

Hearing Date: Wednesday, November 29, 2017 at 2 P.M.

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

St. Joseph Health Services of Rhode Island, Inc.,

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:

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vs.

:

C.A. No. 2017-3856

:

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St. Josephs Health Services of Rhode Island
Retirement Plan, as amended

:

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:

MEMORANDUM IN SUPPORT OF
THE DEPARTMENT OF ATTORNEY GENERAL'S
OBJECTION TO MOTION TO COMPEL

I. Background

On August 18, 2017, this Court appointed Stephen F. DelSesto as Temporary Receiver of the St. Josephs Health Services of Rhode Island Retirement Plan, as amended. Thereafter, Special Counsel for the Receiver was approved on October 11, 2017. On November 3, 2017, a subpoena was served on the Department of Attorney General, seeking:

1. All documents relating to the **Plan**;¹
2. All documents relating to **SJHSRI, RWH, CHARTERCARE, or Prospect**;²
3. All documents relating to any **Hospital Conversion Act Proceedings** (as defined above), including all documents relating to applications, amended applications, supplemental

¹ The term "Plan" is defined as "the St. Joseph Health Services of Rhode Island Retirement Plan and any of its versions or amendments.

² Special counsel has withdrawn Request No. 2.

applications, exhibits, supporting documentation, or other documents submitted in connection with **Hospital Conversion Act Proceedings**;

4. All notices or documents submitted or obtained in accordance with any of the conditions of the **May 16, 2014 Decision**, including CONDITIONS ## 3, 4, 5, 6, 7, 8, 11, 12, 13, 18, 19, 23, 24, 27 and 30;
5. All documents concerning the “engage[ment] with counsel for the Petitioner and the Court-appointed receiver” as stated in the **August 24, 2017 Statement**; and
6. All documents concerning the “broken promises” referred to in the **August 24, 2017 Statement**.

The Petitioner, St. Joseph Health Services of Rhode Island, Inc. (“SJHSRI”), has been the subject of Hospital Conversions Act (“HCA”) reviews conducted pursuant to Rhode Island statutory framework. The 2009 and 2014 reviews were conducted pursuant to the HCA, R.I. Gen. Laws §23-17.14-1, *et seq.* The parties to the 2009 HCA Initial Application³ (“2009 Application”) were Roger Williams Hospital (“RWH”), Roger Williams Medical Center (“RWMC”), SJHSRI, and CharterCARE Health Partners (“CCHP” and collectively, the “2009 Transacting Parties”). The 2009 Application proposed the formation of CCHP, a nonprofit corporation, for the purposes of affiliating RWH, RWMC, and SJSHRI. The 2009 Application included 113 questions, which resulted in a 198 page response, accompanied by thousands of pages of exhibits submitted to the Attorney General (hereinafter “Department” or “Attorney General”) and the Department of Health

³ The first step in the HCA process is the filing of an Initial Application.

(“DOH” and collectively, the “Departments”).⁴ Following the 2009 review, the HCA Initial Application was revised and the number of questions was reduced to 73.⁵

The parties to the 2014 HCA Initial Application (“2014 Application”) were RWMC, SJHSRI, CCHP, Prospect Medical Holdings, Inc. (“PMH”), Prospect East Holdings, Inc., Prospect East Advisory Services, LLC, Prospect CharterCARE, LLC, Prospect CharterCARE RWMC LLC, and Prospect CharterCARE SJHSRI, LLC (collectively, the 2014 “Transacting Parties”). In its simplest form, the 2014 Application proposed a sale of the assets of CCHP to the for-profit corporation, PMH. The 2014 Application submitted to the Departments by the 2014 Transacting Parties consisted of 169 pages, with thousands of pages of exhibits attached.⁶

Criteria in the HCA guides the regulators in processing an Initial Application. The 2009 and 2014 proposed transactions were reviewed pursuant to different statutory criteria. The 2009 Application involved a conversion limited to not-for-profit corporations, the regulatory review was conducted pursuant to R.I. Gen. Laws § 23-17.14-10, and the 21 criteria therein. The 2014 Application however, involved a conversion of a non-profit hospital to a for-profit hospital, and was reviewed pursuant to the 30 requirements established in R.I. Gen. Laws § 23-17.14-7. As a general matter, the Attorney General’s focus in an HCA review is concentrated in the areas of governance, conflicts of interest and charitable assets.

In addition to reviewing the Initial Application submitted by the Transacting Parties⁷ and other publicly available information, the Departments interview executive leadership and

⁴ After the 2009 Application was deemed complete, supplemental information was collected from the 2009 Transacting Parties.

⁵ In addition, a 2012 amendment to the HCA decreased the review period from 180-days to 120-days following the date of acceptance of an Initial Application.

⁶ After the 2014 Application was deemed complete, supplemental information was collected from the 2014 Transacting Parties.

⁷ “Transacting Parties” is defined as the acquiree and the acquiror. *See* R.I. Gen. Laws § 23-17.14-4(17).

management from the Transacting Parties. The HCA also requires a public informational meeting. *See* R.I. Gen. Laws § 23-17.14-7(b)(3)(iv). The Initial Application, along with the supplemental information provided⁸, information gathered from the investigation, including publicly available information and information resulting from interviews and public comment, are all considered in rendering the Attorney General's Decision. The October 28, 2009 Decision of the Attorney General is 43 pages and approves the 2009 Application with 14 conditions; while the May 16, 2014 Decision of the Attorney General is 55 pages and approves the 2014 Application with 30 conditions.

II. Standard of Review

All proceedings in Superior Court are governed by Rule 1 of the Superior Court Rules of Civil Procedure, requiring a “just, speedy and inexpensive determination of every action.” The subpoena at issue must be construed and limited with these concerns at the forefront. Further, the Attorney General is a non-party in this matter. Non-parties are given broad protection when served a subpoena. *See Cusumano v. Microsoft Corp.*, 162 F.3d 708, 717 (1st Cir. 1998) (“Although discovery is by definition invasive, parties to a law suit must accept its travails as a natural concomitant of modern civil litigation. Non-parties have a different set of expectations. Accordingly, concern for the unwanted burden thrust upon non-parties is a factor entitled to special weight in evaluating the balance of competing needs.”). The Attorney General, a non-party and regulator in this matter, filed a partial objection to the subpoena, and now seeks relief pursuant to

⁸ By way of example, after the 2014 Application was deemed complete and the 120-day review period commenced, six (6) sets of supplemental questions consisting of two hundred and thirteen (213) questions were sent to and responded to by the 2014 Transacting Parties.

Rule 45 and 26 of the Superior Court Rules of Civil Procedure. Rule 45 is specific to subpoenas, and contemplates the exact scenario presented here:

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. ...

(2)(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, ...serve...written objection to inspection of copying of any or all of the designated materials...

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

- (i) Fails to allow reasonable time for compliance;
- (ii) Requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iii) Subjects a person to undue burden.

III. Argument

A. The Subpoena Fails to Allow a Reasonable Time for Compliance

The Attorney General is not a party to these proceedings. This is not a review of the Department's regulatory processes in 2009 and 2014 under the Hospital Conversions Act. The Department is in possession of information that may assist the Respondent in performing its function, and has indicated that it will provide documents to that end. The Attorney General has pointed out on several occasions that the wide net cast by the subpoena will result in the review of completely irrelevant material, wasting precious time and resources. The parties least able to afford those fees will pay for retrieval and review of irrelevant documents.

Because of the wildly overbroad requests, seeking tens of thousands of documents that are mostly unrelated to the pension fund, the Attorney General reached out to the Respondent for an informal discussion as to the most focused and expeditious way to respond to the subpoena. *See*

E-mail string, Exhibit A. On November 9, 2017, members of the Department met with Special Counsel for the Receiver to determine the best way to provide responsive documents. *See* Correspondence dated November 16, 2017, Exhibit B. The Attorney General attempted to explain the role of the Department in Hospital Conversions Act proceedings, noting the Department's focus on charitable assets and board membership.

To demonstrate the wide range of matters covered in an HCA review conducted by the Departments, the Attorney General brought a copy of the 2014 Initial Application (Exhibit C) with its 73 questions, to the November 9th meeting with Special Counsel for the Receiver. Representatives from the Department explained that since the subpoena requested "all documents relating to any Hospital Conversions Act Proceedings... submitted in connection with Hospital Conversions Act Proceedings,"⁹ it would capture irrelevant and immaterial documents and information. Of note, for the 73 questions from the 2014 Application, only one question specifically referenced the pension:

45. Please provide detailed description as each relates to the proposed transaction for equipment leases, insurance, regulatory compliance, tax status, pending litigation or pending regulatory citations, **pension plan descriptions**, and employee benefits, environmental reports, assessments and organizational goals.¹⁰ (emphasis added).

Similarly, the 2009 application (Exhibit D) was comprised of a total of 113 questions, only two of which specifically reference the pension. One mirrored question 45, above, and the other asks:

60. Please provide any and all documents referring to agreements reflecting the salary, bonus and all other compensation, including but not limited to, those documents filed with the Securities and Exchange Commission, Internal Revenue Service and/or any other governmental entity *but not including the individuals' federal or state income tax-returns), expense account, transportation subsidy, cafeteria plan, deferred

⁹ See Subpoena Request #3.

¹⁰ This application is attached as Exhibit C.

compensation, **pension plan**, and retirement plan of the 25 highest compensated employees of each of the transacting parties and each of their affiliates. (Exhibit D).

In addition to the Request concerning the HCA proceedings, Request #4 seeks documents relating to conditions imposed by the Attorney General in the 2014 HCA Decision. *See* 2014 HCA Decision, Exhibit E, at 51. Compliance with the “everything” nature of Special Counsel’s request requires an extension of time, and will likely capture numerous privileged documents.

Respondent claims that rather than comply with the subpoena, the Attorney General objected “to any production before February 15, 2018, over three and a half months after he received the subpoena!” (exclamation in original). *See* Respondent’s Memorandum in Support of Motion to Overrule the R.I. Attorney General’s Partial Objection to Subpoena and Compel Compliance with Subpoena Duces Tecum, at 2, filed November 17, 2017. This is false, and Special Counsel knew this was untrue when the Memorandum was filed. Indeed, in the November 9, 2017 meeting the parties agreed to production on a rolling basis, and knew that the process had already begun. *See e.g.* Exhibit B. (“We both agreed that production of the documents on a rolling basis is preferred by all, and have already begun that process. We do not have the resources to do a mass production in a short time frame, particularly the two-week time frame provided in the subpoena. Providing documents on a rolling basis will give you the opportunity to begin reviewing, without waiting for us to complete our production.”) Respondent would have this Court and the parties believe that the Attorney General is attempting to stall production until February of 2018. That is simply not the case.

The Attorney General is aware that the Receiver intends to propose pension benefit adjustments in February 2018. Extending the time for the Attorney General to respond to the subpoena will not interfere with the Receiver’s proposal, which will be developed based on the information currently available concerning pension resources and the status of plan participants.

The investigation to be conducted by Special Counsel, and the pursuit of any claims by Special Counsel, will not be concluded by February 2018. It would make sense that if any damages become available for the benefit of the pension, those funds could be injected into the corpus and the Receiver's proposal adjusted accordingly at the time.

The Attorney General initially suggested that, since a wealth of information exists in the public domain, that Special Counsel obtain it from official government websites. *See* Exhibit B, page 3. This is the norm in litigation,¹¹ and would have enabled counsel to begin an immediate review, saving time and resources. *See* Memorandum and Order, Costa v. Rasch, USDC No. 11-336L (declining to order production of documents "readily available...at the click of a mouse"). In fact, in requesting the extension to February 15, 2018, the Attorney General did not account for production of the publicly available documents. *See* Attorney General's Partial Objection, page 3, ("The Attorney General has estimated ninety (90) days as a sufficient time frame to respond, assuming that publicly available documents would be exempt from production in response to the Subpoena."). However, at this point, since the Attorney General's document review pursuant to the subpoena has begun, this is no longer a point of contention. Reproducing the thousands of publicly available documents will be time consuming, and the Attorney General cannot complete its response in less than ninety (90) days.

As a practical matter, the Attorney General envisions document review to be conducted chronologically with documents from the 2009 HCA review to be produced first, followed by the documents related to the 2014 HCA review, as that is how the documents are maintained. The Department will review the boxes for each transaction and will provide Special Counsel with boxes

¹¹ Rule 26 of the Superior Court Rules of Civil Procedure allows the Court to limit discovery if the material sought "is obtainable from some other source that is more convenient, less burdensome, or less expensive."

of documents on a rolling basis, with each box produced to contain a privilege log, if necessary. If any of the documents described in the privilege logs are of interest to Special Counsel, pursuing their disclosure should be addressed through either court order, an in-camera review or a waiver or consent from the parties, as further discussed below.

