quality or Safety Occurrence	Continuing
7.13(g)	Community Contributions	Continuing
7.13(h)	Medicare/Medicaid Enrollment & Good Standing Required Status	Continuing
7.13(i)	Community Programs (i.e., Cancer, Genetic Center Education, Lifeline, Medication Assistance Program, Safe Kids, Sports Medicine, Health Education Center, Madison EMS, Mitchell EMS, Yancey EMS)	Expired 1/31/2020 (but must provide notification if a Program is terminated.)
7.14(e)	Capital Expenditures (i.e., Angel Medical Center Project; Behavioral Health Hospital Project)	Completed
7.15	Uninsured and Charity Care Policies	Continuing
7.16	Innovation Fund, as amended	Completed
7.18	Graduate Medical Education	Continuing
7.19	Charitable Donations	Continuing
7.20	Right to Bid	Continuing
7.24	Maintenance of WNCHN membership by facilities	Continuing

*Role of Dogwood Health Trust (DHT)*

DHT was created to receive and manage the proceeds resulting from the sale of Mission Health to HCA and to operate as a charitable non-profit organization under an agreement with the North Carolina Office of the Attorney General (NC OAG).

DHT was named in the APA as “the Foundation” and listed as a party to the APA. Under Section 3.5(b), the Foundation was also designated as “Seller Representative” for the assignment of rights, including the authority to select an Independent Monitor under 7.12(c). In addition, DHT was given certain obligations (e.g., enforcement) under Section 13.13.

*APA Enforceability*

As referenced above, under Section 13.13(a), DHT was given the right to enforce the obligations of HCA as set forth in Article 7 of the APA, subject to conditions and limitations imposed.

In addition, the rights and responsibility for enforcement of the AG-Enforceable Obligations of the APA were set forth in 13.13(b), which also provides right of enforcement of the APA to the NC OAG.

## **Role & Responsibilities of the Independent Monitor**

### *Required Qualifications*

The APA, at Section 7.12(c), established the requirement for an Independent Monitor (IM). In summary, the qualifications for selection of the IM by DHT included the following:

- One key individual shall have
  - at least 12 years of management – level experience with an acute care hospital (150 beds), or a hospital system that owns/operates a hospital with at least 150 beds;
  - substantial experience as chief executive officer (CEO), chief financial officer (CFO), or chief operating officer (COO);
  - never have been an officer, director, employee, consultant, or other representative of Mission Health System or HCA or any of their affiliates.
- No person performing substantial work on the engagement shall have ever been an officer, director, employee, consultant, or other representative of Mission Health System or HCA or any of their affiliates within the previous five-year period.

Both HCA and the NC OAG are to be provided with the right to consent, in advance, to the selection of the IM.

### *Role & Responsibilities of the IM*

The role of the IM is multi-faceted. The IM serves as one of the recipients of HCA’s Annual Report, acts in an advisory capacity to specified entities, and is charged with consenting obligations for certain changes in services, sales, and proposed closures of material facilities or local hospitals.

The IM derives authority from the APA, as set forth in the following sections:

- Recipient of HCA Annual Reports – The IM receives Annual Reports (and Cap Ex Reports), which contain HCA’s compliance activities related to the “Continuing Obligations” and other obligations of the APA covered in the reports. APA, Section 17.17
- Advisory Activities – Specifically, the IM is to advise DHT (including the seller directors of the Advisory Board) and Local Advisory Boards regarding HCA’s compliance activities, including those reflected in HCA’s Annual Reports. APA, Section 7.12(c)

- Consenting Obligations – Receive requests or notices from HCA regarding the discontinuation of any Mission Hospital, CarePartners service, Member Hospital Facility Services or LTAC Service, the sale or closure of any Material Facility or the occurrence of a contingency or MHF Quality or Safety Occurrence and participate in the consenting obligations held jointly with the Local Advisory Boards relative to the discontinuation of services and the sale or closure of any Material Facilities or local hospitals and uninsured and charity care policy revisions. APA, Sections 7.13 (b) and (c) and 7.15

Fees and expenses of the IM shall be the exclusive responsibility of DHT, as the Seller Representative. The APA section contains additional obligations and terms. APA, 7.12(c)

### **Selection Process for Independent Monitor**

In January 2024, DHT issued a *Request for Proposal* (RFP), which described the scope of the work required by the independent monitor, the evaluation process established, and the deadlines for consideration.

In February, AMI submitted its *Proposal to Serve as the Independent Monitor for Dogwood Health Trust*. Subsequently, AMI was selected by DHT to participate in an in-person interview process, which was held at the offices of DHT in Asheville, North Carolina in late February. In March, AMI was notified by DHT of their selection of AMI to serve as the independent monitor, replacing Gibbins Advisors, pending approval of both HCA and the NC OAG. Both HCA and the NC OAG agreed for AMI to serve as the IM.

In April, AMI was engaged under contract to perform the independent monitoring services subject to the contract terms and the APA.

### **The AMI Team**

The AMI Team consists of three core team members: Gerald Coyne, Project Lead; Denise Moran, Deputy Project Lead; and Jeffrey Brickman, serving as subject matter expert specific to health care systems.

The core team members are supplemented by executive leaders, Jesse Caplan, Dionne Lomax, and Stephen Nemmers, and supported by an array of mid-level and administrative assistants.

## **METHODOLOGY**

### **Basic Tenets of the Monitoring Process**

AMI's monitoring process incorporates the following elements: audit, analyze, verify, and test. We exercise these processes through documentation review, requests for additional information, interviews of key staff and personnel, participation in site visits to facilities, and intake and analysis of information provided by the public (e.g., patients, board members).

Note: AMI maintains a policy of non-attribution to individuals and identification of comments in its reports, unless those comments are attributable to the client, DHT, or to the entity being monitored, HCA or its agents.

### **Transition Period & AMI Orientation**

#### *Transition Sessions with Previous IM*

Following AMI's engagement at the beginning of April 2024, AMI participated in two transition sessions with the previous IM, Gibbins Advisors, which, through key representatives, provided insight into their monitoring practices and approaches, described their experiences in interacting with various stakeholders, and furnished an overview of their work as of the date of our meetings.

#### *Orientation Phase with DHT*

From April 22 through April 26, 2024, AMI's core team members (the Team) participated in a week-long orientation session held at the offices of DHT, located in Asheville. The orientation event consisted of meetings and interviews with various individuals to understand historical perspectives, gain insight into the prior reporting cycles, and establish rapport with key stakeholders. In addition, AMI reviewed documentation and participated in a question-and-answer session with key DHT executives to better understand the documentation, previously provided to AMI, related to the APA and the prior monitoring cycles.

### **Compliance Process & Annual Reporting Period**

#### *Timeframe & Deliverables*

The annual monitoring cycle is guided by the timed requirements set forth in the APA at Section 7.17. Specifically, HCA is required to provide a copy of their Annual Report within 120 days of the end of their fiscal year, or by April 30<sup>th</sup> of each year, to the IM and other designated entities. Within 90 days of receipt of each Annual Report, DHT shall notify the NC OAG of its intention to notify HCA of any potential noncompliance by HCA of the APA. APA, 7.17(b)



The receipt of the Annual Report by the IM triggers a review of the Annual Report for the preceding timeframe (i.e., January 1 – December 31, 2023) for an analysis of HCA’s stated compliance with the terms and obligations of the APA and activates the time period within which noncompliance activities must be reported by DHT to NC OAG.

