



MONITORING REPORT
For Sixth Annual Compliance Review Cycle

**To Assess the Compliance Activities of
HCA Healthcare, Inc.
operating under the *Asset Purchase Agreement*
for Mission Health System
During Calendar Year 2024**

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EXECUTIVE SUMMARY

This Monitoring Report assesses HCA Healthcare's compliance with the terms of the Asset Purchase Agreement through which it purchased Mission Health in 2019. Dogwood Health Trust was formed out of the assets of the former Mission Health. Under the terms of the Asset Purchase Agreement (APA), an Independent Monitor prepares an annual report to Dogwood Health Trust.

This annual report covers activities occurring during 2024.

In its report covering activities occurring during 2023, the Independent Monitor recommended that HCA be found potentially non-compliant with respect to three provisions of the APA.

APA Section 7.13 (a) – Continuation of Mission Hospital/Care Partners Services

This recommendation of potential non-compliance is based upon the allegation that the levels of emergency and oncology services at Mission Hospital were so reduced in 2023 that they had been functionally discontinued. This recommendation is consistent with the allegations made by then Attorney General Josh Stein in the case of *Stein ex rel. DHT v. HCA Management Services, et al.*, filed by the Attorney General in the Buncombe County Superior Court on December 14, 2023. HCA Healthcare presented no documentation to address this non-compliance.

In the IM's report for 2023, we stated, "We believe that the Superior Court – and not the IM - is the most appropriate forum to resolve this issue." Because this case remains pending in Superior Court, we once again have determined that HCA Healthcare is potentially non-compliant with the terms of the APA.

APA Section 7.13 (h) – Medicare and Medicaid Enrollment

Section 7.13(h) of the Asset Purchase Agreement states that, "...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)...".

In its Annual Report to the IM covering reporting year 2023, HCA stated, "During the Reporting Period, the Material Facilities and the Local Hospital Facilities remained enrolled and in good standing in the Medicare and Medicaid programs." The IM's Report challenged HCA's claim of continuous "good standing" based upon the results of two surveys by NC DHHS, which had found patients could be in "Immediate Jeopardy" at Mission Hospital, and giving the hospital a 23 day deadline to obtain approval of a "Plan of Correction" from CMS or be dropped from participation in the Medicare and Medicaid programs. Those plans were eventually approved, and the threat of program suspension was terminated. Nevertheless, Mission Hospital operated for a significant period of the year under the threat of being dropped from Medicare and Medicaid, and because of that threat, we found that HCA was not in continuous "good standing," which led to the IM's determination that HCA Healthcare was potentially non-compliant with the terms of the APA.

The IM's Report does not contest that during reporting year 2023, Mission Hospital and the associated facilities remained "enrolled" in Medicaid. Because of our opinion that Mission Hospital failed to remain "in good standing" throughout that period, we recommended this finding of potential non-compliance.

APA Section 7.15 – Uninsured and Charity Care Policies

During our review of reporting year 2023, we also attempted to confirm HCA's assertion that there had been no revisions to the Uninsured and Charity Care Policy (the Policy) during that year. After initially maintaining that the Uninsured and Charity Care Policy had not been changed during reporting year 2023, HCA representatives acknowledged that the Policy had been changed. However, 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 IM for approval.

HCA claimed that they have a policy against placing liens on real estate if the company's claim is based upon medical debt. In 2023 we discovered that HCA also had a policy which prevented the placement of a lien for medical debt on real estate valued at less than \$300,000. We found that if that prohibition were removed – as HCA had done – and if HCA subsequently reversed its internal policy and once again allowed the placement of liens upon real estate for medical debt, removal of the \$300,000 floor eliminated protection currently enjoyed by patients. As a result, we recommended that HCA be found to be potentially non-compliant with the terms of the APA for 2023.

It is important to note that the only remedy available in the event a court determines that HCA was non-compliant with a term of the APA is to order the company to come into compliance.

Actions During 2024

During the course of 2024, HCA did come into compliance with Section 7.15 by having the potential for program termination removed. Also in 2024, the State of North Carolina enacted a new law regarding medical debt which resulted in significant changes to the company's Uninsured and Charity Care Policies effective January 1, 2025, and which addressed the concerns raised in the IM's 2023 report. Nevertheless, although our review this year has found that HCA is currently in compliance with both of these provisions, we note that the company remained potentially non-compliant for most or all of 2024. Because remedial action has already been taken in both instances to address the concerns we identified, we do not recommend any additional action regarding the potential non-compliance with Section 7.13 (h) or Section 7.15. We do, however, recommend that remedial action be pursued with respect to the potential non-compliance with Section 7.13(a).

SECTION I: INTRODUCTION AND BACKGROUND

Since April 1, 2024, Affiliated Monitors, Inc. (AMI) has served as the successor Independent Monitor (IM) under the terms and conditions established by the 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 (WNC).

AMI was selected by Dogwood Health Trust (DHT), a non-profit organization, through a *Request for Proposal* process to serve as the successor IM following Gibbins Advisors. The selection was approved by the North Carolina Office of the Attorney General (NC OAG) and HCA.

This is the second IM Report to be issued by AMI. The IM Report reflects the compliance activities of HCA, operating under the APA, for the period January 1 through December 31, 2024. Section outlines are contained in the *Table of Contents*.

As in the previous Report, the following additional terms and abbreviations are used:

APA	Asset Purchase Agreement
Buyer	Refers to HCA Healthcare (HCA)
Reporting Year	The “Reporting Year” for the current report is calendar year 2024
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 (Mission Health)

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 WNC.

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, as follows:

- *First Amendment to the APA* – executed in or about June 2020, the *First Amendment* allowed communications to be received by telegraphic or other electronic (i.e., electronic mail or facsimile) means until midnight on December 31, 2020.
- *Second Amendment* - effective in April 2022, the Second Amendment amended sections 1.1, 7.3, and 7.16 of the APA related 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 expired/completed.