B. Respondent Should Provide Search Terms For Electronic Materials

Respondent has not deviated from their demand that the Attorney General produce “everything.” This encompasses thousands of pieces of electronic information. To retrieve and review “everything” would take months, with little useable results. As in litigation, special counsel must provide the Department with time parameters and search terms in order to provide meaningful results while conserving scarce resources.

C. Confidential and/or Privileged Information

In the Attorney General’s Partial Objection, it is explained that a provision of the HCA enables applicants to request that the Attorney General provide confidential status for certain information required by the HCA. In response, Special Counsel states,

The Attorney General cites no authority whatsoever for either assertion, either that the Attorney General ‘is bound by the confidentiality determination,’ or the assertion that ‘confidential documents can only be disclosed pursuant to a waiver from the transacting parties or an Order of this Court.’

See Respondent’s Memorandum in Support of Motion to Overrule the R.I. Attorney General’s Partial Objection to Subpoena and Compel Compliance with Subpoena Duces Tecum, at 7, filed November 17, 2017.

The statute, referenced in the Partial Objection, clearly establishes that the confidentiality determination is binding on the Attorney General and others:

The attorney general has the power to decide whether any information required by this chapter of an applicant is confidential and/or proprietary. **The decisions by the attorney**

general shall be made prior to any public notice of an initial application or any public review of any information and **shall be binding on the attorney general, the department of health, and all experts or consultants engaged by the attorney general or the department of health.**

R.I. Gen Laws § 23-17.14-32(a) (Emphasis added).

Since it is the HCA applicants who request confidential status, their consent to disclosure would obviate the need for further protection by the Attorney General. In his Motion, Special Counsel argues that that the applicants' silence should be construed by the Attorney General as relieving it of any continuing responsibility to protect the documents designated as confidential. That should not be a rule created or adopted by the Superior Court, for obvious reasons. This argument fails on several levels, including that the subpoena is directed at the Attorney General and not the applicants.

In addition, since the Attorney General is bound by the confidential designation, which is a protection without expiration, the Transacting Parties to the 2009 and 2014 HCA reviews must at a minimum, be notified of the subpoena, but would preferably take some more affirmative action evidencing their consent to disclosure. In the absence of a waiver, consent or notice, the Attorney General cannot produce the confidential records without a court order.

D. Privilege Logs

Special Counsel to the Receiver has said "by failing to provide a privilege log, the Attorney General has waived any claim of privilege" and accuses the Attorney General of "improperly claiming" certain privileges "for unidentified documents". See Respondent's Memorandum in Support of Motion to Overrule the R.I. Attorney General's Partial Objection to Subpoena and Compel Compliance with Subpoena Duces Tecum, at 8, filed November 17, 2017. In order to preserve privilege, the Attorney General has addressed that privileges will be asserted as

documents are produced, where appropriate. *See* Attorney General's Partial Objection filed November 16, 2017, at pages 4-7. The Attorney General did not attempt to assert a blanket privilege covering all documents, as Special Counsel to the Receiver seems to suggest. Preserving the right to assert privilege is proper and necessary and should not be construed as a substitute for a privilege log. More specifically, the Attorney General expects that many documents will be protected from disclosure by one or more privileges: (1) deliberative process; (2) work product and (3) attorney-client relationship. Privilege logs will be provided as necessary with the rolling production arrangement.

IV. Conclusion

WHEREFORE, for the foregoing reasons, the Attorney General respectfully requests that this Honorable Court enter an Order as follows:

- (1) The Court allow production of documents and privilege logs on a rolling basis;
- (2) That as to Requests 1 and 3, the subpoena is limited to documents related to the 2009 and 2014 Hospital Conversion Act review as agreed upon by the parties;
- (3) No response is necessary as to Request No. 2, as it has been withdrawn;
- (4) Extend the time for the Attorney General to respond to the subpoena ninety (90) days or until February 15, 2018;
- (5) Extend time for the Attorney General to provide a privilege log identifying all documents withheld pursuant to privilege for ninety (90) days or until February 15, 2018;
- (6) Materials subject to the confidentiality determination required by R.I. Gen. Laws §23-17.14-32(a), may not be produced by the Attorney General absent consent by the requesting party or by Order of this Court;
- (7) Special Counsel will provide the Attorney General with reasonable search terms for electronic discovery limited by custodian and time frame.

Respectfully submitted,

STATE OF RHODE ISLAND
BY ITS ATTORNEY,

PETER F. KILMARTIN
ATTORNEY GENERAL

/s/ Kathryn Enright

/s/ Jessica D. Rider

Kathryn Enright #7208

Assistant Attorney General

Jessica D. Rider #8801

Special Assistant Attorney General

150 South Main Street

Providence, RI 02903

Tel.: (401) 274-4400 Ext. 2236/2314

Fax: (401) 222-2995

Email: kenright@riag.ri.gov/jrider@riag.ri.gov

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 27th day of November, 2017, I electronically filed and served this document through the electronic filing system to all on record. The document electronically filed is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Diane Milia

EXHIBIT A

From: Kathryn Enright <KEnright@riag.ri.gov>
Sent: Thursday, November 16, 2017 11:48 AM
To: Rebecca Partington
Cc: Jessica Rider
Subject: FW: SJHSRI v. SJHSRI Retirement Plan; PC 2017-3856

From: Stephen P. Sheehan [mailto:sps@wistbar.com]
Sent: Wednesday, November 08, 2017 4:28 PM
To: Jessica Rider <JRider@riag.ri.gov>
Cc: Max Wistow <mw@wistbar.com>; Benjamin Ledsham <bledsham@wistbar.com>; Kathryn Enright <KEnright@riag.ri.gov>; Rebecca Partington <RPartington@riag.ri.gov>; Daria Souza <daria@wistbar.com>
Subject: RE: SJHSRI v. SJHSRI Retirement Plan; PC 2017-3856

Thanks Jessica.

Stephen P. Sheehan
Wistow, Sheehan & Loveley, PC
61 Weybosset Street
Providence RI 02903
Phone: (401)831-2700
Fax: (401)272-9752
Email: spsheehan@wistbar.com

From: Jessica Rider [mailto:JRider@riag.ri.gov]
Sent: Wednesday, November 08, 2017 4:15 PM
To: Stephen P. Sheehan
Cc: Max Wistow; Benjamin Ledsham; Kathryn Enright; Rebecca Partington; Daria Souza
Subject: RE: SJHSRI v. SJHSRI Retirement Plan; PC 2017-3856

Steve,

Our purpose for meeting is to identify your goals and the documents that are a priority for you, and the most efficient way for us to provide those documents. Because there are no time frames or other limitations in the subpoena, irrelevant and immaterial documents are captured by the requests. Many of these documents may be of no interest to you. Additionally, given the broad scope of the subpoena, a two-week turnaround time to respond is not feasible so we would like to discuss a reasonable time for responding. Finally, the subpoena captures documents deemed confidential by the Attorney General during the Hospital Conversions Act reviews, which we can provide, but only via a waiver from the applicants or court order.

We look forward to meeting tomorrow.

Regards,
Jessica

Jessica D. Rider | Special Assistant Attorney General

The State of Rhode Island | Office of the Attorney General
150 South Main Street | Providence, RI - 02903
Office: +1 401 274 4400 | Ext:2314
jrider@riag.ri.gov | www.riag.ri.gov |



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From: Stephen P. Sheehan [<mailto:sps@wistbar.com>]
Sent: Tuesday, November 07, 2017 10:50 AM
To: Jessica Rider <JRider@riag.ri.gov>
Cc: Max Wistow <mw@wistbar.com>; Benjamin Ledsham <bledsham@wistbar.com>; Kathryn Enright <KENright@riag.ri.gov>; Rebecca Partington <RPartington@riag.ri.gov>; Daria Souza <daria@wistbar.com>
Subject: RE: SJHSRI v. SJHSRI Retirement Plan; PC 2017-3856

Thanks, see you then.

Stephen P. Sheehan
Wistow, Sheehan & Loveley, PC
61 Weybosset Street
Providence RI 02903
Phone: (401)831-2700
Fax: (401)272-9752
Email: spsheehan@wistbar.com

From: Jessica Rider [<mailto:JRider@riag.ri.gov>]
Sent: Tuesday, November 07, 2017 10:46 AM
To: Stephen P. Sheehan
Cc: Max Wistow; Benjamin Ledsham; Kathryn Enright; Rebecca Partington
Subject: RE: SJHSRI v. SJHSRI Retirement Plan; PC 2017-3856

Steve,

We are available to meet at your office this Thursday from 2 – 3 p.m. We will send an email prior to the meeting outlining the issues to be discussed.

Regards,
Jessica

Jessica D. Rider | Special Assistant Attorney General

The State of Rhode Island | Office of the Attorney General
150 South Main Street | Providence, RI - 02903
Office: +1 401 274 4400 | Ext:2314
jrider@riag.ri.gov | www.riag.ri.gov |



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From: Stephen P. Sheehan [<mailto:sps@wistbar.com>]
Sent: Tuesday, November 07, 2017 9:52 AM
To: Jessica Rider <JRider@riag.ri.gov>
Cc: Max Wistow <mw@wistbar.com>; Benjamin Ledsham <bledsham@wistbar.com>; Kathryn Enright <KENright@riag.ri.gov>; Rebecca Partington <RPartington@riag.ri.gov>
Subject: RE: SJHSRI v. SJHSRI Retirement Plan; PC 2017-3856

Hi Jessica

2 pm Thursday(11/9) at our office works for us. Can you send me an email outlining the issues you want to discuss so we're prepared at the meeting?

Thanks

Steve

Stephen P. Sheehan
Wistow, Sheehan & Loveley, PC
61 Weybosset Street
Providence RI 02903
Phone: (401)831-2700
Fax: (401)272-9752
Email: spsheehan@wistbar.com

From: Jessica Rider [<mailto:JRider@riag.ri.gov>]
Sent: Monday, November 06, 2017 4:29 PM
To: Stephen P. Sheehan
Cc: Max Wistow; Benjamin Ledsham; Kathryn Enright; Rebecca Partington
Subject: SJHSRI v. SJHSRI Retirement Plan; PC 2017-3856

Attorney Sheehan,

I am emailing regarding the subpoena that was served upon the Attorney General in the above-referenced matter last Friday. Our office would like to meet to discuss the documents requested in the subpoena. We are available in the

afternoon of November 9th and the morning of either November 14th or November 15th. Please let us know if you are available to meet at one of these times.

We look forward to hearing from you.

Regards,
Jessica

Jessica D. Rider | Special Assistant Attorney General
The State of Rhode Island | Office of the Attorney General
150 South Main Street | Providence, RI - 02903
Office: +1 401 274 4400 | Ext:2314
jrider@riag.ri.gov | www.riag.ri.gov |



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EXHIBIT B



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903
(401) 274-4400 - TDD (401) 453-0410

Peter F. Kilmartin, Attorney General

November 16, 2017

Via Electronic and Regular Mail

Max Wistow, Esq.
Wistow, Sheehan & Loveley, PC
61 Weybosset Street
Providence, RI 02903
Email: mw@wistbar.com

Re: St. Joseph Health Services of Rhode Island, Inc. vs.
St. Josephs Health Services of Rhode Island
Retirement Plan, PC-2017-3856

Dear Mr. Wistow:

The purpose of this letter is, as you requested, to memorialize our discussion on November 9, 2017 regarding the subpoena served on the Attorney General.¹ That meeting was at our request. On that date, myself, Health Care Advocate Kathryn Enright and Special Assistant Attorney General Jessica Rider met with you, Mr. Sheehan and Mr. Ledsham at your offices. At the outset, we indicated that our intention was to determine what your priorities were so that we could provide you with the most meaningful documents in a timely manner. You indicated your surprise, as you considered our initial email requesting the meeting to be negative. As our email was not in any way negative, I was surprised by that reaction. As we stated in our email to you, the purpose of the meeting was to identify your goals and the documents that are a priority for you, and the most efficient way for us to provide those documents. See attached email dated November 8, 2017. Upon our arrival for the meeting, we indicated that given the breadth of documents the subpoena covered, we wanted to understand your priorities and provide those documents first. The Attorney General is mindful that the resources of the pension fund are at stake, and that relevant information needs to be transmitted in a timely and orderly fashion.

I entered the meeting with five specific points of discussion to be of assistance to your inquiry: your priorities, the confidential nature of certain documents, responding on a rolling basis, public documents, and the need for a clawback agreement. Upon indicating that we would respond

¹ This letter also serves as a partial Objection pursuant to Rule 45 of the Superior Court Rules of Civil Procedure.