It is within these timeframes that AMI is required to conduct its final review and submit its monitoring report to DHT for review and decision-making.

*Meeting with Greg Lowe, President, HCA NC Division*

Prior to the orientation event with DHT, AMI requested an initial meeting be scheduled with HCA’s North Carolina Division for purposes of introduction and for general discussion. A meeting was scheduled for April 24, 2024 at the corporate offices of HCA in Asheville.

The initial meeting was attended by Greg Lowe and members of the HCA executive team, representatives from DHT, and the AMI Team. During the conversation, Mr. Lowe designated Heidi Letzelter as the IM’s point of contact. AMI explained the general monitoring process that it would undertake as the newly selected IM, including the Team’s request to interview staff and personnel who would have first-hand knowledge of the compliance commitments. Mr. Lowe offered to provide names of personnel and staff with whom we could speak. He commented that he hoped for a balanced report. No names, however, were provided by Mr. Lowe.

*Requests for Information*

During the review process, there were multiple Requests for Information (RFI) submitted to HCA, as follows:

- Initial Request for Information (RFI)

March 5, 2024 – As part of the monitoring plan and before the engagement of AMI, DHT submitted the initial RFI to HCA on behalf of the IM.

May 7, 2024 – As there was no production of responses/documentation provided by HCA to the RFI, AMI provided a written request to HCA’s Designee. HCA responded: “I will follow up on the status of this request and advise you of status as soon as I am able.”

Week of May 13, 2024 – As there was no update or production of responses/documentation provided by HCA to the RFI, DHT representative reached out to HCA. HCA responded that request for production of responses/documentation remained under review by auditors but could not be provided until the following week.

May 20, 2024 – As there had been no production of responses/documentation by this date to the RFI, AMI renewed its request, asking for a “rolling production” of reviewed materials, a weekly call to update for production status, and a timetable for the deliverables.

May 24, 2024 – AMI received HCA Responses to IM’s RFI.

May 28, 2024 – AMI requested clarification from HCA as to the terminology found in the footer of each page of the HCA Responses document: *“For Discussion Purposes Only – Subject to Change.”*

May 29, 2024 – HCA re-submitted their Responses to AMI with the footer removed.

- Second Request for Information

June 10, 2024 – AMI requested additional information related to the *Charity Care Policy* and, to conduct a random sample of Community Contributions, AMI identified ten contributions, ranging in differing amounts and given to ten distinct entities, and requested supporting documentation. The information was provided by HCA on June 12<sup>th</sup> and June 19<sup>th</sup>.

- Subsequent Requests for Information

In subsequent emails, AMI made requests for organizational charts for leadership staff and personnel for each facility, requested specific areas to include in the facility tours, and provided a list of individuals to whom AMI would like to speak. No individual interviews were scheduled by HCA with the exception of one interview related to questions about changes to HCA’s Charity Care Policy.

*Annual Tour of Healthcare Facilities*

In accordance with APA, Section 7.17(a), DHT requested tours of the facilities (i.e., hospitals and affiliated centers) owned by HCA, and the IM was able to accompany DHT on the tours. The following facilities were toured on the dates indicated:

Date Toured	Names of Facilities	Locations or Townships
June 13	Highlands-Cashiers Hospital	Highlands
June 14	Blue Ridge Regional Hospital	Spruce Pine
June 14	Mission Hospital McDowell	Marion
June 18	Transylvania Regional Hospital	Brevard
June 19	Mission Hospital & SECU Cancer Center	Asheville
June 19	Mission Children’s Hospital – Reuter Outpatient Center; Sweeten Creek Mental & Wellness Center; and CarePartners	Asheville
June 21	Angel Medical Center	Franklin

**COMMUNITY ENGAGEMENT ACTIVITIES**

In addition to the activities required under the APA, for the new monitor, DHT expanded the role of the IM to include additional community engagement activities. Within a few weeks of engagement, AMI accomplished the following: identified sites and scheduled community meetings, started the development of a website for the purpose of community engagement, and scheduled meetings with elected officials and members of the emergency medical services community serving the citizens of Western North Carolina.

Specific information is provided in the sections below.

**Community Meetings**

AMI hosted six community meetings during the weeks of June 10<sup>th</sup> and June 17<sup>th</sup> in various locations throughout Western North Carolina. DHT and AMI conducted the meetings in a public hearing format, with slides prepared by DHT as an overview of DHT’s overall mission and charitable work. DHT explained the RFP process and introduced AMI, who provided slides focused on the introduction of AMI’s Team and initial insights into AMI’s monitoring approach. The meetings were held on the following dates and locations:

Date	Community	Location
June 10	McDowell County	Marion Community Building 191 N. Main Street Marion, NC 28752
June 11	Mitchell & Yancey	Cross Street Commerce Center 31 Cross Street Spruce Pine, NC 28777
June 12	Buncombe County	AB Tech (Ferguson Auditorium) 19 Tech Drive Asheville, NC 28801
June 17	Transylvania County	Transylvania County Library Rogow Room 212 S. Gaston Street Brevard, NC 28712
June 18	Jackson County	Hudson Library 544 Main Street Highlands, NC
June 20	Macon County	Macon County Facilities Building Robert C. Carpenter Room 1288 Georgia Road Franklin, NC 28734

The format of the Community Meetings provided an opportunity for members of the public to participate in a *Community Sharing* segment, which allowed citizens to provide comments and/or feedback and ask questions of the new IM. The meetings were live-streamed, offering members of the viewing public an opportunity to submit questions to the IM. Each meeting was taped by DHT, and AMI intends to make those recordings available to the public.

The AMI Team is in conversation regarding the best use of time and resources in order to reach members of the public who do not or did not attend the public meetings. Several ideas were shared by attendees after the conclusion of the meetings, and AMI will be structuring a more expansive approach in the coming months.

### Independent Monitor Website

The IM developed an IM Website (<https://independentmonitormhs.com>) in order to provide information to the citizens of Western North Carolina and to serve as a mechanism to collect feedback and concerns. While still under development, the IM Website was operational on May 30<sup>th</sup> and currently offers the following:

Tab	Functionality
Home Page	A Welcoming Page and Message to identify the Independent Monitor and provide at-a-glance tabs, including a quick link to the Asset Purchase Agreement (APA)
Our Role	An explanation of the role of the Independent Monitor by focusing on three key components: HCA’s Commitments, Independent Monitor Obligations, and the Monitoring Process
Documents	The APA (redacted), a Summary of HCA’s Commitments, and Press Releases
FAQs	A list of <i>Frequently Asked Questions</i>
Community Meetings	A statement about the purpose of the Community Meetings, a link to the Press Release, a Schedule of the Meetings (for June 2024), and a Registration button, which allowed the community members to register and submit questions in advance
Contact	Encourages the public to “Get in Touch,” providing a contact email for the Independent Monitor ( <a href="mailto:Mission@AffiliatedMonitors.com">Mission@AffiliatedMonitors.com</a> ) and a list of Additional Resources with a brief explanation of the agency and contact information
Submit a Complaint	While the portal for the <i>Monitor’s Hotline and Complaint Submission Portal</i> is not operational and still undergoing development, the verbiage is provided for informational purposes and requests the public to provide their information by email to the IM. The page also provides a link back to the Contact page

As noted above, AMI continues to collaborate with a vendor on the interactive portion, or Phase 3, of the website development project. The Interactive phase will include a *Monitor Hotline*, operational 24/7/365 and answered by individuals specially trained to receive complaint data. The *Complaint Submission* and/or *Reporting Portal* will allow individuals to submit their information via a portal embedded into the IM Website. The submitted information will be reviewed and assessed by AMI staff and, where appropriate, forwarded to the state or federal agency which can best assist the reporting individual.