APA Article 7 & Sections	Requirement or Continuing Obligation	Expired/Completed
7.13(e)	LTAC Services (at St. Joseph Campus)	Expired 1/31/2021
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

As the IM, AMI continues to monitor the following pertinent obligations specific to Article 7, which 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(g)	Community Contributions	Continuing
7.13(h)	Medicare/Medicaid Enrollment & Good Standing Required Status	Continuing
7.15	Uninsured and Charity Care Policies	Continuing
7.16	Innovation Fund, as amended	Continuing
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 DHT (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.

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 IM under 7.12(c). In addition, DHT was given certain obligations (e.g., enforcement) under Section 13.13.

APA Enforceability

As referenced above, according to 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 by the Attorney General's office of the AG-enforceable obligations of the APA were set forth in 13.13(b).

Role & Responsibilities of the IM

Required Qualifications

Section 7.12(c) of the APA established the requirements for the selection of the IM by DHT. In summary, the qualifications for selection 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); and
 - 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.

AMI met the above requirements. Both HCA and the NC OAG were 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 and 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).

The AMI Team

In April 2024, AMI was engaged under contract to perform IM services subject to the contract terms and the APA. In order to serve, the AMI Team participated in two transition sessions with the former IM and underwent a week-long, on-site orientation session in WNC to understand the scope of the APA and actions to date.

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 who are supported by an array of mid-level and administrative assistants.

IMPACT OF HURRICANE HELENE

No discussion of the events in WNC during 2024 can be complete without noting the historic impact of Hurricane Helene, and the storm's aftermath. On September 27, 2024, Hurricane Helene made landfall in the Big Bend region of Florida and followed a northerly track eventually impacting the Asheville and other areas in WNC. Heavy rainfall associated with the storm caused catastrophic flooding and damage. Widespread flooding submerged areas like Biltmore Village and the River Arts District, and landslides blocked interstate highways isolating the city and many communities. The city's water system was severely damaged, and widespread power outages lasted for some time.

Without water or power, some suggested that Mission Hospital should suspend operations. Recognizing the importance of its hospitals, particularly to provide urgent medical needs in a time of crisis, HCA Healthcare undertook extraordinary measures to keep Mission Hospital and the

other hospitals covered by the APA open. Over 200,000 gallons of water were transported by tanker trucks to keep the hospitals functioning, and two wells were dug at Mission Hospital.

While we recognize the heroic response of HCA to this event, we specifically recognize the response of its staff. Many staff members worked around the clock to serve their community, and others were brought in from other HCA facilities around the country. The efforts of those individuals to keep the Mission Health hospitals open, to provide services to those in need, and to aid in the community's recovery can never be overstated.

In the aftermath of the storm, HCA inevitably had to make temporary adjustments to the levels and types of service it could provide. Many of these decisions were driven by limited access to clean water, limitations which lasted for weeks rather than days.

On October 7, 2024, Greg Lowe, Chief Executive Officer, advised DHT that it would temporarily be reducing patient census to zero at the Asheville Specialty Hospital (which had a patient census of 12) and at CarePartners Inpatient Rehabilitation Hospital (which had a patient census of 26). In addition, no new patients would be admitted to Care Partners Hospital Solace Inpatient Hospice.

The APA contains a provision that allows for changes to the operations at the Mission hospitals in the aftermath of a *Force Majeure* event. Hurricane Helene was clearly such an event.

At the IM's request, we were provided with a copy of a report called "Never Alone – Hurricane Helene, Hurricane Milton, and the HCA Healthcare Response." HCA's response to these storms is admirably documented in that report.

In our review of HCA's compliance with the APA during 2024, we acknowledge the *Force Majeure* event of Hurricane Helene, and we do not consider any temporary alteration in service levels in the storm's aftermath to be an area of potential non-compliance with the APA.

METHODOLOGY

The Annual Reporting Period

The annual monitoring cycle for timeframe and deliverables 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 30th 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, 2024) 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.

Basic Tenets of the Monitoring Process

During this monitoring cycle, AMI's process incorporated the following elements: audit, analyze, verify, and test. We exercised these processes through a series of activities:

Requests for Information (RFI) prepared by AMI and submitted to HCA/Mission Health; documentation review; submission of requests for additional information, if needed; participation in site visits to facilities and conversations with key staff and personnel; planned community engagement activities and public meetings; intentional engagements with individuals and organizations; meetings with community members; and a continuous analysis of information provided by the public (e.g., patients, elected officials, 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.

REQUESTS FOR INFORMATION

During the review process, AMI submitted its annual *Request for Information* (RFI) to HCA/Mission Health on February 24, 2025, seeking information related to HCA's continuing obligations for the monitored year, 2024. AMI requested that the information be supplied on or before April 15, 2025 and in advance of their scheduled onsite visit to WNC in May. There was no response by the requested date.

AMI received a verbal communication that AMI could expect responses from HCA/Mission Health to be submitted to AMI on or before May 1, 2025. There was no response received by the stated date.

During AMI's scheduled visit, May 5 – 14, 2025, an AMI Team member verbally requested an update from an HCA legal counsel who accompanied DHT and AMI on the facility site visits. The HCA representative advised AMI that he would check with HCA corporate and the NC Division's offices as to the status of responses to AMI's RFI. There was no follow-up information provided.

On May 22, 2025, HCA's responses to AMI's RFI were submitted to the AMI Team. Upon AMI's review, a significant number of those responses were incomplete or not answered and all contained

blanketed confidentiality constraints that applied, arguably, to both publicly held information and, understandably, some proprietary information.

On June 9, 2025, AMI submitted a continuing request for missing or incomplete information with a request to specify which aspects of HCA's responses were *bona fide* confidential. Our continuing request for information was submitted seeking a response within seven business days.