Max Wistow, Esq.
Wistow, Sheehan & Loveley, PC
November 16, 2017
Page 2

based on your priorities, and before moving to any other topic, you interjected, stating that “everything is a priority” and that “everything” means all documents related to the 2009 and 2014 Hospital Conversion Act (“HCA”) reviews. You indicated that is how litigation goes, and stated that if the Attorney General was intending to be lackadaisical in its response, that you would just go to court. This misrepresentation and your reluctance to allow a mutual discussion was not productive.

Overbreadth

The following is intended to be instructional and explanatory with an eye towards avoiding providing boxes of immaterial documents. As we explained, Hospital Conversion Act proceedings are governed by statute, rule and regulation. The Department of Health and the Attorney General have distinct interests and specific roles in conducting an HCA review. There are myriad issues reviewed, and to demonstrate the breadth of information collected by the regulators, we shared that for the 2014 HCA review, the transacting parties responded to a seventy-three (73) question application, with only one question specifically referencing the pension, which states:

45. Please provide detailed description as each relates to the proposed transaction for equipment leases, insurance, regulatory compliance, tax status, pending litigation or pending regulatory citations, pension plan descriptions, and employee benefits, environmental reports, assessments and organizational goals.²

Similarly, the 2009 application included a total of one hundred and thirteen (113) questions, only two of which specifically reference the pension. One of those questions mirrored the question in the 2014 application. The other question states:

60. Please provide any and all documents referring to agreements reflecting the salary, bonus and all other compensation, including but not limited to, those documents filed with the Securities and Exchange Commission, Internal Revenue Service and/or any other governmental entity (but not including the individuals’ federal or state income tax-returns), expense account, transportation subsidy, cafeteria plan, deferred compensation, pension plan, and retirement plan of the 25 highest compensated employees of each of the transacting parties and each of their affiliates.

In summary, the Attorney General considers your request to be overbroad. With that said, the Attorney General will provide “everything” short of privileged, confidential and publicly available documents if that is what you and the Receiver feel is necessary and can agree to that course. Our aim is to highlight the nature of the HCA review and our belief that a review of “all” documents would result in the waste of precious resources—and we do not want to be accused of engaging in a “document dump.”

² This application is available for review at:
<http://www.riag.ri.gov/CivilDivision/OfficeoftheHealthCareAdvocate.php>.

Max Wistow, Esq.
Wistow, Sheehan & Loveley, PC
November 16, 2017
Page 3

Publicly Available Documents

The subpoena seeks many documents which are publicly available, such as (but not limited to):

- The 2014 Initial Application, Public Exhibits, the Attorney General's Decision and Department of Health's ("DOH") Decision;
- The 2009 joint HCA application and DOH's Decision; and
- The Change in Effective Control DOH Decisions for both the 2009 and 2014 reviews.

All of these documents are available on either publicly accessible websites maintained by the Attorney General or the Department of Health. Your review of these documents can commence immediately, and this course of action is consistent with the approach used in litigation. *See*, Memorandum and Order, Costa v. Rasch, USDC No. 11-336L (declining to order production of documents "readily available...at the click of a mouse"). For your reference, attached are screenshots of both websites which show where these documents may be found. Finally, all documents related to the *cy pres* petitions are publicly available through the Superior Court files. See In re: CharterCARE Health Partners Foundation, Roger Williams Hospital and St. Joseph Health Services of Rhode Island, C.A. No. KM-2015-0035; In re: CharterCARE Health Partners Foundation, C.A. No. 11-6822; Roger Williams Medical Center v. Patrick Lynch, C.A. No. 09-665.

Rolling Production and Clawback

We both agreed that production of the documents on a rolling basis is preferred by all, and have already begun that process. We do not have the resources to do a mass production in a short time frame, particularly the two-week time frame provided in the subpoena. Providing documents on a rolling basis will give you the opportunity to begin reviewing, without waiting for us to complete our production. You agreed to our request for a clawback agreement, which will be transmitted shortly.

Specific Requests

We then addressed the specific requests in your subpoena. Documents responsive to Request #1³, will be subsumed in any response to Request #3.⁴ You agreed that Request #2 was redundant and unnecessary and agreed to withdraw it. Please confirm this agreement.

³ Request Number One seeks "All documents relating to the **Plan**." (emphasis in original). The term "Plan" is defined as "St. Joseph Health Services of Rhode Island Retirement Plan and any of its versions or amendments."

⁴ Request Number Three seeks "All documents relating to any **Hospital Conversion Act Proceedings** (as defined above), including all documents relating to applications, amended applications, supplemental

Max Wistow, Esq.
Wistow, Sheehan & Loveley, PC
November 16, 2017
Page 4

Request #4 seeks documents relating to the monitoring of the 2014 HCA decision. While you request documents for multiple conditions, we discussed that only one condition specifically references the pension from the 2014 Decision, which states:

23. For the next three (3) years following the close of the transaction, notify the Attorney General of any actions out of the ordinary course take in connection with the SJHSRI pension or any material changes in its operation and/or structure.

Documents related to monitoring also include several boxes. Please keep in mind that monitoring is ongoing.

We indicated that for both HCA reviews, there were several documents that were deemed confidential pursuant to R.I.G.L. § 23-17.14-32(a), which states:

The attorney general has the power to decide whether any information required by this chapter of an applicant is confidential and/or proprietary. The decisions by the attorney general shall be made prior to any public notice of an initial application or any public review of any information and shall be binding on the attorney general, the department of health, and all experts or consultants engaged by the attorney general or the department of health.

Specifically, we shared a chart documenting which exhibits in the 2014 review were deemed confidential. This chart was created during the review as part of our regulatory process – not in response to this subpoena. The intention of sharing the chart was to demonstrate the number of documents that have been deemed confidential, and the fact that some may be relevant and some surely are not. As we indicated at the meeting, our position is that we can give you those documents with a waiver from the transacting parties, or in the alternative, under seal or with some other protective order as the court deems fit. As only the transacting parties might have requested confidentiality, and you are likely in contact with their representatives, it seems most expedient that you approach those parties regarding the waiver of confidentiality. Of course, if the Court determines that any of these documents should be produced, the Attorney General will comply, and we will also begin that process.

applications, exhibits supporting documentation, or other documents submitted in connection with **Hospital Conversion Act Proceedings.**” (emphasis in original). At our meeting you clarified that you seek only documents connected with the 2009 and 2014 HCA proceedings. If you have changed your mind, please let us know as soon as possible.

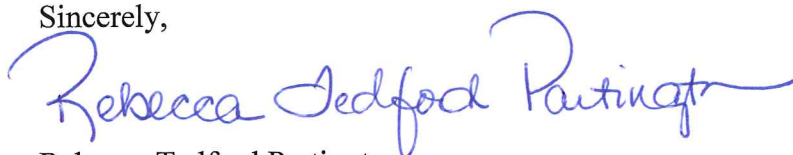
Max Wistow, Esq.
Wistow, Sheehan & Loveley, PC
November 16, 2017
Page 5

The documents deemed confidential pursuant to statute are different than those which may be privileged. We expect many responsive documents will be privileged, either under the work-product or other doctrines. Privilege logs will be provided as we provide responses.

Because of the issues with the time to respond, scope, and the confidential and privileged documents, we will be filing a formal partial objection to the subpoena with the Superior Court. We ask that you share this letter with the Receiver. We are available to conference with the Court on the matter immediately. In the meantime, the document gathering process is underway. We anticipate that we will require a minimum of 90 days to produce a privilege log.

Please feel free to contact us with any questions regarding this correspondence. Of course, if you believe we can enter into a stipulation without the need for Court intervention, we are certainly amenable to that.

Sincerely,



Rebecca Tedford Partington
Assistant Attorney General
Chief, Civil Division

RTP/dm

From: Kathryn Enright <KEnright@riag.ri.gov>
Sent: Thursday, November 16, 2017 11:48 AM
To: Rebecca Partington
Cc: Jessica Rider
Subject: FW: SJHSRI v. SJHSRI Retirement Plan; PC 2017-3856

From: Stephen P. Sheehan [mailto:sps@wistbar.com]
Sent: Wednesday, November 08, 2017 4:28 PM
To: Jessica Rider <JRider@riag.ri.gov>
Cc: Max Wistow <mw@wistbar.com>; Benjamin Ledsham <bledsham@wistbar.com>; Kathryn Enright <KEnright@riag.ri.gov>; Rebecca Partington <RPartington@riag.ri.gov>; Daria Souza <daria@wistbar.com>
Subject: RE: SJHSRI v. SJHSRI Retirement Plan; PC 2017-3856

Thanks Jessica.

Stephen P. Sheehan
Wistow, Sheehan & Loveley, PC
61 Weybosset Street
Providence RI 02903
Phone: (401)831-2700
Fax: (401)272-9752
Email: spsheehan@wistbar.com

From: Jessica Rider [mailto:JRider@riag.ri.gov]
Sent: Wednesday, November 08, 2017 4:15 PM
To: Stephen P. Sheehan
Cc: Max Wistow; Benjamin Ledsham; Kathryn Enright; Rebecca Partington; Daria Souza
Subject: RE: SJHSRI v. SJHSRI Retirement Plan; PC 2017-3856

Steve,

Our purpose for meeting is to identify your goals and the documents that are a priority for you, and the most efficient way for us to provide those documents. Because there are no time frames or other limitations in the subpoena, irrelevant and immaterial documents are captured by the requests. Many of these documents may be of no interest to you. Additionally, given the broad scope of the subpoena, a two-week turnaround time to respond is not feasible so we would like to discuss a reasonable time for responding. Finally, the subpoena captures documents deemed confidential by the Attorney General during the Hospital Conversions Act reviews, which we can provide, but only via a waiver from the applicants or court order.

We look forward to meeting tomorrow.

Regards,
Jessica

Jessica D. Rider | Special Assistant Attorney General

The State of Rhode Island | Office of the Attorney General
150 South Main Street | Providence, RI - 02903
Office: +1 401 274 4400 | Ext:2314
jrider@riag.ri.gov | www.riag.ri.gov |



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From: Stephen P. Sheehan [<mailto:sps@wistbar.com>]
Sent: Tuesday, November 07, 2017 10:50 AM
To: Jessica Rider <JRider@riag.ri.gov>
Cc: Max Wistow <mw@wistbar.com>; Benjamin Ledsham <bledsham@wistbar.com>; Kathryn Enright <KENright@riag.ri.gov>; Rebecca Partington <RPartington@riag.ri.gov>; Daria Souza <daria@wistbar.com>
Subject: RE: SJHSRI v. SJHSRI Retirement Plan; PC 2017-3856

Thanks, see you then.

Stephen P. Sheehan
Wistow, Sheehan & Loveley, PC
61 Weybosset Street
Providence RI 02903
Phone: (401)831-2700
Fax: (401)272-9752
Email: spsheehan@wistbar.com

From: Jessica Rider [<mailto:JRider@riag.ri.gov>]
Sent: Tuesday, November 07, 2017 10:46 AM
To: Stephen P. Sheehan
Cc: Max Wistow; Benjamin Ledsham; Kathryn Enright; Rebecca Partington
Subject: RE: SJHSRI v. SJHSRI Retirement Plan; PC 2017-3856

Steve,

We are available to meet at your office this Thursday from 2 – 3 p.m. We will send an email prior to the meeting outlining the issues to be discussed.

Regards,
Jessica

Jessica D. Rider | Special Assistant Attorney General

The State of Rhode Island | Office of the Attorney General
150 South Main Street | Providence, RI - 02903
Office: +1 401 274 4400 | Ext:2314
jrider@riag.ri.gov | www.riag.ri.gov |



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From: Stephen P. Sheehan [<mailto:sps@wistbar.com>]
Sent: Tuesday, November 07, 2017 9:52 AM
To: Jessica Rider <JRider@riag.ri.gov>
Cc: Max Wistow <mw@wistbar.com>; Benjamin Ledsham <bledsham@wistbar.com>; Kathryn Enright <KENright@riag.ri.gov>; Rebecca Partington <RPartington@riag.ri.gov>
Subject: RE: SJHSRI v. SJHSRI Retirement Plan; PC 2017-3856

Hi Jessica

2 pm Thursday(11/9) at our office works for us. Can you send me an email outlining the issues you want to discuss so we're prepared at the meeting?