### **Meetings with Elected Officials**

During June, the AMI Team conducted a number of meetings with elected officials and interested individuals and groups. In preparation for our local or community hospital community meetings, the AMI team met with the Mayor, City Manager or County Manager of the host community.

### **Meetings with Emergency Medical Services (EMS) Representatives**

As the provision of emergency medical services and, in particular, the number of concerns surrounding the delivery of emergency medical services by HCA was at the forefront of issues in 2023 and 2024, the AMI Team contacted EMS personnel throughout Western North Carolina and requested meetings. Meetings were conducted with the primary EMS Service serving each local hospital.

### **Identified Stakeholders and Healthcare Practitioners**

The AMI Team has met with a number of stakeholders and healthcare professionals.

## **DOCUMENTATION REVIEW**

### **Overview of HCA's Report for Year Ending 2023**

Section 7.17 of the APA requires an Annual Report from HCA, so long as the "Continuing Obligations" of the APA remain in effect. The Annual Report must be submitted within one hundred twenty (120) days following the conclusion of Buyer's fiscal year. The Annual Report must be provided to the Seller Representative, the Independent Monitor, the North Carolina AG and the Advisory Board and it must summarize HCA's compliance with the "Continuing Obligations" as well as the obligations set forth in Sections 7.14(e)(ii), 7.14(e)(iii), 7.16 and 7.20. The HCA Healthcare Mission Health 2023 Annual Report was received on April 30, 2024.

#### *AMI Impressions*

HCA's report was delivered in a timely manner. No data presented in the report was identified as 'confidential' though HCA requested that specific information regarding community contributions not be disclosed. We have honored that request.

No information provided in response to the Monitor's Requests for Information was identified as confidential. The Monitor had access to annual reports prepared by the previous Independent Monitor, each of which contained material labeled as confidential at the request of HCA.

## **SECTION II: REVIEW OF THE SELLER'S ANNUAL REPORT AND OBLIGATIONS OF THE ASSET PURCHASE AGREEMENT**

### **Summary of Commitments Completed by HCA**

The APA created a number of conditions related to the purchase of Mission Health, most of which related to the transaction itself, but fifteen of which have been informally identified as the "primary commitments" made by HCA. Of those, approximately eight, related to specific projects or expenditures of funds, have been completed.

The completed "Primary Commitments" are:

- Continuing long term acute care services at the St. Joseph's campus for two years. (This commitment expired January 31, 2021.)
- Completion of the new Mission Hospital North Tower. (Opened in late 2019.)
- Build a new 120 bed behavioral health hospital in Asheville within 5 years of drawing necessary permits. (Completed November 2023.)
- Build a new replacement hospital for Angel Medical Center within 5 years of drawing necessary permits. (Completed September 2022.)
- Spend \$232 million in general capital expenditures within 5 years. (Expenditure completed in 2022; Pursuant to the APA, no further reports are required.)
- Provide \$25 million over five years for the HCA Healthcare Mission Fund. (In 2021, the Second Amendment to the APA, the Mission Fund was replaced by the Western NC Health Innovation Fund, LLC. As the result of this Amendment, the Buyer has permanently satisfied this obligation.)
- Continue certain community activities, services and programs for at least 12 months (This commitment expired January 31, 2020, with the exception of the 90 day notice required in the event of the discontinuation of a Program.)
- Provide an Annual Report and Capital Expenditure Report that summarizes compliance. (Partially completed. Cap Ex report no longer required.)

### **THE CONTINUING OBLIGATIONS**

The “Continuing Obligations” are defined in Section 7.12(a) as: “Sections 7.10, 7.12, 7.13 and 7.15.” The subject matter of these Continuing Obligation provisions are:

- 7.10 – Branding
- 7.12 - Hospital Advisory Board; Independent Monitor
- 7.13 - Operations of the Hospitals
- 7.15 - Uninsured and Charity Care Policies

In addition, Section 7.17(a) requires that the Annual Report shall include information about the following in each case with respect to the applicable fiscal year:

- whether Buyer has discontinued any services at any Hospital; whether Buyer has sold or closed any Hospital;
- detail on Buyer’s Community Contributions in satisfaction of Section 7.13(g);
- detail on continuation of programs pursuant to Section 7.13(i) (if applicable);
- detail on construction pursuant to, and compliance with, Sections 7.14(e)(ii) and 7.14(e)(iii);
- any changes to the Uninsured and Charity Care Policy implemented and maintained by Buyer at the Hospitals pursuant to Section 7.15 and
- detail on Buyer’s support for graduate medical education at the Facilities pursuant to Section 7.18.

For the sake of clarity, we note that although information on the following projects is required in the Annual Report, the projects have been completed:

- Section 17.14 – Construction of New Facilities

The Independent Monitor is also required to report on what are termed “Certain Committed Capital Projects” in Section 17.14(e). These projects were the Angel Medical Center (Section 17.14(e)(ii)) and the “Behavioral Health Hospital” which opened as the Sweeten Creek Mental Health and Wellness Center (Section 17.14 (e)(iii)). The Independent Monitor toured both of these facilities in June 2024. Because both of these projects have been completed, no further progress reports are required.

- Section 17.16 – Innovation/Investment Fund

The Asset Purchase Agreement also requires the Independent Monitor to report on HCA’s compliance with Section 7.16 regarding the “Innovation/Investment Fund.” In its 2023 Annual



Report, the former Independent Monitor reported that the Buyer has permanently satisfied this obligation.

### **BUYER'S COMPLIANCE WITH SPECIFIC SECTIONS**

AMI provides the following analysis and offers its observations and decisions related to HCA's compliance for calendar year 2023:

#### **APA, Section 7.10 – Branding – In Compliance**

The APA states that: “Following the Closing, Buyer, in its and its Affiliates’ operation of the Hospitals and the other Facilities, shall use the name “Mission Health” or “Mission Health System” in the naming, branding and marketing of such Hospitals and other Facilities in each case unless such name is required to be changed to comply with applicable Law. In addition, following the Closing, Buyer in its and its Affiliates’ operation of the occupational, rehabilitation and home care operations and facilities shall use the name CarePartners in the naming and branding and marketing of such facilities in each case unless such name is required to be changed to comply with applicable Law. For the avoidance of doubt, Buyer and its affiliates may nonetheless incorporate “HCA” into any such naming, branding and marketing, in accordance with applicable Law.”