On June 17, 2025, HCA submitted its responses. With respect to AMI's request to identify specific information it deemed confidential or proprietary, HCA declined. Rather, HCA cited two laws as the basis of their assertion: North Carolina's Trade Secrets Protection Act, and its Hospital Licensure Act. HCA stated, "While Buyer can easily identify some sets of confidential documents and information – including, without limitation, Buyer's volume data and contribution data – it would require additional time to identify all confidential information produced." As an alternative, HCA has proposed that AMI "provide Buyer with a copy of the documents or information that you intends (sic) to disclose." Providing HCA with editorial control of the content of this report is neither practical nor consistent with the public's interest in a fair and objective report. We have, however, carefully avoided inclusion in this report of any information that we deem potentially confidential or privileged.

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
May 05	Mission Hospital Sweeten Creek Mental Health & Wellness Center	Asheville
May 06	CarePartners	Asheville
May 06	Transylvania Regional Hospital	Brevard
May 07	Highlands-Cashiers Hospital	Highlands
May 07	Angel Medical Center	Franklin
May 08	Blue Ridge Regional Hospital	Spruce Pine
May 08	Mission Hospital McDowell	Marion

For each hospital or facility, the HCA/Mission Healthcare representatives hosted DHT and the AMI Team with an introductory video specific to the hospital facility. This year's information was focused on the hospitals' efforts to meet the demands of their communities in the aftermath of Hurricane Helene, which occurred on September 28, 2024.

HCA leadership shared additional items during these tours which they considered to be proprietary and/or confidential, and AMI has honored their request not to share this information in a document designed for public distribution.

COMMUNITY ENGAGEMENT ACTIVITIES

As part of our ongoing community engagement activities, AMI participated in meetings with individuals and small groups, hosted two annual community meetings, and welcomed interactions with elected officials and members of the emergency medical services community serving the citizens of WNC. In addition, AMI developed and continued to manage a website specific to the IM's responsibilities.

Highlighted information regarding the community engagement activities held during 2025, for monitoring of calendar year 2024, is provided in the sections below.

Intentional Engagement with Individuals, Small Groups, & Organizations

January 2025 Visit – In addition to speaking with numerous individuals and engaging with others by email transmittals, AMI made efforts to return to WNC in the Fall 2024 to engage individuals, groups, and civic organizations with regard to the compliance activities of HCA/Mission Health. Unfortunately, due to the impact of Hurricane Helene on WNC, our efforts required the AMI Team to pivot and reschedule their visit to the region in January 2025.

During our January visit, the IM Team held 14 meetings – three with organizations, including a civic club; three with groups of concerned citizens; and eight with individuals. Those meetings were conducted both in-person and remotely to better manage time. The small group discussions helped to provide important context to the Mission market and its evolution.

The IM was able to provide feedback about the monitoring process and obtain community perspectives related to the continuation of healthcare services, information about care which might impact enrollment standards established by the Centers for Medicare and Medicaid Services (CMS), and discussed any concerns related to the charity care policy and charitable donations at or made by HCA/Mission Health for year 2024.

Individuals were welcoming and receptive to our outreach and continued to share their experiences and reflect on their encounters with healthcare professionals. The community provided information about the impact, both positive and negative, that HCA/Mission Health had on the WNC population.

Remote Engagement Activities – In addition to our onsite visits, the AMI Team continues to request and receive information from individuals (i.e., patients, staff, clinicians, elected representatives) on an ongoing basis to inform the IM's perspective and its monitoring initiatives.

The exchanges can be and have been received in any format (e.g., telephone, email, remote platform). AMI continues to ask individuals and groups to contact the IM in any available format.

- Interactions with Elected Officials – The AMI Team has interacted via email transmittal, phone call, and in-person with several elected officials.
- Meetings with Emergency Medical Services (EMS) Representatives – Various members of the EMS community have been contacted by the IM Team with invitations to meet, as delivery of emergency medical services has been at the forefront of several issues. The IM has found it difficult to connect with some services, although will we continue to extend invitations to connect.
- Identified Stakeholders and Healthcare Practitioners – The AMI Team has met with a number of stakeholders and healthcare professionals located in WNC.

May 2025 Visit – Individual and smaller group meetings were also held during the WNC May visit and were found to be meaningful and necessary to the monitoring process of the Asset Purchase Agreement (APA). During this visit, members of the AMI team met with one individual, and three groups.

Community Meetings

AMI hosted two community meetings in Spring 2025 in the following locations and, based on ideas provided by the public, expanded the format:

Date	Location	Resource Tables
May 12 (5:30 – 7pm)	Marion Train Depot 45 Depot Street Marion, NC 28752	Affiliated Monitors, Inc. DHT NC Department of Justice NC Department of Health & Human Services HCA/Mission Health
May 13 (5:30 – 7pm)	AB Tech Community College Ferguson Auditorium 340 Victoria Road Asheville, NC 28801	Affiliated Monitors, Inc. DHT NC Department of Justice NC Department of Health & Human Services HCA/Mission Health

Updated Format

The new format of the Community Meetings this year reflected the IM's efforts to incorporate the public's ideas and to improve the value of the community meetings for the public, as follows:

- Resource Tables – The IM invited representatives of two primary regulatory agencies, North Carolina Department of Justice (NC DOJ) and the North Carolina Department of Health and Human Services (NC DHHS), to meet with the public

via “resource tables.” Both agencies govern the regulation of health care facilities in North Carolina.

The IM’s introduced members of the public to the representative of the office of the NC DOJ, which investigates billing issues. A representative from NC DHHS, which conducts investigations on their own initiative and provides surveyors to investigate on behalf of the Centers for Medicare and Medicaid Services (CMS), also participated and provided an opportunity for the public to share their experiences directly with the regulator.