Thanks

Steve

Stephen P. Sheehan
Wistow, Sheehan & Loveley, PC
61 Weybosset Street
Providence RI 02903
Phone: (401)831-2700
Fax: (401)272-9752
Email: spsheehan@wistbar.com

From: Jessica Rider [<mailto:JRider@riag.ri.gov>]
Sent: Monday, November 06, 2017 4:29 PM
To: Stephen P. Sheehan
Cc: Max Wistow; Benjamin Ledsham; Kathryn Enright; Rebecca Partington
Subject: SJHSRI v. SJHSRI Retirement Plan; PC 2017-3856

Attorney Sheehan,

I am emailing regarding the subpoena that was served upon the Attorney General in the above-referenced matter last Friday. Our office would like to meet to discuss the documents requested in the subpoena. We are available in the

afternoon of November 9th and the morning of either November 14th or November 15th. Please let us know if you are available to meet at one of these times.

We look forward to hearing from you.

Regards,
Jessica

Jessica D. Rider | Special Assistant Attorney General
The State of Rhode Island | Office of the Attorney General
150 South Main Street | Providence, RI - 02903
Office: +1 401 274 4400 | Ext:2314
jrider@riag.ri.gov | www.riag.ri.gov |



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State of Rhode Island
Attorney General Peter F. Kilmartin

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Office of the Health Care Advocate

The Office of Health Care Advocate advocates for Rhode Islanders through the following duties that

The Attorney General may direct: to appear as an amicus curiae in civil actions, to intervene in or request initiation of administrative action related to health care and health insurance, to investigate complaints to assure the delivery of quality health care, to educate the public, to engage in legislative advocacy, to initiate formal legal actions concerning health care and to advocate for changes to support quality and affordable health care. Many patients, family members and providers turn to the Office of Health Care Advocate for assistance.

The Health Care Advocate is appointed to or attends several health care-related boards and committees, and reviews proposed regulations and legislation. The Health Care Advocate also assists consumers with various issues, including access to medical records, privacy questions and assistance with navigating the various agencies governing health care complaints.

To contact the Office of the Health Care Advocate please call (401) 274-4400.

Yale-New Haven Health Services and L+M Corporation (Westerly Hospital) HCA

On September 1, 2016, Attorney General Peter F. Kilmartin approved, with conditions, the proposed affiliation between LMW Healthcare (Westerly Hospital) and Yale-New Haven Health Services Corporation.

 [LMW \(Westerly Hospital\) and Yale-New Haven Services Decision](#)

 [Yale-New Haven/L+M Application and Appendix A](#)

 [Public Notice: Yale-New Haven/L+M \(Westerly Hospital\)](#)

+ Hospital Conversions Act (HCA)

+ HCA Forms

+ Recent HCA Reviews

- CharterCARE/Prospect

-  [CharterCARE/Prospect Final Decision](#)

-  [CharterCARE Initial Application](#)








-  [CharterCARE/Prospect 1st Amendment to Asset Purchase Agreement](#)

- [Public Exhibits](#)

- [Additional Public Exhibits](#)

- Landmark/Prime

-  [Landmark/Prime Final Decision](#)

-  [Prime Hospital Conversion Application - Part 1](#)
-  [Prime Hospital Conversion Application - Part 2](#)
- [Public Exhibits](#)
- Memorial/Care New England
 -  [Memorial Final Decision](#)
 -  [Memorial Initial Application](#)
 -  [Public Notice - MHRI/CNE](#)
- Westerly/L&M
 -  [Westerly Final Decision](#)
 -  [Westerly Application and Appendix A](#)
 -  [Westerly Public Exhibits](#)

CONTACT US

RI Office of the Attorney General

150 South Main Street

Providence, RI 02903

Phone: (401) 274-4400

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Hospitals

Hospital Conversions / Mergers Program

Mission

Assure the viability of a safe, accessible and affordable healthcare system that is available to all of the citizens of the state.

Hospital Merger / Conversion Review Process

Proposals Subject to Review

Since 1997, transfers of 20% or more of ownership, assets, membership interest, authority or control of a hospital in Rhode Island require approval by both the Department of Health and the Rhode Island Department of the Attorney General (RIAG) under the authority of the [Hospital Conversions Act \(HCA\)](#). [MORE](#)

Review Criteria

The Department of Health reviews completed application in consideration of nine statutory criteria:

1. Satisfactory character, commitment, competence, and standing in the community;
2. Sufficient safeguards to assure the affected community continued access to affordable care;
3. Clear and convincing* evidence to provide health care and access for traditionally underserved populations in the affected community;
4. Procedures or safeguards to insure that ownership interests will not be used as incentives for hospital employees or physicians to refer patients to the hospital;

5. Commitment to assure the continuation of collective bargaining rights and workplace retention;
6. Estimated future employment needs under the conversion, and retraining of employees who may be impacted by the proposed restructuring;
7. Demonstration that public interest will be served, including access to essential medical services needed to provide safe and adequate treatment, and assurance of a balanced health care delivery system;
8. Issues of market share, especially as they affect quality, access, and affordability of services; and
9. Applicants must meet the Conditions of Approval for any previous Conversion under the Act (For-Profit conversions only)




*for non-profit corporations the consideration is 'satisfactory' rather than 'clear and convincing'

Procedure








Upon submission of an application, the Department of Health reviews the submission to determine if it is complete. If the application is determined to be incomplete, the applicants are advised of the additional information required to complete the application. Once the application is complete, the Department of Health reviews the application in consideration of statutory criteria. Public input is sought through written comment and informational public meetings, as applicable.

Decision

The Director of Health's decision may be:










-  To approve the application
-  To reject the application, or
-  To approve the application with conditions

Completed Decisions

-  Yale-New Haven Health Services Corporations and Westerly Hospital *September 2016+*
-  Care New England Health System and Southcoast Health System *June 2016+*
-  Prospect/CharterCare *May 2014-*
 -   HCA Decision
 -  

Change in Effective Control Decision

Application

-  Prime/Landmark Medical Center *October 2013+*
-  Care New England / Memorial *June 2013 +*
-  L & M / Westerly Hospital: completed *April 2013+*
-  Steward/Landmark: completed *May 2012+*
-  Lifespan/CNE Merger: withdrawn, *February 2010+*
-  CharterCARE Health Partners (St. Joseph and Roger Williams Affiliation-
 -  HCA Approval: [Cover Letter](#) | [Full Decision](#)
 -  [Change in Effective Control \(Ownership \) Decision \(CEC\)](#)
 -  [Application](#)

Program Publications

Applications


-  [Hospital Conversion Application Expedited](#)
-  [Hospital Conversion or Merger](#)

Forms

[Request](#)

-  [Hospital Conversion Expeditious Review](#)

Summaries

-  [2013 Hospital Conversion Act Summary](#)

CONTACT

Department of Health
3 Capitol Hill
Providence, RI 02908
[Email us](#)
[Directions](#)
Phone: 401-222-5960

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EXHIBIT C



Rhode Island Department of Health
Hospital Conversions/Mergers Program
Three Capitol Hill, Room 410
Providence, RI 02908-5097
Phone: (401) 222-2788
www.health.state.ri.us/hospitals/about/mergers



Rhode Island Department of Attorney General
Office of Health Care Advocate
150 South Main Street
Providence, RI 02903-2907
Phone: 401-274-4400
www.riag.state.ri.us/civil/healthcare/conversions.php

INITIAL APPLICATION
(Pursuant to R.I. Gen. Laws § 23-17.14-6)
Instructions

Format:

Each and every hospital that is a Transacting Party or an affiliate of a Transacting Party, shall provide complete responses to each question. Two (2) copies of the Initial Application (one (1) copy shall be in an electronic format acceptable to the Department of Health and the Department of Attorney General and one (1) copy shall be in 3 ring binders with a spine label setting forth the volume number and the range of the sequential unique identifier and tab for each question) are to be submitted. For both the electronic formatted version and the hard copy of the Initial Application, each page submitted as part of the Initial Application shall be labeled with a sequential unique identifier, such as the Bates system, beginning with the first number matching the question. For example, the response to Question 13 would provide a unique identifier beginning with 13- followed by the page number. In addition, a complete index of pages of the Initial Application, setting forth the unique identifier for each page and a description of the document shall be provided. Responses to each question shall begin on a page separate from the prior response.

References to the other responses contained in the Initial Application shall be accepted. Attachments must be listed under an individual tab at the end of the application form. Applications should not include the instruction pages or appendices not applicable to the proposal. All Appendices must be completed.

All information submitted as part of the Initial Application shall be public except for information determined to be confidential pursuant to R.I. Gen. Laws §§ 23-17.14-6 (31) and 23-17.14-6 (c). If the Transacting Parties seek a determination by the Attorney General that any information submitted as part of the Initial Application should be deemed confidential and/or proprietary or otherwise required by law to be maintained as confidential, the Transacting Parties shall submit such information, in a separate package clearly labeled "Request for Confidentiality." For both the

electronic version and the hard copy, the Transacting Parties shall submit the request(s) for a determination that the information is confidential including the legal citation and/or explanation for the reason that the information should be deemed confidential. One (1) copy of the information shall be clearly marked as confidential on the top and contain the redactions that the Transacting Parties seek to be deemed confidential by using a black marker to strike those words/section, and one (1) copy of the information shall be clearly marked as confidential on the top in an unredacted version of the identical document.

The Transacting Parties shall update and/or supplement responses up and until the time of closing of the proposed conversion.

Review for acceptability:

Within 30 calendar days after the receipt of the Initial Application, the Department of Health and the Department of Attorney General shall jointly advise the applicants, in writing, whether the application is complete. If the Initial Application is not complete, the Department of Health and the Department of Attorney General shall specify all additional information that the applicants are required to provide to complete the Initial Application. The applicants are required to submit the additional information within 30 working days. Within 10 working days of the receipt of the additional information, the Department of Health and the Department of Attorney General shall determine the acceptability of the additional information. If the additional information is not submitted by the applicants within 30 working days, or if the Department of Health and the Department of Attorney General determine the additional information submitted by the applicants is insufficient, the application will be rejected, without prejudice, to the applicants' right to resubmit. A rejection will be accompanied by a detailed written explanation of the reasons for rejection. If the Department of Health and the Department of Attorney General determine the additional information requested is sufficient, the applicants will be notified, in writing, of the date acceptance of the application.

Timeline:

The Department of Attorney General and Department of Health shall each approve, approve with conditions directly related to the proposed conversion, or disapprove the application within 120 calendar days of the date of acceptance of the application.

Definitions:

Words and terms used in these instructions that are defined by the Hospital Conversions Act, R.I. Gen. Laws § 23-17.14-4, *et seq.*, shall have the meaning contained in the Hospital Conversions Act.

The term "document," as used herein, includes, but is not limited to, the following items, whether created, printed or recorded or reproduced by any other mechanical or electronic process, or written or produced by hand and/or any electronic device, and whether sent or received or neither; namely, contracts, agreements and understandings, communications, including intracompany communications, memoranda, statements, handwritten or other types of notes, correspondence,

telegrams, notices, books, diaries, forecasts, financials, statistical statements, ledgers, journals, books or records of account, desk calendars and appointment books.

The term “Effective Date” shall mean the date upon which the proposed conversion will become effective.

The word “or” as used herein, means and/or. Whenever a request asks to “describe” a fact, event, or item, or any variation thereof, please provide a detailed description of the fact, event or item requested.

Whenever a request asks to “identify” a fact, event or item, or any variation thereof, designate the fact, event or item and provide such descriptive information so as to enable the fact, etc. to be ascertained.

When appropriate in this Initial Application, the singular form shall be interpreted as plural and vice versa, and the present tense includes the past tense and vice versa, and the neuter includes the masculine and feminine.

Reports, use of experts, costs:

The Department of Attorney General and Department of Health may engage experts or consultants including, but not limited to, actuaries, investment bankers, accountants, attorneys, or industry analysts. All copies of reports prepared by experts and consultants, and costs associated therewith, shall be made available to the Transacting Parties and to the public.¹ All costs incurred under this provision shall be the responsibility of one (1) or more of the Transacting Parties in an amount to be determined by the Attorney General or the Director, as he/she deems appropriate. No Initial Application for a conversion shall be considered complete unless an agreement has been executed with the Director and the Attorney General for the payment of costs, pursuant to R.I. Gen. Laws §§ 23-1-53 and 23-17.14 , *et seq.*

¹ If any recitation in a report contains information that is confidential by law or Court order, it may be redacted.

HOSPITAL CONVERSION APPLICATION

Please provide the following information (please replicate as needed):

Name of Transacting Parties:
Date Application Submitted:
Date of Agreement Execution with the Director for Payment of Costs*:
Date of Agreement Execution with the Attorney General for Payment of Costs*:

* Please provide copies of the responsive documents.

**All questions concerning this application should be directed to:
Office of Health Care Advocate (401) 274-4400**

CERTIFICATION

Please provide the attestation/verification for each of the Transacting Parties and licensed hospital affiliates. (Please replicate as needed):

I hereby certify that the information contained in this application is complete, accurate and true.