HCA Annual Report: In its Annual Report, HCA stated:

- that, “During the Reporting Period, Buyer and its Affiliates continued to use the name “Mission Health” or “Mission Health System” in the naming, branding and marketing of the Hospitals and other Facilities.”
- “During the Reporting Period, Buyer and its Affiliates continued to use the name “CarePartners” in the naming, branding and marketing of the occupational, rehabilitation and home care operations and facilities acquired pursuant to the Purchase Agreement.”

In addition, HCA provided links to examples of branding for both Mission Health and CarePartners.

AMI Observations: During our visits to Western North Carolina, we have viewed numerous examples of HCA's compliance with this requirement, including media ads and other advertising, as well as on specific facility buildings.

For the foregoing reasons, we believe that HCA is in compliance with this requirement.

#### **APA Section 7.12 – Hospital Advisory Boards – In Compliance**

The Hospital Advisory Boards required by Section 7.12 are unique requirements of the APA, and as such are distinct from a traditional hospital “Board of Directors.” Each hospital continues to



maintain its own Board of Directors that is often responsible, for example, for the recruitment and credentialing of physicians, and oversight of the hospital's general operations.

- Section 7.12(a) – The Advisory Board

The Hospital Advisory Board addresses matters related to Mission Hospital. The APA requires that the Parties shall establish an advisory board (the “Advisory Board”) which shall continue in existence for the Advisory Board Designation Period. During the Advisory Board Designation Period, the Advisory Board shall be composed of eight (8) individuals appointed as follows: (i) four (4) of the Advisory Board members, and their replacements, as determined by the Seller Representative, shall be appointed by Seller Representative (the “Seller Directors”) and (ii) four (4) of the Advisory Board members, and their replacements, as determined by Buyer, shall be appointed by Buyer, who may be employees of Buyer or any of its Affiliates (the “Buyer Directors”).

The primary remaining purposes of the Advisory Board are: (I) approving any modifications to Buyer's obligations set forth in Section 7.10, this Section 7.12, Section 7.13 and Section 7.15 (the “Continuing Obligations”); provided that the Advisory Board shall not have any rights or authority regarding the Continuing Obligations with respect to any Hospital owned by a Local Hospital as of the Execution Date and for which the Local Advisory Boards have authority pursuant to Section 7.12(b); (II) receiving reports prepared by Buyer pursuant to Sections 7.14(e) and 7.17 and (III) resolving disputes regarding the occurrence of a Contingency with respect to any Mission Hospital / CarePartners Service or any Material Facility that is not a Local Hospital Facility.

In addition, the Advisory Board acts through block voting, meaning that affirmative action of the Advisory Board can only be taken where a majority of both the Seller Directors and the Buyer Directors, each, respectively, voting as a block at a meeting in which a quorum is present, vote in favor of the particular measure.

HCA Annual Report: The Buyer's Annual Report lists the members of the Hospital Advisory Board, and reported that during the Reporting Period, the Advisory Board met on August 4, 2023. We were also provided with minutes of that meeting (and spoke with three of the four Seller's Representatives), which showed that the Advisory Board met on June 15, 2023 for the purpose of receiving and approving the Buyer's Annual Report and CapEx Reports. The meeting lasted 43 minutes.

For the foregoing reasons, AMI determined that HCA is in compliance with these requirements.

- Section 7.12(b) - Local Advisory Boards

Section 7.12 (b) requires that for each “local hospital” an advisory board shall be established to serve the same function to each local hospital that the board established pursuant to Section 7.12 (A) serves for Mission Hospital.

HCA Annual Report: The Buyer’s Annual Report lists the members of each Local Advisory Board, as well as the date that each Local Advisory Board met during the Reporting Period.

In addition, AMI received copies of the minutes of each Local Advisory Board meeting. According to the Minutes, each Board received and approved the Buyer’s Annual Report and CapEx Report. The dates of each meeting, and the reported meeting length in the minutes were:

- Angel Memorial Hospital – July 12, 2023 (15 minutes)
- Blue Ridge Regional Medical Center – July 17, 2023 (45 minutes)
- Highlands-Cashiers Hospital – July 26, 2023 (25 minutes)
- Mission Hospital McDowell – July 26, 2023 (19 minutes)
- Transylvania Regional Hospital – August 10, 2023 (20 minutes)

For the foregoing reasons, AMI determined that HCA is in compliance with these requirements.

APA Section 7.13(a) – Continuation of Mission Hospital/Care Partners Services – Potential Non-Compliance and Subject to Litigation by the Attorney General

The APA states: “(a) Unless otherwise consented to in writing by the Advisory Board for a period of ten (10) years immediately following the Closing Date, Buyer shall not discontinue the provision of the services set forth on Schedule 7.13(a) (the “Mission Hospital / CarePartners Services”) at the Mission Hospital Campus Facility, the Community CarePartners Facilities or the Mission Children’s Hospital Reuter Outpatient Center, as applicable, 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).”

HCA Annual Report: The Buyer’s Annual Report states that it is in compliance with this provision: “During the Reporting Period, Buyer did not discontinue the provision of the services set forth on Schedule 7.13(a) of the Purchase Agreement at the Mission Hospital Campus Facility, the Community CarePartners Facilities or the Mission Children’s Hospital Reuter Outpatient Center.”

AMI Observations: Throughout the course of our engagement, we have heard a number of questions regarding the continuation of protected services at both the critical care hospitals as well as Mission Hospital. Although HCA has not petitioned to discontinue any protected services under the APA, concern has been raised that reductions in staffing have limited access to certain specific services so dramatically that those services should be considered constructively “discontinued.” Because those reductions did not comply with the procedures outlined in the Asset Purchase Agreement, these actions, according to this argument, violate the APA.

During the Reporting Year of 2023, reductions in service at Mission Hospital formed the basis for both litigation and enforcement actions by government agencies. Reduced staffing and other degraded services in the Mission emergency department directly resulted in not only litigation being filed by the Attorney General, but in notification from the North Carolina Department of Health and Human Services on December 19, 2023 that a recent survey had resulted in the identification of two findings of Immediate Jeopardy (“IJ”). (NC Department of Health and Human Services letter of December 19, 2023 to Chad Patrick, CEO of Memorial Mission Hospital and Asheville Surgery Center.)

On December 14, 2023, the Attorney General of North Carolina, citing factual allegations distinct from those cited by the Department of Health and Human Services, filed litigation in the Superior Court of North Carolina for Buncombe County (File No. 23-CV-5013) alleging that service reductions in the areas of emergency medicine and oncology at Mission Hospital have so degraded the level of those services that the APA has been violated.

In its Complaint, the Attorney General stated: “Mission Hospital’s once efficient and orderly emergency department is now significantly degraded and unable to meet patient’s needs. Doctors and nurses are forced to treat patients in the waiting room, without even the bare minimum equipment or patient privacy protections, let alone adequate staff. Surgeons lack sterile equipment because HCA refuses to pay staff to clean surgical instruments. Local emergency management services are frustrated – and in one county have stopped sending ambulances to Mission – because of how long it takes for their patients to be transferred into the emergency department.” (Attorney General’s Complaint at 3.)