- Submission of Written Questions – The IM’s pre-registration process allowed pre-registrants the opportunity to submit questions in advance of the community meetings to the IM. In addition, those attending the community meetings were also asked to submit written questions at the Welcome Table located at each meeting venue.

Overview of Community Meetings - The 2025 community meetings were opened by DHT. Next, the AMI Team provided the following:

- Review of the APA
- Overview of the IM’s Report for Monitored Year 2023
- Description of the Current IM Process for Year 2024

It was specifically noted that outreach efforts continue to be made and, as the IM’s website indicates, we ask for individuals and organizations who would like to meet with the IM Team to reach out to the IM Team members via the IM website, either its phone number 617.275.0620, or our email address at Mission@AffiliatedMonitors.com.

AMI expressed appreciation to the NC DOJ and its representative, Michael Hawkins, for staffing the NC DOJ resource table. In addition, Karen Burkes represented the NC Department of Health and Human Services (NC DHHS), J.C. Sadler and Annie Carpenter represented HCA/Mission Health. AMI staffed the IM Resource Table, and DHT representatives staffed their table.

The IM invited the public to visit one or more Resource Tables to meet the representatives, learn about the organizations, and/or vocalize feedback and concerns.

The AMI Team received positive feedback from the majority of attendees and the organizations’ representatives about the new format and, for one patient, was able to meet with that individual and subsequently forwarded their HCA/Mission Health concerns to the NC DOJ.

IM Website – In 2024, AMI developed a new IM Website (<https://independentmonitormhs.com>) in order to provide information to the citizens of WNC and to serve as a mechanism to collect feedback and concerns. The IM Website became operational on May 30, 2024 and we encourage readers seeking more information to visit that site.

AMI continues to accept concerns (or requests for meetings) via their email address: Mission@AffiliatedMonitors.com.

DOCUMENTATION REVIEW

Overview of HCA's Report for Year Ending 2024

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 IM, 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 2024 Annual Report was received on April 30, 2025.

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.

HCA requested that all information provided in response to the Monitor’s *Requests for Information* be treated as confidential. The same request was not made by HCA in the preceding year.

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; IM
- 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 IM 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 IM 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 IM to report on HCA's compliance with Section 7.16 regarding the “Innovation/Investment Fund.”

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 2024:

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 WNC, we viewed numerous examples of HCA’s compliance with this requirement, including specific signage on the exterior and interiors of facility buildings. In addition, a member of the AMI team conducted an extensive review of numerous websites and other publicly available media and advertising sources to confirm compliance with this provision.

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 July 19, 2024. We were also provided with minutes of that meeting, which showed that the Advisory Board met for the purpose of receiving and approving the Buyer's Annual Report.

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. The dates of each meeting were:

- Angel Memorial Hospital – July 10, 2024
- Blue Ridge Regional Hospital – July 15, 2024
- Highlands-Cashiers Hospital – July 25, 2024
- Mission Hospital McDowell – July 30, 2024
- Transylvania Regional Hospital – July 11, 2024

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: Since our engagement, we have continued to receive a number of concerns which question 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.

For the sake of clarity, we repeat the background summary contained in our Annual Report for Reporting Year 2023:

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 7.13(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 IM’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.

In addition to the declaratory judgment counterclaim, HCA filed a “Motion for Partial Summary Judgment” which the Superior Court heard on December 12, 2024. [The Court issued its decision on April 16, 2025, which we address in this report due to the hearing having been conducted during the Reporting Year.]

In its decision, the Superior Court noted that, “Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” In reviewing a motion for summary judgment, “the Court must consider all evidence in the light most favorable to the non-moving party. Parties moving for summary judgment have the burden of establishing the lack of any triable issue of fact.” Finally, “When ruling on a motion for summary judgment, the Court does not resolve issues of fact and must deny the motion if there is any genuine issue of material fact.”

In its motion, HCA argued that the Attorney General’s lawsuit is based solely upon an alleged breach of Section 7.13(a) of the APA, stating: “By both its plain terms and all extrinsic evidence, that provision, Section 7.13(a) of the Amended and Restated Asset Purchase Agreement, requires just one thing: that for ten years Mission ‘not discontinue the provision of the services’ listed on Section 7.13(a) (the ‘Hospital Service Commitments.’)” (See, Defendant’s Brief in Support of Motion for Partial Summary Judgment at Page 1).

HCA argued that the “Hospital Service Commitments are clear and do not mean what the Attorney General alleges they mean.”

The Court ruled that “the language in a contract should be given its natural and ordinary meaning” and that “an ambiguity exists when the language of a contract is fairly and reasonably susceptible to differing interpretations.” Ultimately, the Court stated, “deciding whether the language of a contract is ambiguous is a question for the court.”

In its decision, the Court stated that, “After reviewing the briefing and hearing the parties at oral argument, the Court concludes not only that the words ‘shall not discontinue’ in Section 7.13(a) are ambiguous, but also that the word ‘services’ lacks clarity.” (See, Opinion of the Superior Court at page 11.) The Court held that in order to grant HCA’s motion, it would need to make certain findings with respect to the parties’ intent at the time the APA was signed, but “there is no doubt that a determination of the parties’ intent with respect to the contract language at issue requires a more developed record than the one presented.”

The Court concluded that, “As the moving party for summary judgment, HCA must establish that there are no genuine issues of material fact. Because it is unable to do so at this juncture, summary judgment is not appropriate. Accordingly, the Court DENIES the Motion.”

In the IM’s Report for 2023, we stated, “We believe that the Superior Court – and not the IM - 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.”

We believe that because the issues forming the basis for the Attorney General’s lawsuit remained unresolved during Reporting Year 2024, for the reasons expressed in our previous report, HCA remains 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 2024.