Signed by the President or Chief Executive Officer

Entity

Subscribed and sworn to before me on this ____ day of _____ 20__.

Notary Public
My Commission Expires:

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APPENDIX A

APPENDIX B

APPENDIX C

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APPENDIX F

A. OVERVIEW

1. Please provide an executive summary of the proposed conversion which shall include a discussion of the date of implementation, purchase price, source of funds, debt, and commitments for and development of new services and/or facilities that are associated with the proposed conversion.
2. Contact information of President or CEO of each Transacting Party (Please replicate as needed):

Name:	Telephone:	
Address:	State:	Zip:
E-mail:	Fax	

3. Name, title, address, phone, fax and e-mail of one contact person for each Transacting Party for this application process (only if different from the President/CEO in Question 2)(Please replicate as needed):

Name:	Telephone:	
Address:	State:	Zip:
E-Mail:	Fax:	

B. EXISTING AFFILIATE HOSPITALS OF THE TRANSACTING PARTIES:

4. For each existing affiliate hospital of the Transacting Parties, please provide the following information (Please replicate as needed):

Name of Facility:	License #:	
Address:	State:	Zip:
Telephone:		
Type of Ownership: ___Individual ___Partnership ___Corporation ___LLC		
Tax Status: ___For-profit ___Non-Profit		

5. Please identify any changes that will occur in the information provided in response to Question 4 as a result of the implementation of the conversion.

6. Estimate the date for the implementation of the proposed conversion, if approved:

Month/Year: _____

C. CORPORATE

7. (a) With regard to the officers, members of the boards of directors, trustees, executives, and senior managers of each of the Transacting Parties and their affiliates, please provide the following for the past 2 years: (a) name; (b) address; (c) phone number; (d) occupation; and (e) tenure.

(b) Provide the (a) name; (b) address; (c) phone number; and (d) occupation of the proposed members of the board of directors, trustees, executives and senior managers after the conversion of the Transacting Parties and their affiliates, identifying any additional members or removal of members.

(c) Please describe the governance structure of the new hospital after conversion, including a description of how members of any board of directors, trustees or similar type group will be chosen.

8. Please provide a list of all current committees, subcommittees, task forces, or similar entities of the board of directors or trustees. With regard to each please include:

(a) a short description of the purpose of each committee; and

(b) the name, address, phone number, occupation and tenure of each current committee member.

9. Please provide agenda and minutes of all meetings of the board of directors or trustees and any of its committees, subcommittees, task forces related to the conversion, or similar entities (excluding those focused on peer review and confidential medical matters) that occurred within the 2 year period prior to submission of the application (beginning with January 1) to the present in identifiable format. Please note, meeting packages may also be requested by the Attorney General to complete the Initial Application.

10. Please provide each of the following applicable documents and amendments for each of the Transacting Parties and affiliated hospital(s):

(a) Charter;

(b) Certificate and Articles of Incorporation and By-laws;

(c) Certificate of Partnership and Partnership Agreement;

(d) Certificates or Articles of Organization and Operating Agreement;

(e) Other organizational documents

If any of the above documents are proposed to be revised or modified in any way as a result of the proposed conversion, include the proposed revisions or modifications.

11. Please provide the name and mailing address of all licensed facilities in which the for-profit corporation maintains an ownership interest or controlling interest or operating authority.
12. (a) Please provide organizational charts for the existing and post-conversion Transacting Parties and each partner, affiliate, parent, subsidiary or related legal entity in which either Transacting Party has a twenty percent (20%) or greater ownership or membership interest or control; and

(b) Please provide a detailed narrative that describes the organizational structure for the Transacting Parties and each partner, affiliate, parent, subsidiary or related legal entity in which either Transacting Party has a twenty percent (20%) or greater ownership or membership interest or control.
13. Please provide a description of criteria established by the board of directors of the existing hospital for pursuing a proposed conversion with one or more health care providers.
14. Please provide a description of request(s) for proposals issued by the existing hospital(s) relating to pursuing a proposed conversion.
15. Please provide copies of current conflict of interest forms from all incumbent or recently incumbent officers, members of the board of directors, trustees and senior managers, including the medical directors of the Transacting Parties on a form acceptable to the Attorney General (“incumbent or recently incumbent” means those individuals holding the position at the time the application is submitted and any individual who held a similar position within one year prior to the application’s acceptance).
16. Please provide conflict of interest statements, policies and procedures.
17. Please provide the draft Closing Memorandum, including, but not limited to, certification, exhibits, and/or schedules required for the closing documents and/or other closing documents. As any changes are made, the parties are required to update this response. Within 7 calendar days of signing the Closing Memorandum, the parties are required to provide a signed copy, including, but not limited to certification, exhibits and/or schedules or other documents required for the closing.
18. Please provide the binding transaction documents, such as an asset purchase/ transfer agreement, affiliation agreement and/or memorandum of understanding and all exhibits and schedules (including any updates or supplements).
19. Please provide a copy of the Transacting Parties’ affiliated hospital’s Credentialing Committee Guidelines, Policies and/or Procedures, including any contemplated changes thereto. Please describe any arrangements for cross-privileging of medical staff affiliated with either of the Transacting Parties and their affiliates before and after the proposed conversion.
20. Please discuss whether this proposal will require the review by any relevant federal authority and, if so, please identify such review(s) and provide its current status.

21. Please identify all government permits, licenses, or other approvals necessary to implement the proposed conversion and the status thereof.
22. Please provide a list of pending or adjudicated citations, violations or charges against the Transacting Parties and their affiliates brought by any governmental agency or accrediting agency within the past 3 years and the status or disposition of each.
23. Please provide a description of any current or impending litigation and/or investigations by foreign, federal, state or municipal boards or governments, administrative agencies against each Transacting Party and its affiliates. For each claim, include the nature, an estimate of the amount, the status, and whether it is covered by any applicable insurance.
24. Please provide a list of insurance contracts in full force and effect for each Transacting Party and their affiliates, including professional, directors and officers and comprehensive general liability, including coverage limits, purpose of insurance, and duty of coverage, both currently and post conversion. Please provide detailed information concerning any and all coverage provided by self-insured funds and/or captive insurance companies to provide coverage for risks, including but not limited to the amount of the self-insurance fund, claims paid, or claims pending.
25. Please provide a copy or description of all agreements executed or anticipated to be executed by any of the Transacting Parties in connection with the proposed conversion.
26. Please provide copies of reports of any due diligence review performed by each Transacting Party in relation to the proposed conversion. These reports are to be held by the Attorney General and Department of Health as confidential and not released to the public regardless of any determination made pursuant to R.I. Gen. Laws § 23-17.14-32 and notwithstanding any other provision of the general laws. Please include a description of the plans for ongoing due diligence efforts by the Transacting Parties and their affiliates throughout the proposed conversion review and other regulatory reviews, up to and including the Effective Date.
27. Please provide copies of reports analyzing affiliations, mergers, or other similar transactions considered by any of the Transacting Parties during the past 3 years, including but not limited to, reports by appraisers, accountants, investment bankers, actuaries, other experts, and any committee investigating the proposed conversion and any and all recommendations from the committee to the board of directors for each of the Transacting Parties and each of its affiliates.

D. CHARITABLE ASSETS

28. Please provide copies of all documents related to:
 - (a) Identification of all charitable assets;
 - (b) Accounting of all charitable assets for the past 3 years;
 - (c) Distribution of the charitable assets including, but not limited to, endowments, restricted, unrestricted and specific purpose funds as each relates to the proposed transaction; and
 - (d) Please list all current donations that include naming privileges relating to the donation.

29. Please provide copies of documents or descriptions of any proposed plan for any entity to be created for charitable assets, including but not limited to, endowments, restricted, unrestricted and specific purpose funds, the proposed articles of incorporation, by-laws, mission statement, program agenda, method of appointment of board members, qualifications of board members, duties of board members, and conflict of interest policies.

30. Please provide the following information regarding all donor restricted gifts received by the Transacting Parties and their affiliates and attach copies of any legal documents that created each gift:

Date of Gift	Name of Gift/ Instrument	Restriction(s)	Value of Gift at time of Gift	Current Value of Gift

31. Please provide a *Cy Pres* Petition for the proposed conversion(s) of affiliate hospitals, other affiliate 501(c)(3) entities, and all that will be affected by the proposed conversion.

E. CHARITY CARE

32. Please provide the following information:

- (a) A list of uncompensated care provided over the past 3 years by each facility which the for-profit corporation maintains an interest ownership or controlling interest or operating authority and a description as to how that amount was calculated;
- (b) A description of charity care and uncompensated care provided by the existing hospital(s) for the previous 3 year period to the present, including a dollar amount and a description of services provided to patients;
- (c) A description of bad debt incurred by the existing hospital(s) for the previous 3 years for which payment was anticipated but not received; and
- (d) Identify the reasons for any discrepancies between responses to sections (a) through (c) above, if any.

33. Please provide a description of the plan as to how the Transacting Parties and their affiliates will provide community benefit and charity care during the first 3 years of operation after the proposed transaction is completed.

34. Please provide a description of how the Transacting Parties and their affiliates will monitor and value charity care services and community benefit after the proposed transaction is completed.

F. COMPENSATION

35. Please provide the names of persons currently holding a position as an officer, director, board member, or senior manager who will or will not maintain any position with the new hospital and whether any said person will receive any salary, severance, stock offering or any financial gain, current or deferred, as a result of or in relation to the proposed conversion, including but not limited to, the individual's job description, employment or other contract or agreement to provide services under this corporate title, and total compensation, including, but not limited to, salary, benefits, expense accounts, membership, 401K, retirement plans, contribution agreements, benefit agreements and any other financial distributions of any kind, including deferred payments or compensation.
36. Please provide a copy or description of all agreements or proposed agreements reflecting any current and/or future employment or compensated relationship between the acquiror (or any related entity) and any officer, director, board member, or senior manager of the acquiree (or any related entity). Included in this response, please also provide a schedule that clearly demonstrates the historical compensation for the prior 3 years for these individuals as well as the projected compensation extending out 2 years with and without the proposed transaction being approved and/or completed.
37. Intentionally omitted.
38. Please provide any and all severance packages, contracts or any other documents relating to same, given, negotiated or renegotiated with any employee or former employee of the Transacting Parties and their affiliates for the prior 3 years from the date of the application through the present. Please include in your response any agreements to provide consulting services and/or covenants to not compete following completion of the proposed conversion as well as the existing ERISA benefit plan and severance agreements or arrangements.
39. Please provide a copy of proposed contracts or description of proposed arrangements with senior managers, board members, officers, or directors of the existing hospital for severance, consulting services or covenants not to compete following completion of the proposed conversion.
40. Please provide an itemization of all loans outstanding and their current balances, given, and/or forgiven in the last 3 years to any executive, employee or consultant of the Transacting Parties and/or their affiliates, including the terms of such loan.
41. Please provide a copy of the resignations of any directors, board members, senior managers and officers of each of the Transacting Parties and/or their affiliates within the prior year.
42. Intentionally omitted.

G. FINANCIAL

43. (a) Please provide copies of audited income statements, balance sheets, other financial statements, and management and discussion letters for the past 3 years, audited interim financial statements and income statements, together with a detailed description of the financing structure of the proposed conversion including equity contribution, debt restructuring, stock issuance, partnership interests, stock offerings and the like, and unaudited financial statements (where audited financial statements are unavailable); and

(b) In addition, please include any and all assessments, reports or evaluations, financial or otherwise, of the Transacting Parties and/or their affiliates performed in anticipation of any proposed affiliation, purchase, merger, or other such transaction for the prior 3 fiscal years, by whomever prepared (internal or external experts or consultants, or in combination), including, but not limited to, analyses of financial strengths, weaknesses and/or viability.

44. Please provide a detailed description of the real estate involved in the Proposed Transaction including:
 - (a) Title reports for land owned and lease agreements concerning the proposed conversion for all properties owned, leased, operated, or used by each Transacting Party and its affiliates within the last 3 years;
 - (b) The address for each property;
 - (c) All lease agreements and encumbrances; and
 - (d) Any and all documents related to the proposed sale or development of property owned by the Transacting Parties and/or their affiliates.

45. Please provide a detailed description as each relates to the proposed transaction for equipment leases, insurance, regulatory compliance, tax status, pending litigation or pending regulatory citations, pension plan descriptions and employee benefits, environmental reports, assessments and organizational goals.

46. Please provide copies of IRS Form 990 for any Transacting Party and its affiliates required by federal law to file such a form for each of the 3 years prior to the submission of the application.