With respect to allegations of reduced oncology services, the reduction in services appears to have resulted, at least in part, from the decision of a large physicians’ group to terminate its professional services agreement with Mission.

The Attorney General’s Complaint states, “The unacceptable conditions are not limited to the emergency department. Mission has discontinued certain essential oncology services that it provided before HCA acquired the hospital and has fewer available oncology beds overall. Before the acquisition, leukemia and lymphoma patients could receive chemotherapy treatment at Mission Hospital, close to their homes and support systems. Now, they must travel to Charlotte or the Triangle for that care. And the harm to oncology patients extends well beyond those with complex blood cancers. Mission Cancer Center, Mission’s comprehensive cancer treatment facility, no longer employs a single medical oncologist, a failing that harms uninsured and underinsured cancer patients.” (Attorney General’s Complaint at 3-4.)

In its response to the Attorney General’s Complaint, HCA stated that it continues to offer facilities, staff and equipment necessary for Mission’s medical staff to care for oncology patients, but that the physicians providing services under the Messino Cancer Group chose to terminate the professional services agreement between that group and Mission and chose instead to partner with the American Oncology Network. (Answer at 49.) As a result, services previously provided at Mission are now provided at a network of freestanding clinics operated by Messino Cancer Group. The Answer further states explicitly that, “Mission had and has no control over the Messino physicians or contractual liability for the independent decisions of those physicians.” (Answer at 50.)

Further, in its answer to the Amended Complaint filed by the Attorney General, the “HCA Defendants” state, “The APA makes clear the services HCA must not discontinue for ten years and sets out scenarios when HCA may be excused, temporarily or permanently, from continuing those services. As relevant here, Section 713(a) of the APA says, “Unless otherwise consented to in writing by the Advisory Board for a period of ten (10) years immediately following the Closing Date, Buyer shall not discontinue the provision of the services set forth on Schedule 7.13(a) at the Mission Hospital Facility...” Their response continues, “And, in relevant part, Schedule 7.13(a) says, “Inpatient and outpatient services must include: ... Emergency and Trauma services generally consistent with the current Level II Trauma Program with emergency services for pediatrics and adults, ground/air transport services and forensic nursing services, [and] Oncology Services – inpatient and outpatient cancer services, radiation therapy, surgery, chemotherapy, and infusion services.” (Counterclaims to Amended Complaint at Paragraphs 20-21).

The response continues, “The text is plain. Section 7.13(a) of the APA and the accompanying Schedule 7.13(a) require HCA to provide the facilities, staff, and equipment necessary for certain healthcare services at Mission Hospital. The result of those commitments is that any provider on Mission Hospital’s staff can use the facility to provide those services to patients...The plain text makes clear that the purpose of the Hospital Service Commitments was to ensure that Mission Hospital remained an option for physicians who wanted to care for patients in the community. The APA did not include any commitment from HCA to employ any number or specialty of physicians at Mission Hospital. Instead, the APA states that all services can be provided by medical staff members, who need not be employed by HCA.” (Counterclaims to Amended Complaint at Paragraphs 22-23.)

The factual allegations set forth in the Attorney General’s Complaint and Amended Complaint, and those which form the basis for the findings of Immediate Jeopardy cited in the letter from the North Carolina Department of Health and Human Services, certainly suggests that the quality of care at the Mission Hospital emergency department declined during 2023, which is the period covered by this review.

Paragraph 33 of the Attorney General’s Complaint specifically alleges that, “HCA’s current practices are not consistent with Level II Trauma Program Regulations. In other words, HCA has discontinued the provision of emergency and trauma services at Mission, as defined in the APA – despite its commitment not to do so. HCA has therefore breached that agreement.”

We acknowledge the complexity of resolving this controversy, particularly given the position adopted by HCA as stated in its pleadings. Court resolution will necessarily include legal arguments and in all likelihood an evidentiary hearing in order to develop a factual record upon which to decide. This process is clearly beyond the scope of the Independent Monitor’s role and is now in a forum – the Superior Court – where such a resolution is most appropriately made.

The defendants have filed a declaratory judgment counterclaim that seeks a judicial declaration that Section 7.13(a) of the APA requires HCA only to offer the facilities and equipment necessary to provide the services, rather than requiring HCA to actually *provide* the services.

We believe that the Superior Court – and not the Independent Monitor - is the most appropriate forum to resolve this issue. We have determined that HCA is in potential non-compliance with Section 7.13(a) of the APA with respect to the reduction of emergency and oncology services at Mission Hospital in 2023.

#### Section 7.13(b) – Member Hospital Facility Services Continuation – In Compliance

Section 7.13(b) requires that specified “protected services” be continued at member hospital facilities unless specific processes are followed to discontinue a service. According to the APA, “Unless otherwise consented to in writing by both the applicable Local Advisory Board and the Independent Monitor, and subject to the right to discontinue if a MHF Quality or Safety Occurrence occurs between the fifth and tenth anniversaries of the Closing Date as described in this Section 7.13(b), for a period of ten (10) years immediately following the Closing Date, 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).”

HCA Annual Report: The Annual Report states: “During the Reporting Period, Buyer did not discontinue the provision of the services set forth on Schedule 7.13(b) of the Purchase Agreement at any Member Hospital Facility.”

AMI Observations: To date, the Buyer has not sought to discontinue any protected services at the member hospital facilities. With respect to these facilities – Angel, Highlands-Cashiers, McDowell, Transylvania, and Blue Ridge – service reductions that have occurred appear to be primarily related to the departure of a physician providing that specific service, and the challenge of recruiting a replacement. When a position is gapped for that reason, the hospitals have worked cooperatively to provide coverage to each other. Although we will continue to monitor any reductions in the volume or availability of protected services at these hospitals, we observed no reductions in 2023 that appear to be related to a deliberate plan rather than personnel staffing.

Based on the foregoing observations, AMI determined that HCA is in compliance with these requirements.

APA, Section 7.13(c) - Sale or Closure of any Facility – In Compliance

The APA prohibits the sale or closure of any material facility by HCA, unless certain actions are taken pursuant to the APA.

HCA Annual Report: The Buyer’s Annual Report states, “During the Reporting Period, Buyer did not sell or close any of the Material Facilities.”

AMI Observations: The Buyer has produced sufficient evidence, coupled with the onsite visits to each of the material facilities conducted by the AMI Team in June 2024, to ascertain that the Buyer is in compliance with this section.

APA Section 7.13(g) – Community Contributions – In Compliance

Section 7.13(g) requires that between the first (1st) anniversary and tenth (10th) 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.

HCA Annual Report: The Annual Report states that during 2023, the Buyer and its Affiliates made contributions in the amount of \$757,801. Those contributions consisted of Cash and charitable donations to non-profit organizations and other charities of \$677,801; and student scholarships of \$80,000.