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 IM, 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. To the extent there have been varying levels of service at these facilities – Angel, Highlands-Cashiers, McDowell, Transylvania, and Blue Ridge – those gaps 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. We note that 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 2024 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 May 2025, 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 2024, the Buyer and its Affiliates made contributions in the amount of \$776,213. Those contributions consisted of Cash and charitable donations to non-profit organizations and other charities of \$688,672 and student scholarships in the amount of \$87,541.

AMI Observations: AMI requested, and was provided, with the complete list of community contributions. This information was included in the response to the IM's *Request for Information*, which HCA advised was "Highly Confidential" and thus further detail regarding any specific recipient is not being released.

We also note that in the aftermath of Hurricane Helene, HCA Healthcare donated \$250,000 to the American Red Cross of North Carolina to support shelter operations. In addition, \$250,000 was donated to the United Way of Asheville and Buncombe County to assist with disaster response and long-term support for flood victims. According to its after action report on the Hurricane Response, HCA also provided an additional \$500,000 to community partners providing direct support for hurricane related issues, as well as a contribution of \$500,000 from the company's annual "Disaster Giving Program."

Given the amount of community contributions made by HCA in the aftermath of Hurricane Helene in 2024, we did not audit individual donations to organizations or charities, nor did we audit any scholarships that were awarded. We anticipate resuming these audits for contributions in 2025.

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: Last year, our analysis of this provision focused upon the phrase “in good standing.”

As we stated then, “Clearly, by requiring both “enrollment” and “in good standing”, the APA requires something more than just enrollment in the Medicare and Medicaid programs.”

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

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.

Beginning in December 2023, the NC DHHS, as well as CMS within the United States Department of Health and Human Services 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 WNC region. In sum, these actions resulted in CMS initiating action which rose to the level of a finding 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, many of which occurred in 2024, 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.

Last year, the IM’s report addressed “Reporting Year” 2023 and the events that were known as of December 31, 2023, to HCA regarding CMS participation. In order to put our discussion in proper context, we also briefly noted events related to this notification which occurred after the Reporting Year concluded.

On December 19, 2023, NC DHHS 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 19th 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.”

On February 1, 2024 a “Statement of Deficiencies” was provided to the hospital by CMS. On February 23, 2024, the North Carolina State Survey Agency (NC DHHS) and CMS concluded a revisit survey at Mission Hospital to determine if corrective actions taken by the hospital had removed the immediate jeopardy to patients. That visit concluded that although the immediate jeopardy had been removed “condition level non-compliance” continued with respect to six specific Conditions of Participation. The February 24, 2024 deadline for potential termination was extended until June 5, 2024 to allow time for HCA/Mission Health to address those concerns.

A re-visit follow-up survey was conducted on May 24, 2024. On June 11, 2024, CMS advised Mission Hospital that the May 24th survey determined that “actions had been taken to correct the deficiency that was cited, and that procedural changes had been made giving reasonable assurance that a similar violation will not occur.”

Also, in 2024 and independent of the aforementioned findings of Immediate Jeopardy within the Mission Hospital Emergency Department, 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 between November 13 through 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.

Resolution of the deficiencies noted in that survey were included by CMS with the resolution of the deficiencies within the Emergency Department.

Based upon the failure of "Mission Hospital to be in "good standing" during the Reporting Year of 2024, 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

HCA's Annual Report for 2024 states: "Buyer revised the Uninsured and Charity Care Policy at the Hospitals during the Reporting Period to implement changes pursuant to the Health Care Access and Stabilization Program." The policies were amended on December 20, 2024, and the changes to the policy did not become effective until January 1, 2025. These changes will be discussed in detail later in this section.

The Uninsured and Charity Care Policy which formed the basis of the IM's recommended finding of potential non-compliance for Reporting Year 2023 was unchanged for the entirety of Reporting Year 2024.

The 2023 Finding of Potential Non-Compliance

In the IM's report addressing reporting year 2023, we identified Section 7.15 as an area of potential non-compliance. This finding was based upon a revision to the Uninsured and Charitable Care Policy made during 2023 and which had not received prior approval by the Local Advisory Boards and the IM.

Section 7.15(ii) of the Asset Purchase Agreement states in part:

"Between the Effective Time and the tenth (10th) anniversary of the Effective Time, Buyer shall implement and maintain at the Hospitals the Uninsured and "respect to any Material Facility other than the Local Hospital Facilities, both the Advisory Board and IM, or (B) with respect to any Local Hospital Facility, both its applicable Local Advisory Board and IM, (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's Annual Report for 2023 asserted that the Uninsured and Charitable Care policy had not been changed during the reporting period. On Wednesday, June 19, 2024, the President of HCA's North Carolina Division repeated the Annual Report's assertion when he was specifically asked by the IM if the Charitable Care Policy had been changed during the previous year and emphatically stated it had not been. In order to confirm that statement, the Monitor requested a copy of the company's current policy to compare with the policy in effect at the start of 2023.

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.”

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.”

Although the revision we focused upon did not immediately change the impact of that policy upon consumers, it did remove an existing provision of its existing policy which stated: “Under no

circumstances will liens be considered on properties less than \$300,000 in value.” Because HCA Healthcare’s company-wide policy was to not impose liens related to healthcare debt, HCA Healthcare took the position that removal of this clause had no impact on the manner in which its policy was administered, and that it did not adversely impact consumers.

Although our report acknowledged the Company’s current practice, we noted that a future change in company policy to once again allow and impose liens would – with this clause deleted – allow the imposition of liens on property of any value. Thus, we concluded this change removed a significant protection to consumers.

Our annual report covering calendar year 2023 stated, “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 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.”

Our Annual Report concluded: “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 IM, or (B) with respect to any Local Hospital Facility, both its applicable Local Advisory Board and IM.”

The 2024 Finding of Potential Non-Compliance

HCA took no action in response to the analysis contained in the 2023 Annual Report. Therefore, because the Uninsured and Charity Care Policy that we reviewed for 2023 remained the same throughout 2024, we make the same recommendation with respect to that policy. Due to the changes made in the Uninsured and Charity Care Policy in 2023, which were neither changed nor presented to the Advisory Boards or IM for approval during the entire reporting period of 2024, we once again have determined that HCA is in potential non-compliance with this section.