47. Please provide a description and quantification of the outstanding debts of acquiree and/or their affiliates, both between and among acquiree and/or their affiliates, including, but not limited to:
 - (a) The plans for disposition of each such debt if the proposed conversion is approved; and
 - (b) A list of any indebtedness acquiree and/or their affiliates could forgive, extinguish, or otherwise write-off for acquiree and/or their affiliates, including:
 - (i) The amount of the original debt;
 - (ii) The amount that would be forgiven, extinguished or otherwise written-off; and
 - (iii) For any such debts written off with the preceding 3 years, provide the amount forgiven, extinguished or otherwise written-off, the date of the write off, and the reason.

48. Please provide a list of the transaction costs and expenses by appropriate accounting classification incurred to date or to be incurred by the Transacting Parties and their affiliate entities involved, with respect to the proposed conversion, including: an itemization of all consulting fees incurred by the Transacting Parties and/or their affiliates in connection with the proposed transaction, including vendor, dates of service, services(s) provided and cost(s) and projected additional amounts, through closing, by category and payee.

49. Please provide a description by each Transacting Party and its affiliates with respect to Medicare and Medicaid programs, including but not limited to notice of de-certification, revocation, suspension or termination, or of threatened or potential re-certification, revocation, suspension or termination pending or resolved within past 3 years of submission.
50. Please complete the following chart for the previous 3 fiscal years and year to date.

Year	Total Endowment	Restricted	Unrestricted
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
Year to Date ___/___/___	\$	\$	\$

51. Please provide a list of all agreements of the existing hospital(s) and/or their affiliated medical providers with third party payors.
52. If the acquiror is a for profit corporation that has acquired a not for profit hospital under the provisions of the Hospital Conversion Act, the application shall also include a complete statement of performance during the preceding one year with regard to the terms and conditions of approval of conversion and each projection, plan, or description submitted as part of the application for any conversion completed under an application submitted pursuant to the Hospital Conversion Act and made a part of an approval for the conversion pursuant to R.I. Gen. Law §§ 23-17.14-7 or 23-17.14-8.

H. PLANNING

53. Please address the following regarding market share to ensure a balanced health care delivery system to the residents of the state:

Tertiary or Specialty Care Services

- (a) Please identify all tertiary or specialty care services and the market share of the Transacting Parties and/or their affiliates in the state;
- (b) Please discuss the plans for changes to existing or development of any new tertiary or specialty care service in the state within 3 years after implementation of the conversion;
- (c) Please justify how the proposed conversion would contribute to a balanced health care delivery system to the residents of the state with regard to the impact of the conversion

on the market share of tertiary or specialty care services of the Transacting Parties and/or their affiliates;

Service Area

- (d) Please identify which cities and/or towns comprise the primary and secondary service area of the Transacting Parties and/or their affiliates in the state and represent that information on a map of the state. Please describe how these service areas were determined;
- (e) Please justify how the proposed conversion would contribute to a balanced health care delivery system to the residents of the state with regard to impact of the conversion on the market share of the service area of the Transacting Parties and/or their affiliates;

Licensed Bed and Utilization

- (f) Please identify the market share in the service area and state of both licensed and staffed beds of the Transacting Parties and/or their affiliates;
- (g) Please justify how the proposed conversion would contribute to a balanced health care delivery system to the residents of the state with regard to the impact of the conversion on the market share of the licensed and staffed beds of the Transacting Parties and/or their affiliates;

Impact on Other Providers

- (h) Please discuss the anticipated impact of the proposed conversion on the future viability of other providers of health services in the Transacting Parties and/or their affiliates' service area in the state and justify how the proposed conversion would contribute to a balanced health care delivery system to the residents of the state in consideration of its impact on other providers of health care services in the state;
 - (i) Discuss in detail the anticipated impact, if any, on the market share of the acquiror and its affiliates, if the proposed conversion takes place, on each of the tertiary or specialty care services identified in (a) above; and
 - (j) Discuss in detail the appropriateness of the conversion based on the share of tertiary or specialty care services to ensure a balanced health care delivery system to the residents of the state.
54. Please provide copies of any opinions or memoranda addressing the state and federal tax consequences of the proposed conversion prepared for a Transacting Party by an attorney, accountant, or other expert.
55. Please provide a description of the manner in which the price was determined including which methods of valuation and what data were used, and the names and addresses of persons preparing the documents.

56. Please provide patient statistics for the past 3 years and patient projections for the next year including patient visits, admissions, emergency room visits, clinical visits, and visits to each department of the hospital, admissions to nursing care or visits by affiliated home health entities.
57. Please describe all plans to develop or change the existing services and/or develop new services and programs at the hospital(s) being converted.
58. Please provide any and all documents (including, but not limited to, letters, memoranda, reports, minutes, and the like) reflecting consideration of potential “partners” other than the Transacting Parties (including affiliations, mergers, acquisitions, purchases or the like) by the Transacting Parties for the full prior 3 calendar years up to the present, including, but not limited to, the following:
 - (a) A list of potential “partners” and a description of any negotiations with such party;
 - (b) Copies of reports analyzing affiliations, mergers, or other similar transactions considered by any of the Transacting Parties, including, but not limited to, reports by appraisers, accountants, investment bankers, actuaries and other experts;
 - (c) Copies of any and all proposals, bids presentations, correspondence, memoranda and/or other forms of communication to or from actual or potential strategic partners or acquirors of any interest in the Transacting Parties and/or its affiliates, including, but not limited to, preliminary, modified or superseded proposals, bids, presentations or communications relating thereto and responses to any said proposals or the like;
 - (d) Any proposals, or other presentation and discussion packet materials, both formal and informal, prepared for and/or provided by the Transacting Parties and their affiliate hospital or their consultants or advisors with respect to the proposed conversion;
 - (e) Copies of any opinions or memoranda addressing the state and federal tax consequences of the proposed conversion prepared for a Transacting Party or its’ affiliates by an attorney, accountant, or other expert, including whether the proposed conversion is proper under applicable federal and state tax code provisions; and
59. Please provide an Integration Plan for the proposed conversion. An Integration Plan should include the following key components at a minimum:
 - (a) Financial/Business Plan: Please quantify the projected enhanced revenue versus the operational cost, capital cost and financing plan for the combined operations of the affiliated entities, including any management fees, etc. to be paid by the Transacting Parties and any of the affiliates as well as for each entity. These financial projections must include documentation of the expected operational, clinical and corporate cost reductions and efficiencies to be gained through the conversion. For example, is it anticipated that all of the current management staff will remain or will the plan require management consolidations? Projections must then be compared to the current baseline financial projection assuming the affiliation did not occur.

- (b) Feasibility Assessment: Please provide justification that the underlying assumptions supporting the financial/business plan for the resulting entities post transaction are reasonable. For example, what market share, rate increases, property sale/value, new research grants, utilization increases, changes in reimbursements from payors, financing capabilities, potential new services to be provided, etc. are assumed in the proposed revenue projections?
 - (c) Benefit to the Community: Please demonstrate the impact of each element of the integration plan on the community, specifically considering affordability. For example, will this plan require increases in fees to offset the required investments or other changes in medical services? In addition, the application must demonstrate the impact of each element of the Integration Plan on the community in terms of quality and access including, but not limited to, the following:
 - (i) Plans to improve access and provide benefits to the community in geographic areas to be served under the proposed affiliation;
 - (ii) Commitment to a primary care-based infrastructure and its design in comparison to NCQA's Medical Home standards; and
 - (iii) Determination of unmet needs of the population in geographic areas to be served, how the proposed conversion will address such unmet needs, and the improved community/population outcomes that are anticipated as a result.
 - (d) Balanced Health Care Delivery Assessment: The application must demonstrate how the proposed transaction will contribute to a more efficient delivery system, rebalancing institutionally based-care and community-based care to ensure that care is delivered in the most appropriate, least restrictive setting.
 - (e) Patient Discharge: What will be done to promote patient discharge to the least intensive setting, as well as decreased preventable hospitalizations, re-hospitalizations, non-emergent care in the Emergency Department, medical errors, etc.?
 - (f) Integration Plan Approval: Has the Integration Plan been discussed with and approved by the boards of the hospital? Please provide evidence that the Integration Plan has been discussed with provider groups and community members. Please document your response.
60. Please provide the names, addresses and phone numbers of professional consultants engaged in connection with the proposed conversion.
61. Please provide a copy of any agreement outlining the scope of services to be rendered by any consultant or expert engaged by the Transacting Parties in connection with the proposed transaction, including the cost thereof.
62. Please provide all studies, reports, analyses, and plans regarding: (a) integration or coordination of clinical programs and related administrative functions post conversion; and (b) the extent to

which the clinical and administrative services provided by the Transacting Parties and their affiliate entities do and/or do not overlap and/or are complementary of one another.

I. QUALITY AND EFFICIENCY

63. Please provide the Corporate Compliance Program for each of the Transacting Parties.
64. Please identify for each of the Transacting Parties and their affiliates whether or not their JCAHO accreditation is currently in good standing. If not, then please discuss in detail the reasons and provide copy of the JCAHO survey.
65. Please provide all summary reports concerning patient satisfaction surveys for the Transacting Parties and/or its affiliates for the last 3 years.
66. Please describe how the Transacting Parties will make investments to expand supportive primary care in Rhode Island.
67. Please describe how the Transacting Parties will use capitalization, collaboration and partnerships with community health centers and private primary care practices to reduce inappropriate Emergency Department use.
68. Intentionally omitted.
69. Please provide any documents that indicate the efficiencies that are planned and/or projected from the proposed conversion of each of the Transacting Parties and/or their affiliates for a period starting with the Effective Date, running 3 years forward.
70. Please provide any and all documents referring or relating to determination of hospital efficiency for the Transacting Parties and their affiliates for the past 3 years that were provided to the board or senior management.

J. STAFF

71. Please provide a description of staffing levels of all categories of employees, including full-time, part-time, and contract employees currently working at, or providing services to, the existing hospital(s) and a description of any anticipated or proposed changes in current staffing levels, including, but not limited to, copies of plans relative to staffing during the first 3 years at the new hospital(s).
72. Please provide a copy of all union contracts and any written comments from any of the unions regarding the proposed conversion.

K. SERVICES

73. Please provide: (a) a list of all medical services, departments, clinical services, and administrative services that shall be maintained at the new hospital; and (b) a description of all departments, clinical, social, or other services or medical services (including emergency and primary care) that will be changed, eliminated, or significantly reduced at the new hospital.

APPENDIX A (CONT.)

2. Please complete the following table for the existing and new hospital for each year indicated.

	Past Three Fiscal Years			Budgeted Current Fiscal Year	Projected Three Fiscal Years (if approved)		
	FY:	FY:	FY:	FY:	FY:	FY:	FY:
REVENUES							
Net Patient Revenue							
Other: (_____)							
Total Revenue							
EXPENSES							
Payroll w/Fringes							
Bad Debt							
Supplies							
Office Expenses							
Utilities							
Insurance							
Interest							
Depreciation/Amortization							
Leasehold Expenses							
Other: (_____)							
Other: (_____)							
Total Expenses							
OPERATING PROFIT/LOSS							
# of Admissions							
# of ED Visits							

APPENDIX A (CONT.)

3. Please complete the table below for the existing and new hospital for each year indicated.

	Past Three Fiscal Years (Actual)						Budgeted Current Year		Projected First Three Operating Years (if approved)					
	FY:		FY:		FY:		FY:		FY:		FY:		FY:	
PAYOR SOURCE:	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Medicare														
Medicaid														
Blue Cross														
Commercial														
HMO's														
Self Pay														
Other:														
TOTAL														
Charity Care*														

*Charity Care does not include bad debt, and is based on costs (not charges).

4. Please complete the table below for the new hospital's substantial capital needs.

Capital Needs	Source of Funding for Capital Needs	Cost of Satisfying Capital Needs	Date of Projected Completion

APPENDIX B

Please provide the total cost necessary to implement this proposal and allocate this amount to the sources of funds categories listed below:

TOTAL PROJECT COST: \$ _____ *

<u>SOURCE OF FUNDS</u>	<u>AMOUNT</u>
a. Funded depreciation	\$ _____
b. Other restricted funds (specify)	_____
c. Unrestricted funds (specify)	_____
d. Owner's equity	_____
e. Cash (If different from owner's equity)	_____
f. Unrestricted donations or gifts	_____
g. Restricted donations or gifts	_____
h. Other non-debt funds (specify)	_____
i. Sub-Total Equity Funds	_____
j. Subsidized loan (e.g. FHA etc.)	_____
k. Tax-exempt bonds (specify)	_____
l. Conventional mortgage	_____
m. Lease or rental	_____
n. Other debt funds	_____
o. Sub-Total Debt Funds	_____
p. Total Source of Funds	_____

* should equal the response for line "p"

** Equity means non-debt funds contributed towards the capital cost related to a conversion of a hospital which funds are free and clear of any repayment or liens against the assets of the proposed owner and/or licensee and that result in a like reduction in the portion of the capital cost that is required to be financed or mortgaged.