AMI Observations: AMI requested, and was provided, with the complete list of community contributions. From that list, ten transactions were selected and supporting documentation for each was requested from HCA. Review of that documentation supported the listed contribution in every instance.

We note that in addition to the monetary community contributions required by the APA, HCA employees contribute many hours of community service with the full support of their employer, and we have been provided with the "2023 Impact Report" distributed by HCA Healthcare/Mission Health in April 2024. In it, HCA reports that its employees have contributed more than 7,000 volunteer hours to projects across Western North Carolina, as well as \$330,000 in “colleague donations and company match.”

Based on the foregoing, AMI determined that HCA is in compliance with the section.



APA, Section 7.13(h) – Medicare and Medicaid Enrollment – Potential Non-Compliance

Section 7.13(h) states in pertinent part: “(h) Unless otherwise consented to in writing by (i) with respect to any Material Facility other than the Local Hospital Facilities, the Advisory Board, or (ii) with respect to any Local Hospital Facility, its applicable Local Advisory Board, for a period of ten (10) years immediately following the Closing Date, subject to Force Majeure making doing so impossible or commercially unreasonable (but only for the period of Force Majeure and the applicable Remediation Period), Buyer shall cause the Material Facilities and the Local Hospital Facilities to remain enrolled **and in good standing** in Medicare, Medicaid or their successor program(s).” (emphasis added)

HCA Annual Report: In its Annual Report, the buyer states, “During the Reporting Period, the Material Facilities and the Local Hospital Facilities remained enrolled and in good standing in the Medicare and Medicaid programs.”

AMI Observations: Our analysis of the Buyer’s compliance with this provision focuses upon the phrase, “in good standing.” Clearly, by requiring both “enrollment” and “in good standing”, the APA requires something more than just enrollment in the Medicare and Medicaid programs.

We consider the phrase “good standing” in this context to mean the ability to demonstrate compliance with all applicable regulatory requirements.

Since December 2023, the North Carolina Department of Health and Human Services (NCHHS), as well as the Centers for Medicare and Medicaid Services (CMS) within the United States Department of Health and Human Services have initiated a series of enforcement related actions against Mission Hospital which have been widely reported in news media and appear to be known across the Western North Carolina region. In sum, these actions resulted in CMS initiating action which rose to the level of Immediate Jeopardy and could have led to termination of the Medicare provider agreement between Mission Hospital and the Secretary of the Department of Health and Human Services. Because of these actions, we do not share HCA’s views that during the Reporting Period, each of its Material Facilities and Local Hospital Facilities remained “in good standing” in the Medicare and Medicaid programs.

To be clear, the five “Local Hospital Facilities” in the Mission Health network – Angel Medical Center; Highland-Cashiers Hospital; Blue Ridge Hospital; Mission Hospital McDowell; and Transylvania Regional Hospital – did remain in good standing throughout the relevant time period covered by this report. Nevertheless, these facts have damaged the reputation of HCA and have impacted each of these facilities, particularly given Mission Hospital’s role as the region’s only tertiary care hospital.

As we described, the “Reporting Year” under review concerns 2023 and that events that were known as of December 31, 2023, to HCA regarding CMS participation. We are, however, mindful that for context, we must briefly note events related to this notification which occurred after the Reporting Year concluded.

On December 19, 2023, NCHHS forwarded a letter to the CEO of Mission Hospital entitled “Complaint Investigation” detailing the results of a recently completed Complaint Survey at Mission Hospital. In that letter, the CEO was advised that a Complaint Survey had been conducted at the hospital on November 13-17, 2023; November 27 – December 1, 2023; and December 4-9, 2023. Further, “The complaint investigation resulted in an Immediate Jeopardy (IJ) identification as of December 1, 2023 at 12:00 PM as a result of incidents occurring on 8/14/2023; 07/05/2022; 07/04/2022; 04/05/2022; 10/03/2023; 10/31/2023 and 10/17/2023.”

The complaint investigation also resulted in an Immediate Jeopardy identification as of December 9, 2023 at 5:00 PM as a result of incidents occurring on 11/28/2023 and 11/09/2023.

CMS regulations define immediate jeopardy as noncompliance that “represents a situation in which entity noncompliance has placed the health and safety of recipients in its care at risk for serious injury, serious harm, serious impairment or death. These situations must be accurately identified by surveyors, thoroughly investigated, and resolved by the entity as quickly as possible. In addition, noncompliance cited at IJ is the most serious deficiency type, and carries the most serious sanctions for providers, suppliers, or laboratories (entities). An immediate jeopardy situation is one that is clearly identifiable due to the severity of its harm or likelihood for serious harm and the immediate need for it to be corrected to avoid further or future serious harm.” (See, *State Operations Manual*, Appendix Q, “Core Guidelines for Determining Immediate Jeopardy”)

The letter of December 19<sup>th</sup> identified the general nature of the findings as:

“...the hospital nursing staff failed to provide a safe environment for patients presenting to the emergency department (ED) by failing to accept patients on arrival, resulting in a lack of or delays with triage, assessments, monitoring and implementation of orders, including labs and telemetry. ED nursing staff failed to assess, monitor and evaluate patients to identify and respond to changes in patient conditions. The hospital staff failed to ensure qualified staff were available to provide care and treatment for patients who arrived in the ED. The cumulative effects of these practices resulted in an unsafe environment for ED patients.”

The letter informed the CEO that NCHHS was recommending a 23-day termination due to noncompliance with the Conditions of Participation in the Medicare and Medicaid program, and noted, “The Immediate Jeopardy is ongoing.”

This letter provided formal notice to HCA of concerns which could result in the hospital’s termination from participation in the Medicare and Medicaid programs. Subsequently, on February 1, 2024, CMS provided the hospital with a “23-day notice” that it would be terminated from further participation unless the immediate jeopardy conditions were removed within that time period. Mission Hospital, pursuant to the procedures of CMS, was able to avoid termination by submitting a *Plan of Correction*, detailing specific corrective actions that would be taken, within the time period and receiving the approval of CMS.



Although our review has focused upon the surveys resulting in the findings of Immediate Jeopardy within the Mission Hospital Emergency Department, it should be noted that independent of that action, there were also findings requiring a *Plan of Correction* with respect to violations of the Emergency Medical Treatment and Labor Act (EMTLA). A complaint investigation was conducted by CMS on November 13 – 17 and on November 23, 2023 to evaluate Mission Hospital’s compliance with EMTLA. On March 26, 2024, Mission Hospital’s *Plan of Correction*, related to deficiencies identified in that survey, was approved by CMS.

While we recognize that Mission Hospital has submitted and received approval of a *Plan of Correction* in response to the adverse results cited in the NCHHS correspondence related to Emergency Services, those actions occurred after the Reporting Year and are properly the subject of our review of 2024 events. Nevertheless, we report these corrective actions taken by Mission Health in 2024 because to not do so would be inconclusive and potentially misleading.

Based upon the failure of "Mission Hospital to be in “good standing” during the Reporting Year of 2023, we find that HCA was in potential non-compliance with this provision of the APA.

#### Section 7.15 – Uninsured and Charity Care Policies – Potential Non- Compliance

Section 7.15 of the APA states:

“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.”