Changes to Uninsured and Charitable Care Policy Beginning on January 1, 2025

Although HCA chose to take no action to amend its policy during 2024, HCA’s Annual Report for 2024 cited two major initiatives in North Carolina that impacted uninsured and charitable care and directly resulted in a change to HCA’s policy beginning in 2025. These initiatives created major impacts with respect to medical debt and in the reimbursement to hospitals for medical care provided to low-income patients.

As noted, on December 20, 2024, the President of Mission Health wrote to DHT and to Affiliated Monitors announcing changes to Mission Health’s Charity Financial Assistance Policy for

Uninsured and Underinsured, which would take effect on January 1, 2025. Mission Health stated that because the changes taking effect on January 1, 2025 “provide no less access to necessary medical care regardless of ability to pay for services rendered,” the APA “does not obligate [HCA] to provide this notice of changes to the Policy but we are doing so as a courtesy to you and the community.”

The IM concurs that the changes proposed provide no less access to necessary medical care regardless of ability to pay for services rendered and, thus by the terms of the APA, may be adopted by HCA Healthcare without additional approval.

HCA Annual Report: Referencing the changes announced in its December 20, 2024 letter, the Buyer’s Annual Report states, as follows: “Buyer revised the Uninsured and Charity Care Policy at the Hospitals during the Reporting Period to implement changes pursuant the Health Care Access and Stabilization Program. These revisions provide no less access for necessary medical care regardless of ability to pay for services rendered than the previous Uninsured and Charity Care Policy. A copy of the letter provided to DHT dated December 20, 2024, together with the revised Underinsured and Charity Care Policy and redline comparison against the previous Uninsured and Charity Care Policy, are enclosed herein.”

Explaining the Changes

The IM is using this opportunity to explain several of the key changes which are now in effect. [Because these changes became effective on January 1, 2025, our evaluation of the impact of these changes will be included in our review of Reporting Year 2025, which will be presented in July 2026.]

These initiatives have implemented major changes with respect to medical debt and in the reimbursement to hospitals for medical care provided to low-income patients. In order to take advantage of the provisions of this law that appear more favorable to participating hospitals, those hospitals were required to adopt certain policies. Participating institutions were required to revise their financial assistance policy to incorporate the charity care policy set forth in the statute, which HCA has done. The current charity care policy for HCA’s North Carolina hospitals is titled, “Charity Financial Assistance Policy for Uninsured and Underinsured North Carolina Hospitals (Medical Debt Mitigation Policy)” and the policy’s effective date is January 1, 2025.

Among the most important changes to the Medical Debt Mitigation Policy are:

- Covers all “medically necessary” care, rather than just “emergent” care;
- Removes the requirement that indigent patients pay the first \$1500 for medical treatment; and
- Expands the categories of patients who are considered “presumptively eligible” for financial assistance without the requirement to produce extensive documentation of eligibility.

The issue of medical debt is not limited to North Carolina, and within North Carolina is not limited to any region or hospital system. A study released by The Peterson Center on Healthcare and KFF on February 12, 2024 showed that nationwide, approximately 6% of all adults owed more than \$1,000 in medical debt, while in North Carolina medical debt was reported by 13.4% of adults, the third highest rate of medical debt in the nation. While reducing medical debt has been a priority for a number of states, studies have shown that reducing medical debt requires a multi-component approach, generally including Medicaid expansion so that the cost of medical care is shifted to that program.

On March 27, 2023, Governor Roy Cooper signed into law legislation that would direct the state to expand Medicaid; per the legislation, implementation was contingent upon enactment of the State Fiscal Year (SFY) 2023-2024 budget by June 30, 2024. The legislation additionally included provisions to increase hospital assessments to fund the state share of expansion, increase hospital reimbursement rates, implement a comprehensive workforce development and referral program, and seek federal approval to condition Medicaid eligibility on compliance with work requirements if there is any indication that work requirements as a condition of participation in Medicaid may be authorized by CMS.

On September 22, 2023, the North Carolina General Assembly passed the state budget, and Governor Cooper announced he was directing the North Carolina Department of Health and Human Services to begin the process for expanding Medicaid while he allowed the budget to become law without his signature. Medicaid expansion in North Carolina went into effect on December 1, 2023. The expansion covers adults ages 19 through 64 who live in North Carolina, are U.S. citizens (or meet certain immigration status requirements), and have household incomes up to 138% of the federal poverty level. According to the North Carolina Medicaid Expansion Dashboard, maintained by NC DHHS and updated monthly, it was reported that as of March 7, 2025 640,297 people are enrolled in Medicaid expansion in North Carolina, including 15,698 in Buncombe County, representing 9.5% of the county's adult (19-64) population. Presumably, the expansion of Medicaid will result in a similar reduction in the need for medical treatment to be considered as charitable care.

On July 1, 2024, Governor Roy Cooper announced the "Healthcare Access and Stabilization Program" (HASP) intended to erase hospital medical debts for low and middle-income residents with bills they cannot afford to pay by reimbursing eligible hospitals for Medicaid-covered care at a rate closer to the cost of care. His plan included increasing federal payments to hospitals in exchange for forgiving old medical debt and helping patients avoid new debt. Because of that provision, federal government approval of his plan was required, and participating hospitals had to agree to specific conditions for debt forgiveness.

In addition to providing consumer relief, each hospital in North Carolina can elect whether to participate in the program. Hospitals that choose to meet the eligibility conditions, including medical debt relief, will receive a higher level of Medicaid reimbursement under the Healthcare Access and Stabilization Program (HASP). Hospitals that choose not to implement the policies are eligible for base HASP payments.