*** If debt financing is indicated, please complete Appendix C.

APPENDIX C

Debt Financing

Name of Acquiror: _____

1. Describe the proposed debt by completing the following:

- (a) type of debt contemplated;
- (b) term (month or years);
- (c) principal amount borrowed;
- (d) probable interest rate;
- (e) points, discounts, origination fees;
- (f) likely security;
- (g) disposition of property (if a lease is revoked);
- (h) prepayment penalties or call features;
- (i) front-end costs (e.g. underwriting spread);
- (j) feasibility study, legal and printing expense;
- (k) points, etc.; and
- (l) debt service reserve fund.

2. If this proposal involves refinancing of existing debt of the existing hospital, please indicate the original principal, the current balance, the interest rate, the years remaining on the debt and a justification for the refinancing contemplated.

3. Please present a debt service schedule for the chosen method of financing, which clearly indicates the total amount borrowed and the total amount to be repaid per year. Of the amount to be repaid per year, the total dollars applied to principal and total dollars applied to interest must be shown.

4. Please provide an annual cash flow statement for the new hospital for the period between approval of the application and through the third full FY year after implementation of the proposed conversion.

APPENDIX D

CHANGE, ELIMINATION OR REDUCTION IN SERVICES

Please provide a written plan describing the proposed change, reduction or elimination that shall include, at a minimum, the following information:

1. Description of the services to be changed, reduced or eliminated;
2. the proposed change(s) in hours of operation, if any;
3. the proposed change(s) in staffing, if any;
4. the documented length of time the services to be changed, reduced or eliminated have been available at the facility;
5. the number of patients utilizing those services that are to be changed, reduced or eliminated annually during the most recent 3 years;
6. aggregate data delineating the insurance status of the individuals served by the facility during the most recent 3 years;
7. data describing the insurance status of those individuals utilizing those services that are to be changed, reduced or eliminated annually during the most recent 3 years;
8. the geographical area for which the facility provides services; and
9. identification and description, including supporting data and statistical analyses, of the impact of the proposed change, elimination or reduction on:
 - (a) access to health care services for traditionally underserved populations, including but not limited to, Medicaid, uninsured and underinsured patients, and racial and ethnic minority populations;
 - (b) the delivery of such services on the affected community in the cities and towns whose residents are regularly served by the hospital (the “affected” cities and towns);
 - (c) other licensed hospitals or health care providers in the affected community or cities and towns; and
 - (d) other licensed hospitals or health care providers in the state.

APPENDIX E

DISCLOSURE OF OWNERSHIP AND CONTROL INTEREST

All applicants must complete this Appendix.

Please answer the following questions by checking either “Yes” or “No.” If any of the questions are answered “Yes,” please list the names and addresses of individuals or corporations on an attached sheet (identify each answer with the appropriate number of the question). If yes, please provide details.

1. Will there be any individuals (or organizations) having a direct (or indirect) ownership or control interest of 5 percent or more in the acquiror or acquiree, that have been convicted of a criminal offense related to the involvement of such persons or organizations in any of the programs established by Title XVIII, XIX of the Social Security Act?

Yes___ No___

2. Will there be any directors, officers, agents, or managers of the acquiror or acquiree who have ever been convicted of a felony offense or any other offenses related to their involvement in such programs established by Titles XVIII, XIX of the Social Security Act?

Yes___ No___

3. Are there (or will there be) any individuals employed by the acquiror or acquiree in a managerial, accounting, auditing, or similar capacity who were employed by the applicant’s fiscal intermediary within the past 12 months (Title XVIII providers only)?

Yes___ No___

4. Will there be any individuals (or organizations) having direct (or indirect) ownership interests, separately or in combination, of 5 percent or more in the acquiror? (Indirect ownership interest is ownership in any entity higher in a pyramid than the applicant.)

Yes___ No___ (Note, if the applicant is a subsidiary of a “parent” corporation, the response is “Yes”)

5. Will there be individuals (or organizations) that have an ownership interest (equal to at least 5 percent of the facility's assets) in a mortgage or other obligation secured by the facility?

Yes___ No___

6. Will there be any individuals (or organizations) that have an ownership or control interest of 5 percent or more in a subcontractor in which the acquiror or acquiree has a direct or indirect ownership interest of 5 percent or more (please also identify those subcontractors)?

Yes___ No___

7. Will there be any individuals (or organizations) having a direct (or indirect) ownership or control interest of 5 percent or more in the acquiror or acquiree, who have been direct (or indirect) owners or employees of a health care facility against which sanctions (of any kind) were imposed by any governmental agency?

Yes___ No___

8. Will there be any individuals (or organizations) having a direct (or indirect) ownership or control interest of 5 percent or more in the acquirer or acquiree, that have been convicted of a felony or any crime arising out of the delivery of any health care item or service?

Yes___ No___

APPENDIX F

DEBT FINANCING

Acquirors contemplating the incurrence of a financial obligation for full or partial funding must complete and submit this appendix.

Name of Acquiror: _____

2. Describe the proposed debt by completing the following:

- (m) type of debt contemplated;
- (n) term (month or years);
- (o) principal amount borrowed;
- (p) probable interest rate;
- (q) points, discounts, origination fees;
- (r) likely security;
- (s) disposition of property (if a lease is revoked);
- (t) prepayment penalties or call features;
- (u) front-end costs (e.g. underwriting spread;
- (v) feasibility study, legal and printing expense;
- (w) points, etc.); and
- (x) debt service reserve fund.

2. Compare this method of financing with at least two alternative methods including tax-exempt bond or notes. The comparison should be framed in terms of availability, interest rate, term, equity participation, front-end costs, security, prepayment provision and other relevant considerations.
3. If this proposal involves refinancing of existing debt, please indicate the original principal, the current balance, the interest rate, the years remaining on the debt and a justification for the refinancing contemplated.
4. Present evidence justifying the refinancing in Question 3. Such evidence should show quantitatively that the net present cost of refinancing is less than that of the existing debt, or it should show that this project cannot be financed without refinancing existing debt.
5. If lease financing for this proposal is contemplated, please compare the advantages and disadvantages of a lease versus the option of purchase. Please make the comparison using the following criteria: term of lease, annual lease payments, salvage value of equipment at lease termination, purchase options, value of insurance and purchase options contained in the lease, discounted cash flows under both lease and purchase arrangements, and the discount rate.

6. Present a debt service schedule for the chosen method of financing, which clearly indicates the total amount borrowed and the total amount repaid per year. Of the amount repaid per year, the total dollars applied to principal and total dollars applied to interest must be shown.

7. Please include herewith, an annual analysis of your facility's cash flow for the period between approval of the application and the third year after full implementation of the proposed conversion.

EXHIBIT D



Rhode Island Department of Attorney General
Office of Health Care Advocate
150 South Main Street
Providence, RI 02903-2907
Phone: 401-274-4400
Fax: 401-222-2995
www.riag.ri.gov

Rhode Island Department of Health
Office of Health Systems Development
Three Capitol Hill, Room 407
Providence, RI 02908-5097
Phone: (401) 222-2788
Fax: (401) 273-4350
www.health.ri.gov/hsr/healthsystems/index.php

INITIAL APPLICATION
(Pursuant to R.I. General Laws § 23-17.14-6)
Instructions

Please respond to every question and each appendix unless directed to do otherwise. When you have completed the Initial Application, submit two (2) copies of the completed Initial Application by certified United States Mail or hand delivery, with return receipt requested (one (1) copy shall be in an electronic format acceptable to the Department of Health and the Department of Attorney General and (1) copy of the Initial Application in three (3) ring binders with a spine label setting forth the volume number and the range of the unique identifier and tab for each question) to:

Rhode Island Department of Attorney General
Office of Health Care Advocate
150 South Main Street
Providence, RI 02903-2907

Rhode Island Department of Health
Office of Health Systems Development
Three Capitol Hill, Room 407
Providence, RI 02908-5097

For both the electronic formatted version and the hard copy of the Initial Application, each page submitted as part of the Initial Application shall be labeled with a sequential unique identifier, such as the Bates system, and contain a complete index of pages of the Initial Application, setting forth the unique identifier for each page and a description of the document in a format acceptable to the Department of Health and the Department of Attorney General.

All information submitted as part of the Initial Application shall be public except for information submitted pursuant to Rhode Island General Laws §§ 23-17.14-6 (31) and 23-17.14-6 (c).

Regulatory Requirements: Completion and submission of the Initial Application is a prerequisite. The Initial Application should be completed after a thorough review of Title 23, Chapter 17.14 of the General Laws of Rhode Island, as amended, and any applicable Rules and Regulations.

Review for acceptability: Within 30 days after the receipt of the Initial Application, the Department of Health and the Department of Attorney General shall jointly advise the applicants, in writing, whether the application is complete. If the Initial Application is not complete, the Department of Health and the Department of Attorney General shall specify all additional information that the applicant(s) are required to provide to complete the Initial Application. The applicants are required to submit the additional information within thirty (30) days. Within ten (10) days of the receipt of the additional information, the Department of Health and the Department of Attorney General shall determine the acceptability of the additional information. If the additional information is not submitted by the applicant within thirty (30) business days, or if the Department of Health and the Department of Attorney General determine the additional information submitted by the applicant is insufficient, the application will be rejected, without prejudice, to the applicant's right to resubmit. A rejection will be accompanied by a detailed written explanation of the reasons for rejection. If the Department of Health and the Department of Attorney General determine the additional information requested is sufficient, the applicant will be notified, in writing, of the date acceptance of the application.

Timeline: The Department of Attorney General and Department of Health shall each approve, approve with conditions directly related to the proposed conversion, or disapprove the application within one hundred and eighty (180) days of the date of acceptance of the application.

Format: Each and every hospital that is a transacting party or an affiliate of a transacting party, shall provide complete responses to each question. Two (2) copies of the Initial Application (one (1) copy shall be in an electronic format acceptable to the Department of Health and the Department of Attorney General and (1) copy of the Initial Application in three (3) ring binders with a spine label setting forth the volume number and the range of the sequential unique identifier and tab for each question) are to be submitted. For both the electronic formatted version and the hard copy of the Initial Application, each page submitted as part of the Initial Application shall be labeled with a sequential unique identifier, such as the Bates system, beginning with the first number matching the question. For example, the response to question 13 would provide a unique identifier beginning with 13- the page number. In addition, a complete index of pages of the Initial Application, setting forth the unique identifier for each page and a description of the document shall be provided. Responses to each question shall begin on a page separate from the prior response.

References to other responses shall be accepted. Attachments must be listed under an individual tab at the end of the application form. Applications should not include the instruction pages or appendices not applicable to the proposal.

All information submitted as part of the Initial Application shall be public except for information submitted pursuant to Rhode Island General Laws §§ 23-17.14-6 (31) and 23-17.14-6(c). If the transacting parties seek a determination by the Attorney General that any of the information submitted as part of the Initial Application should be deemed confidential and/or proprietary or otherwise required by law to be maintained as confidential, the transacting parties shall submit, in a separate package clearly labeled "Request for Confidentiality." For both the electronic version and the hard copy, the transacting parties shall submit the request(s) for a determination that document(s) are confidential including the legal citation and/or explanation for the reason that the document(s) should be deemed confidential. One (1) copy of the document(s) shall be clearly marked as confidential on the top and contain the redaction that the transacting parties seek to be deemed confidential by using a black marker to strike those words/section, and one (1) copy of the document(s) shall be clearly marked as confidential on the top in an unredacted version of the identical document.

The transacting parties shall update and/or supplement responses up and until the time of closing of the proposed conversion.

Definitions:

Words and terms used in these instructions, which are defined by the Hospital Conversions Act 23-17.14- 4, *et seq.*, shall have the meaning contained in the Hospital Conversions Act.

The term "document," as used herein, includes, but is not limited to, the following items, whether created, printed or recorded or reproduced by any other mechanical or electronic process, or written or produced by hand and/or any electronic device, and whether sent or received or neither; namely, contracts, agreements and understandings, communications, including intracompany communications, memoranda, statements, handwritten or other types of notes, correspondence, telegrams, notices, books, diaries, forecasts, financials, statistical statements, ledgers, journals, books or records of account, desk calendars and appointment books.

The term "Effective Date" shall mean the date upon which the proposed conversion will become effective.