HCA Annual Report: The Buyer’s Annual Report states, as follows: “Buyer has implemented and maintained the Uninsured and Charity Care Policy at the Hospitals during the Reporting Period. No revisions to such policy were made during the Reporting Period.”

On July 9, 2023, HCA provided an “Amended and Restated Annual Report.” HCA stated that, “Following the delivery of the 2023 Report, Buyer became aware of a misstatement in the 2023 Report related to the Uninsured and Charity Care Policies.”

AMI Observations:

We attempted to confirm HCA’s assertion that there had been no revisions to the Uninsured and Charity Care Policy (the Policy) during 2023.

After initially maintaining that the Uninsured and Charity Care Policy had not been changed during calendar year 2023, HCA representatives advised AMI that the Policy had been changed, and subsequently submitted an amendment to its Annual Report. The amended Annual Report states: Buyer revised the Uninsured and Charity Care Policy at the Hospitals during the Reporting Period to remove all references to liens. These revisions provide for no less access for necessary medical care regardless of ability to pay for services rendered than the previous Uninsured and Charity Care Policy.” HCA explained that since the change benefited those who are subject to the Policy, the changes were not required to be presented to the local Advisory Boards and Independent Monitor for approval.

During the course of our review, we noted that the “Uninsured and Charity Care Policy” was attached to the APA as “Exhibit 3.” We were told that HCA’s “Uninsured and Charity Care Policy” had been amended once since the execution of the HCA (in 2020), and that the document originally attached as Exhibit 3 to the APA was no longer current. HCA determined that because the amended policy “provided no less access for necessary medical care regardless of ability to pay for services rendered than the Uninsured and Charity Care Policy” under Section 7.15 (ii) - a view discussed with and shared by the previous IM - the amended policy did not need to be approved by the designated local Advisory Boards and Independent Monitor.

The previous Annual Reports submitted by HCA pursuant to Section 7.17 of the APA were reviewed to determine if any previous revisions to the “Uninsured and Charity Care Policy” had been reported. Those reports were dated:

- April 30, 2020 (for calendar year 2019)
- April 30, 2021 (for calendar year 2020)
- April 30, 2022 (for calendar year 2021)
- April 30, 2023 (for calendar year 2022)

Each of these four reports affirmatively stated, “Buyer has implemented and maintained the Uninsured and Charity Care Policy at the Hospitals during the Reporting Period. No revisions to such policy were made during the Reporting Period.” The previous amendment to the Uninsured

and Charity Care Policy, which occurred in 2020, was not referenced by HCA in its Annual Report for that Reporting Year.

On March 5, 2024, the General Counsel for Dogwood Health Trust, on behalf of the Independent Monitor, forwarded a Request for Information to HCA entitled, “Information Requests for Annual Report.” Within that request, covering calendar year 2023, the following information related to the provision of uninsured and charitable care was requested:

*715.001 – Unless provided in the Annual Report, confirm that no changes were made to the Uninsured and Charity Care Policy (herein the “Charity Care Policy”) during the Reporting Period.*

*715.002 – Provide the number of patients receiving patient service write-offs and the total gross charges written off (as adjusted for chargemaster increases in comparable periods) under the Charity Care Policy during the reporting period for each of the Hospitals in a format consistent with the information provided in the prior Reporting Period.*

*715.003 – Provide monthly staffing levels for those responsible for administration of the charity care policy.*

***715.004 – Confirm that patient billings that qualify under the Charity Care Policy are not subject to any collection procedures. (Emphasis added.)***

*715.005 – Provide number of staff trained to implement and support the Charity Care Policy, and training materials, call scripts, FAQ’s, checklists, or other materials associated with the implementation of the policy.*

No substantive response to the *Request for Information* was received until May 24, 2024. In that response, HCA stated that, “We have implemented and continue to operate under a charity care policy consistent with the Asset Purchase Agreement. Charity care requests for Mission and its affiliated hospitals are handled centrally with charity care requests across the organization, and staff responsible for the administration of charity care are trained upon hire, and at appropriate intervals thereafter.” In addition, HCA provided information in graphs regarding the value of uninsured and charity care for the Mission Hospital system, as well as broken down by individual hospitals based both upon the value of the services provided and the number of requests served.

In order to confirm that there have been no changes to the Uninsured and Charity Care Policy during the Reporting Year, on June 10, 2024, the Independent Monitor requested, “a meeting with the CFO or the most knowledgeable person about the application of the Charitable Care Policy pursuant to Section 7.15.”

On June 12, 2024, AMI sent an email to the individual designated by HCA as the Independent Monitor’s “point of contact” for information stating: “While we await your response to my previous request for follow-up information, could you please provide me with a copy of HCA’s

current charity care policy? If a copy is not readily available, can you please confirm the effective date of the policy?"

On Wednesday, June 19, 2024, the President of HCA's North Carolina Division repeated the Annual Report's assertion when he was specifically asked if the Uninsured and Charity Care Policy had been changed during the previous year, and emphatically stated it had not been. At that time, the Independent Monitor's need for a copy of the current policy to confirm the lack of revision was further explained.

On June 21, 2024, a substantive response for a copy of the current policy was received. Due to its significance to this review and finding, that response from HCA's designated contact is provided in its entirety:

*"We realized in answering your follow-up question that the information we submitted about the charity care policy on 4/30 was incorrect. We actually did revise the charity care policy slightly in the Spring of 2023 to remove all references to liens. The original policy contemplated that we would not place liens on property less than \$300,000 in value. In fact, we do not place liens at all, regardless of the value of available property, so the provision was removed. Because the revision does not result in less charity care access to patients than the prior policy, it falls under 7.15(ii) of the APA and does not require additional approvals. We have attached a clean version of the current policy to this email and have also attached a marked version of the policy comparing the prior with the 2023 version for your reference. Mission's prior owner filed a number of lawsuits and liens over patient debt. In addition to Mission's practice of declining to file liens against patients, it is important to note that Mission has searched for and released patient judgements filed by legacy Mission, and judgment liens that were placed by our predecessor.*

*The copy of the policy is also posted on our website.*

*<https://www.missionhealth.org/patient-resources/patient-financial-resources/financial-assistance>*"

Upon receipt of the current Policy, as identified by HCA, it was noted that the current Policy bears an "approved date" of February 23, 2023, and an effective date of March 1, 2023, noting as well that the Policy replaces the Policy dated October 1, 2020, which was the most recent copy provided by HCA.

AMI then compared the Policies and noted a substantive change in the Policy at Paragraph 14, which removed the limitation on the use of liens: "Under no circumstances will liens be considered on properties less than \$300,000 in value."

We do not concur with HCA's position that this change does not result in less charity care access to patients than the prior policy and, therefore, does not require additional approvals pursuant to

Section 7.15(ii) of the APA. After discussing this issue with HCA representatives, we acknowledge that HCA believed that they acted in good faith in revising the company-wide policy. However, due to the unique provisions of the APA, approval for this change in the Policy was required.