Under the North Carolina proposal, hospitals that opt in must implement the following policies as a condition of eligibility for enhanced HASP payments:

- Relieve all medical debt deemed uncollectible dating back to Jan. 1, 2014, for any individuals not enrolled in Medicaid with incomes at or below at least 350% of the federal poverty level (\$52,710 for an individual or \$109,200 for a family of four) as well as for patients for whom the total medical debt exceeds 5% of annual income.
- Relieve all unpaid medical debt dating back to Jan. 1, 2014, for individuals who are enrolled in Medicaid.
- Provide discounts on medical bills of between 50-100% for patients with incomes at or below 300% FPL, with the amount of the discount varying based on the patient's income.
- Automatically enroll people into financial assistance, known as charity care, by implementing a policy for presumptively determining individuals eligible for financial assistance through a streamlined screening and income validation approach. This includes any patient who is homeless, mentally incapacitated with no one to act on their behalf, or enrolled in a public benefit program such as Medicaid, Supplemental Nutrition Assistance Program (SNAP), or the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).
- Not sell any medical debt for consumers with incomes at or below 300% FPL to debt collectors.
- Medical debt interest rate is capped at 3 percent.
- Not report a patient's debt covered by these policies to a credit reporting agency.

On July 29, 2024, it was announced that CMS had approved North Carolina's proposed plan. It has been reported that all 99 of North Carolina's acute care hospitals have elected to participate in this program, including those operated by HCA Healthcare.

Mission Health took no steps to implement these changes during 2024. Although these changes do not impact 2024, it is important to those who will read this report to understand the key elements of the revised policy.

Based on the foregoing, AMI determines that HCA remains in potential non-compliance with this section, specifically as it relates to the Charity Care Policy in effect during 2024. .

Section 7.16 – Innovation Fund

Section 7.16 of the APA required the Buyer to create an innovation/investment fund to invest in businesses located in western North Carolina that provide innovations in the delivery of health

care. During the Reporting year, HCA made capital contributions to the Innovation Fund in the aggregate amount of \$2,982,948.

Based on the foregoing, AMI considers HCA to be in 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 2024-2025 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. The Executive Director noted that he is pleased with the support received from Mission Health and HCA.

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

A. THE THREE SECTIONS OF POTENTIAL NON-COMPLIANCE IN 2023

On July 5, 2024, pursuant to the Asset Purchase Agreement (APA) governing the sale of Mission Health System, Affiliated Monitors, Inc. (the “IM”) submitted its report to DHT regarding the compliance activities of HCA Healthcare, Inc. during reporting year 2023. That report identified three sections of potential non-compliance with the Asset Purchase Agreement by HCA Healthcare, Inc. Based upon those three sections of potential non-compliance, the IM recommended to DHT that HCA Healthcare be found in potential non-compliance with the Asset Purchase Agreement for Reporting Year 2023.

On December 12, 2024, the President of Mission Health¹ responded to those findings in a letter to DHT stating that HCA Healthcare “disagrees with each [finding of potential non-compliance].”

On March 31, 2025, DHT requested the IM review documentation received from HCA Healthcare in order to assess whether the information provided is sufficient to address the potential non-compliance issues raised in IM’s report. HCA Healthcare presented documentation on two of the three sections of potential non-compliance. As a result of our review of that documentation, we recommend that no further enforcement action be taken with respect to APA Section 7.13(h) regarding Medicare and Medicaid Enrollment, and APA Section 7.15 regarding Uninsured and Charity Care Policies.

Pursuant to Section 10.7(b) of the Asset Purchase Agreement, the “sole and exclusive remedy with respect to any breach, noncompliance, or non-fulfillment of any of the covenants or other agreements made by Buyer (i) in Sections 7.10, 7.12, 7.13, 7.14(e), 7.15, 7.16, 7.17, 7.18, 7.19, 7.23, 7.24 and 7.25 shall be specific performance and injunctive relief (including pursuant to Section 10.10) of such covenants or other agreements...” Thus, if HCA Healthcare has achieved substantial compliance with the Asset Purchase Agreement, regardless of whether it agrees or disagrees with the recommendation of the IM, those non-compliance issues may be considered to have been successfully addressed.

¹ The same individual, Greg Lowe, holds the positions of President of Mission Health and the President of HCA Healthcare’s North Carolina Division. Correspondence has been received from him in both capacities.

B. THE THREE SECTIONS OF POTENTIAL NON-COMPLIANCE IN 2024

We now turn to the IM's Assessment of the current status of each area of potential non-compliance.

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

In the IM's report, we stated, "We believe that the Superior Court – and not the IM - is the most appropriate forum to resolve this issue. We have determined that HCA is not in compliance with Section 7.13(a) of the APA with respect to the reduction of emergency and oncology services at Mission Hospital in 2023."

On April 16, 2025, the Superior Court denied HCA's Motion for Partial Summary Judgment. Under North Carolina law, "Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (See, *Jackson ex rel. DHT v. HCA Management Services et al.*, Order and Opinion on Defendant's Motion for Partial Summary Judgment at paragraph 14.) In its Motion, HCA asked the court to determine that the language "shall not discontinue" in Section 7.13(a) of the APA is unambiguous and to interpret that language as a matter of law. HCA argued that the Attorney General's claims that HCA had breached the terms of the APA turn on the clear and unambiguous meaning of these three words.

The Superior Court held that deciding whether the language of a contract is ambiguous is a question of law for a judge to decide and not a factual determination for a jury. The court ruled that the language was not so unambiguous that the Partial Summary Judgement should be granted. In Paragraph 32 of its decision, the Court stated, "After reviewing the briefing and hearing from the parties at oral argument, the Court concludes not only that the words "shall not discontinue" in Section 7.13(a) are ambiguous, but also that the word "services" lacks clarity, and that additional evidence is needed to determine the parties' intent. Therefore, the Defendant's motion to dismiss was denied.