HCA's position that this change is beneficial is premised on its assertion that the company does not place liens at all, regardless of the value of the property. Because liens are not currently used, HCA argues that any reference to a limitation of their use was no longer relevant, thus explaining the purpose of the 2023 amendment. To the contrary, by removing the limitation, HCA's amended policy allows the use of liens to collect medical debt under the Uninsured and Charity Care Policy without limitation, regardless of the value of property, should the company choose to reinstate that practice.

In justifying its non-disclosure of this change, HCA included reference to the collection practices of Mission's prior owner, in contrast to HCA's current practice. HCA's efforts to assist those against whom liens were filed by the prior owner is commendable. However, the practices of the former owners are not relevant to this analysis.

It is apparent that by changing only one paragraph in its policy, HCA sought to slightly modify it for a specific purpose rather than enacting wholesale changes. The deleted language clearly limited – by policy – the use of liens to secure payment of medical debt from those covered by the Charity Care Policy by not imposing a lien on property valued at less than \$300,000. By removing the limitation from the Charity Care Policy, that policy - standing alone and read literally as a policy must be - now allows the imposition of a lien on property of any value.

On June 28, 2024, AMI met with Joey Moss and Steve Gross of Parallon, which provides “full service revenue cycle management and, ultimately, total patient account resolution for HCA Healthcare.” Parallon apparently drafted the Charity Care Policy and the 2023 amendment to that policy. Both individuals were careful to make clear that they are not attorneys and would defer to others to make legal interpretations. Mr. Moss stated that HCA as company policy has made a determination to no longer pursue either liens, collection suits or credit reports as a means of collecting debt. When asked if there is a specific policy stating that, we were initially referred to three policies with respect to consumer debts: the Charity Care Policy; the Uninsured Discount Policy; and the Patient Liability Protection Plan. These policies should be read together according to Parallon. According to those with whom we spoke, there is no specific mention of liens in any of these policies. To the contrary, it was suggested that the absence of any reference to suits or liens should be read as reflective of HCA's decision to no longer file suits or to use liens.

Following our discussion, we were provided a copy of HCA's “Patient Financial Support” policy (which had not been previously mentioned), which states, “We do not report to credit bureaus, and we do not pursue litigation activity that involves suing patients or filing liens on patient bad debt accounts.” The policy also states that, “Unless otherwise noted, this information applies to HCA Healthcare facilities located in the United States.”



As Independent Monitor, we are tasked with assessing HCA's compliance with the APA, in part by reviewing the Uninsured and Charity Care Policy used by Mission Health. As a stand-alone policy, the amendment to remove the limitation on the use of liens has resulted in less protection for patients. When read in the context of policies more recently presented to us, we recognize HCA's point that because liens are no longer used, the lien limiting language became unnecessary. Although the "Patient Financial Support" policy does reflect that HCA does not file liens on patient bad debt accounts, were that policy to change, the additional protection previously offered by the Charity Care Policy specifically is no longer in place.

It is noteworthy that in the Request for Information sent to HCA on March 5, 2023, the company was specifically asked to confirm that patient billings that qualify under the Charity Care Policy are not subject to any collection procedures. No response to that inquiry was provided. A substantive response would have provided information relevant to this discussion.

Regardless of its "Patient Financial Support" policy and its current practice under that policy, HCA's current Uninsured and Charity Care Policy, as amended, is silent on the issue of liens. Its previous policy limited the use of liens on property valued at \$300,000 or less. Although from the perspective of the Buyer, reference to liens is now superfluous due to the "Patient Financial Support" policy, that policy is subject to change – as is any policy. Should liens once again be permitted by an amended policy, deletion of the lien limitation in the Charity Care Policy would permit liens on property of any value.

We find that by deleting the limitation on the use of liens, HCA's amended Charity Care Policy provides less access for necessary medical care regardless of ability to pay for services rendered than the Uninsured and Charity Care Policy it replaced. As such, pursuant to Section 7.15(i) this revision could only be implemented subject to approval 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.

Because the former Paragraph 14 has now been deleted, we note that in the event HCA chooses to add the language regarding liens from the Patient Financial Support policy to the Charity Care Policy, such a change would be favorable to patients. We also note that the Charity Care Policy currently allows for state specific changes to comply with state law, so a state specific change for North Carolina seems to be permissible under HCA's policies.

Based on the foregoing, AMI determines that HCA is in potential non-compliance with this section.

#### Section 7.18 – Graduate Medical Education – In Compliance

Section 7.18 of the APA, entitled, "Graduate Medical Education," states in pertinent part, "The Parties recognize the tremendous skill and supportive legacy of the Mountain Area Health Education Center ("MAHEC") Family medicine, obstetrics-gynecology, general surgery,

dentistry, and psychiatry residencies and Buyer intends to maintain a relationship with MAHEC as the sponsoring institution for the currently accredited graduate medical education programs. Buyer shall review the use of MAHEC as the sponsoring institution for such programs at the conclusion of Sellers' most recent graduate medical education agreement with MAHEC, and Buyer may, in its sole discretion, determine whether to continue the relationship with MAHEC. During the ten (10) year period following the Closing and after the termination of the current graduate medical education agreement with MAHEC, Buyer agrees to maintain substantially current levels of graduate medical education, subject to the availability at such time of graduate medical education funding at substantially the current level and on substantially the current terms thereof. For the avoidance of doubt, nothing in this Agreement shall restrict Buyer or any of its Affiliates from developing any new residency or fellowship programs under any sponsoring institution.”

HCA Annual Report: In its Annual Report, the buyer stated: “During the Reporting Period, Buyer has maintained a relationship with MAHEC as the sponsoring institution for the currently accredited graduate medical education programs. Buyer continues to collaborate with the University of North Carolina-Asheville for medical student and other educational rotations as needed.”

AMI Observations: AMI evaluated information presented by the Buyer regarding the number of residencies and fellowships, by specialty, for the 2023-2024 academic year. Subsequently, the AMI Team confirmed the information provided by HCA by speaking with the Executive Director of the Mountain Area Health Education Center, known as MAHEC. We noted that the total number of residencies and fellowships has increased this year.

AMI considers HCA to be in compliance with this section.

#### Section 7.20 – Right to Bid – In Compliance

If Buyer or any of its Affiliates wish to sell or close a Hospital following the Closing Date, and such transaction is otherwise permitted under this Agreement, the Buyer or any of its Affiliates is required to solicit requests for proposals for the purchase of such Hospital (a “Sale Process”) and provide Seller Representative and the North Carolina AG written notice of such Sale Process (a “Sale Notice”).

HCA Annual Report: In its Annual Report, HCA reported that “Buyer has not sold or closed any Hospital during the Reporting Period.”

AMI Observations: We concur with that assessment and determine that HCA is in compliance with this provision.

**SECTION III: CONCLUSION**

For the foregoing reasons, based upon the three sections of non-compliance detailed above, the Independent Monitor recommends to Dogwood Health Trust that HCA Healthcare be found to be not in compliance with the Asset Purchase Agreement for Reporting Year 2023.

We appreciate the opportunity to assist the Dogwood Health Trust in this very important task and would be happy to address any questions or concerns you may have.

Very truly yours,



Gerald J. Coyne  
Managing Director  
State Monitoring Services