As a result of the Court's ruling, this matter remains pending trial in the Superior Court. Therefore, the IM recommends that this matter continue to be considered unresolved.

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

Section 7.13(h) of the Asset Purchase Agreement states that, "...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)..."

In its Annual Report to the IM covering reporting year 2023, HCA stated, "During the Reporting Period, the Material Facilities and the Local Hospital Facilities remained enrolled and in good standing in the Medicare and Medicaid programs."

The IM's Report does not contest that during reporting year 2023, Mission Hospital and the associated facilities remained "enrolled" in Medicaid. Because of our opinion that Mission Hospital failed to remain "in good standing" we recommended this finding of potential non-compliance.

To demonstrate resolution of this potential non-compliance, HCA Healthcare provided copies of two letters from the Centers for Medicare and Medicaid Services to the CEO of Memorial Mission Hospital and Asheville Surgery Center, one dated March 8, 2024, and the other dated June 11, 2024.²

The letter of March 8th pertains to the complaint survey of the Emergency Department of Mission Hospital conducted over ten days in November and December 2023. According to correspondence to the CEO of Mission Hospital on December 19, 2023, "The complaint investigation resulted in an Immediate Jeopardy (IJ) identification as of December 1, 2023..." against the facility.

As used in CMS surveys, the term "Immediate Jeopardy" (IJ) refers to a situation where a recipient of care (e.g., a resident in a nursing home) has suffered or is likely to suffer serious injury, harm, impairment, or death due to a provider's noncompliance with one or more health and safety regulations. IJ is the most severe deficiency that can be cited by CMS surveyors, and it carries the potential for the highest level of fines and sanctions, including exclusion from enrollment in the Medicare and Medicaid programs.

The December 19, 2023 letter to the CEO of Mission Hospital entitled "Complaint Investigation" detailed the results of the 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

The December 23, 2023 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

² The letter of June 11, 2024 pertained to alleged violations of the Emergency Medical Treatment & Labor Act (EMTALA), based upon a survey concluded on December 9, 2023. Mission Health was notified of the deficiencies identified in that survey on February 1, 2024. Because the findings of this survey did not result in our findings of "Probable Non-compliance" for the 2023 reporting year, we address this survey and its results in our report covering reporting year 2024.

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.

On March 13, 2024 the 302 page Plan of Correction submitted by Mission Hospital in response to the Survey was approved by CMS.

The March 8, 2024 letter provided by HCA confirms that on February 23, 2024 a re-visit survey was concluded at Mission Hospital, and on June 3, 2024 the hospital was advised by the state survey agency (NC DHHS) that an additional follow-up survey on May 20-23, 2024 had found the hospital in compliance with Federal Medicare Conditions of Participation.

Based upon its compliance with the approved Corrective Action Plan and the results of subsequent follow-up surveys, we find that the deficiencies that resulted in the Emergency Department of Mission Hospital being recommended as probably non-compliant with CMS standards have been satisfactorily resolved. Although we reaffirm our recommendation that HCA Healthcare be determined probably non-complaint with the APA for reporting year 2023 based upon its failure to maintain good standing in the Medicare and Medicaid programs, we recommend that no further action be initiated based upon that finding.

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

During our review of reporting year 2023, we also attempted to confirm HCA's assertion that there had been no revisions to the Uninsured and Charity Care Policy (the Policy) during that year. After initially maintaining that the Uninsured and Charity Care Policy had not been changed during reporting year 2023, HCA representatives acknowledged that the Policy had been changed. However, 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 IM for approval.

On March 25, 2025, HCA Healthcare's North Carolina Division President wrote to the Chair of the Board of Directors of DHT reiterating that, "Concerning medical debt, in 2023 and 2024 it was Mission Health's policy not to pursue litigation that involves suing patients or filing judgment liens on patient bad debt accounts."

Although HCA Healthcare initially took no action to resolve the recommendation of potential non-compliance with respect to medical liens which we noted in our report covering reporting year 2023, HCA Healthcare made significant changes to Mission Health's "Charity Financial Assistance Policy for Uninsured and Underinsured" which became effective on January 1, 2025.³ Mission Health's letter stated, "The revised Policy implements changes required by the North Carolina Department of Health and Human Services pursuant to the Health Care Access and

³ Because the IM reports retrospectively, the impact of changes implemented on January 1, 2025 would not be covered until the report submitted on or about July 1, 2026.

Stabilization Program (“HASP”). The revisions ‘provide no less access for necessary medical care regardless of ability to pay for services rendered than the Uninsured Charity Care Policy.’”

We will examine the revisions in our annual report for 2024, but we note that in addition to making changes mandated by the HASP program, the concerns regarding the placement of liens expressed in the IM’s Report covering reporting year 2023 have also been addressed.

Although the revisions to the “Charity Financial Assistance Policy for Uninsured and Underinsured” did not become effective until January 1, 2025, the concerns we expressed have been addressed, and we recommend that no further action be initiated based upon that finding.

C. RECOMMENDATIONS REGARDING ENFORCEMENT

For the foregoing reasons, we find that the IM’s concerns with respect to probable non-compliance with Sections 7.13(h) and of the 7.15 have been sufficiently addressed such that the IM recommends that no further action be taken to seek specific performance.

The concerns expressed regarding Section 7.13(a), and which are the subject of ongoing litigation in the matter of *Jackson ex rel. DHT v. HCA Management Services et al.*, remain unresolved pending resolution of that litigation. The IM recommends that no additional action be taken to seek specific performance of this provision.

D. CONCLUSION

For the foregoing reasons, based upon the three sections of non-compliance detailed above, the IM recommends to DHT that HCA Healthcare be found to be potentially not in compliance with the Asset Purchase Agreement for Reporting Year 2024.

We appreciate the opportunity to assist the DHT in this 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