The word "or" as used herein, means and/or. Whenever an requests asks to "describe" a fact, event, or item, or any variation thereof, please provide a detailed description of the fact, event or item requested.

Whenever a request asks to "identify" a fact, event or item, or any variation thereof, designate the fact, event or item and provide such descriptive information so as to enable the fact, etc. to be ascertained.

When appropriate in this initial application, the singular form shall be interpreted as plural and vice versa, and the present tense includes the past tense and vice versa, and the neuter includes the masculine and feminine.

Reports, use of experts, costs: The Department of Attorney General and Department of Health may engage experts or consultants including, but not limited to, actuaries, investment bankers, accountants, attorneys, or industry analysts. All copies of reports prepared by experts and consultants, and costs associated therewith, shall be made available to the transacting parties and to the public. All costs incurred under this provision shall be the responsibility of one (1) or more transacting parties in an amount to be determined by the Attorney General or the Director, as he/she deems appropriate. No application for a conversion shall be considered complete unless an agreement has been executed with the Director and the Attorney General for the payment of costs, pursuant to Title 23, Chapter 17.14 of the General Laws of Rhode Island, as amended, and all applicable Rules and Regulations.

**All questions concerning this application should be directed to:
Office of Health Care Advocate (401) 274-4400 Ext. 2316.**

HOSPITAL CONVERSION APPLICATION

(Date)

Please provide the following information (please copy the chart as needed):

Name Transacting Party:	
Date Application Submitted:	
Date of Agreement Execution with the Director for the Payment of Costs *	
Date of Agreement Execution with the Attorney General for the Payment of Costs *	
Date of Approval by Transacting Parties' and existing hospitals' parent corporation, council, or religious organization, including the Diocese, Council, and the Vatican * (if applicable)	

* Please provide copies of the responsive documents.

Please provide the attestation/verification for each of the Transacting Parties and licensed hospital affiliates.
(Please copy the chart as needed):

"I hereby certify that the information contained in this application is complete, accurate and true."

Signed and dated by the President or Chief Executive Officer

Entity

Subscribed and sworn to before me on this ____ day of _____ 200__.

Notary Public
My Commission Expires:

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INSTRUCTIONS: For each transacting party and its hospital affiliates, provide complete answers to the following questions:

1. Please provide an executive summary of the proposed conversion which shall include (1) discussion of the timing, cost, source of funds, etc. of the individual elements that will occur as a result of the proposed conversion (including real estate sales, development of new services and/or facilities, etc.) and (2) identify and quantify benefits to the community from the conversion, starting with the Effective Date, running 10 years forward.

2. Please demonstrate that each of the individual elements of the proposed conversion benefits the community and whether these benefits could be effected by the transacting parties (whether independently or through collaboration) without undergoing the proposed conversion.

3. Name and address of each transacting party and the affiliate hospitals of the transacting parties (Please copy the chart as needed):

Name:		Telephone:	
Address:		State:	Zip:

4. Name, title, address, phone, fax and e-mail for each transacting party and the affiliate hospitals of the President or CEO (Please copy the chart as needed):

Name:		Telephone:	
Address:		State:	Zip:
E-Mail:		Fax:	

5. Name, title, address, phone, fax and e-mail of one contact person for each transacting party for this application process (only if different from the President/CEO in Question 3):

Name:		Telephone:	
Address:		State:	Zip:
E-Mail:		Fax:	

6. **EXISTING AFFILIATE HOSPITALS OF THE TRANSACTING PARTIES:** For each existing affiliate hospital of the transacting parties, please provide the following information and attach a copy of the current license (Please copy the chart as needed):

License Category:	
Name of Facility:	License Number:
Address:	Telephone Number:
Type of Ownership: <u> </u> Individual <u> </u> Partnership <u> </u> Corporation <u> </u> Limited Liability Co.	
Tax Status: <u> </u> For-Profit <u> </u> Non-Profit	

7. **PROPOSED AFFILIATE HOSPITALS OF THE TRANSACTING PARTY HOSPITALS:** For each proposed affiliate hospitals of the transacting parties, please provide the following information and attach a copy of the current license (Please copy the chart as needed):

License Category:	
Name of Facility:	License Number:
Address:	Telephone Number:
Type of Ownership: _____ Individual _____ Partnership _____ Corporation _____ Limited Liability Co.	
Tax Status: _____ For-Profit _____ Non-Profit	

8. Estimate the date for the implementation of the proposed conversion, if approved:

Month/Year: ____/____

9. Please provide a copy of the current health care facility's license(s) for the transacting parties and their affiliates.

10. Please provide the name, address, phone number, occupation, and tenure of all officers, members of the board of directors, trustees, executives, and senior level managers, including for each position, current persons and persons holding position during the past three (3) years.
11. Please provide a list of all committees, subcommittees, task forces, or similar entities of the board of directors or trustees, including a short description of the purpose of each committee, subcommittee, task force, or similar entity and the name, address, phone number, occupation, and tenure of each member.
12. Please provide agenda, meeting packages, and minutes of all meetings of the board of directors or trustees and any of its committees, subcommittees, task forces, or similar entities that occurred within the two (2) year period prior to submission of the application (beginning with January 1) to the present; including:
 - a. Finance committee;
 - b. Any committee, which existed and/or was formed to study and/or discuss the proposed conversion;
 - c. Any committee, which existed and/or was formed to study and/or discuss any and all potential "partners" (including affiliations, mergers, acquisitions, purchases, or the like); and
 - d. Any committee, task force and/or other entity that discussed the proposed conversion and/or any other potential "partners" as described in subsection (c) above.
13. Please provide each of the following applicable documents for each of the transacting parties:
 - a. Certificate and Articles of incorporation and by-laws for corporation;
 - b. Certificate of Partnership and Partnership Agreement (for partnerships);
 - c. Certificates of Organization and Operating Agreement (for limited liability companies).

If any of the above documents are proposed to be revised or modified in any way as a result of the proposed conversion, include the proposed revisions or modifications to them.

14. Please provide organizational charts for all of the transacting parties for prior and post conversion, including, but not limited to identifying all legal entities with direct or indirect ownership in or control, all related entities also owned or controlled by the same "parent" entity, the percentage of ownership or controlling interest among and between all such entities.
15. Please provide organizational structure for existing transacting parties and each partner, affiliate, parent, subsidiary or related corporate entity in which the acquiror has a twenty percent (20%) or greater ownership interest.
16. Please provide conflict of interest statements, policies and procedures.
17. Please provide names, addresses and phone numbers of professional consultants engaged in connection with the proposed conversion.
18. Please provide copies of audited income statements, balance sheets, other financial statements, and management letters for the past three (3) years, audited interim financial statements and income statements, together with a detailed description of the financing structure of the proposed conversion including equity contribution, debt restructuring, stock issuance, partnership interests, stock offerings and the like, and unaudited financial statements (where audited financial statements are unavailable), including:

- a. Any and all financial projections for each transacting party and its affiliates for any period included in the fiscal years from prior three fiscal years;
- b. Any and all assessments, reports or evaluations, financial or otherwise, of the transacting parties and/or their affiliates performed in anticipation of any proposed affiliation, purchase, merger, or other such transaction for the prior three calendar years, by whomever prepared (internal or external experts or consultants, or in combination), for the prior three fiscal years, including, but not limited to, analyses of financial strengths, weaknesses and/or viability;
- c. Indicate the financing mix for the capital cost of this proposal (Please complete the chart):

Source	Amount	Percent	Interest Rate	Terms (Yrs.)
Equity*	\$	%		
Debt**	\$	%	%	
Lease**	\$	%	%	
TOTAL	\$	100%		

* Equity means non-debt funds contributed towards the capital cost of an acquisition or project that are free and clear of any repayment obligation or liens against assets, and that result in a like reduction in the portion of the capital cost that is required to be financed or mortgaged (R23-15-CON).

** If debt and/or lease financing is indicated, please complete **Appendix C**.

- d. Estimated post-closing balance sheets, including estimated liabilities and contingent liabilities and scope thereof, for each transacting party and all affiliate entities;
- e. A list of transacting parties and their affiliates' substantial capital needs, including, but not limited to, the projected source(s) of funding to satisfy these needs, the cost of satisfying these needs and a date when the needs are expected to be satisfied, including, but not limited to, funding for systems interface and/or integration:

Capital Needs	Source of Funding for Capital Needs	Cost of Satisfying Capital Needs	State of Projected Completion

- f. A summary schedule of cash receipts and disbursements, including source(s) of cash, payee(s) and reason(s) for disbursement(s), for the prior three fiscal years for the transacting parties and all affiliate entities; and
- g. The following budget information for each transacting party and its affiliates:
 - 1. Any and all proposed budgets for any fiscal years during the period from next three fiscal years;
 - 2. Budgets, including comparisons to actuals, for the most recently completed fiscal year; and
 - 3. Budgets, including comparisons to actuals, for the current year-to date.

19. Please provide a detailed description of real estate issues including title reports for land owned and lease agreements concerning the proposed conversion including the following information for all properties owned, leased, operated, or used by each transacting party and its affiliates within the last three (3) years:
 - a. The address for each property;
 - b. All lease agreements concerning the proposed conversion; and
 - c. Any and all documents related to the proposed sale or development of property owned by the transacting parties and/or their affiliates, including but not limited to, strategic utilization plans of real estate of each of the transacting parties and/or their affiliates, real estate appraisals, encumbrances, business plans, strategic planning, and endowment planning (including a quantification of any current endowments of each such transacting party or their affiliate).

20. Please provide a detailed description as each relates to the proposed transaction for equipment leases, insurance, regulatory compliance, tax status, pending litigation or pending regulatory citations, pension plan descriptions and employee benefits, environmental reports, assessments and organizational goals.

21. Please provide copies of reports analyzing the proposed conversion during the past three (3) years including, but not limited to, reports by appraisers, accountants, investment bankers, actuaries and other experts.

22. Please provide copies of any opinions or memoranda addressing the state and federal tax consequences of the proposed conversion prepared for a transacting party by an attorney, accountant, or other expert.

23. Please provide a description of the manner in which the price was determined including which methods of valuation and what data were used, and the names and addresses of persons preparing the documents, and this information is deemed to be proprietary.

24. Please provide patient statistics for the past three (3) years and patient projections for the next one year including patient visits, admissions, emergency room visits, clinical visits, and visits to each department of the hospital, admissions to nursing care or visits by affiliated home health care entities;
 - a. Including, but not limited to, inpatient and outpatient services, including but not limited to, Alzheimer's/memory loss, behavioral medicine, cardiac surgery, cardiology, emergency medicine, geriatrics, gynecology, hematology, infectious diseases, mental health, nephrology, neurology, neurosurgery, oncology, ophthalmology, orthopedics, pediatrics, pulmonary, radiology, rehabilitative services including, audiology, speech/language pathology, hand & upper extremity therapy, occupational therapy, physical therapy, and sports rehabilitation; psychiatry, internal medicine, and primary care. (Please use the following chart.);

Transacting Parties/Affiliates

Year

Services	Total Visits and/or Admissions	# of RI Residents	# of MA Residents	Other

- b. Please provide the projected census for inpatient adult psychiatric/behavioral health patients and outpatients for the next five (5) years; and
 - c. Please provide the projected census for inpatient pediatric psychiatric/behavioral health patients and outpatients for the next five (5) years.
25. Please provide the name and mailing address of all licensed facilities in which the for-profit corporation maintains an ownership interest or controlling interest or operating authority.
26. Please provide a list of pending or adjudicated citations, violations or charges against the facilities listed in number 3 brought by any governmental agency or accrediting agency within the past three (3) years and the status or disposition of each matter with regard to patient care and charitable asset matters.
27. Please provide copies of all documents related to:
- a. Identification of all charitable assets;
 - b. Accounting of all charitable assets for the past three (3) years; and
 - c. Distribution of the charitable assets including, but not limited to, endowments, restricted, unrestricted and specific purpose funds as each relates to the proposed transaction.
28. Please provide the following information:
- a. A list of uncompensated care provided over the past three (3) years by each facility listed in subdivision (25) and detail as to how that amount was calculated;
 - b. A description of charity care and uncompensated care provided by the existing hospital for the previous five (5) year period to the present, including a dollar amount and a description of services provided to patients (Please complete Appendix D separately for each of the transacting parties and/or their affiliates);
 - c. A description of bad debt incurred by the existing hospital for the previous five (5) years for which payment was anticipated but not received; and,
 - d. Identify the reasons for any discrepancies between responses to sections a through c above, if any.
29. Please description for the donor restricted gifts, including, the date of the gift, the value of the gift at the time it was received by the transacting parties and/or its affiliates, the present value of the gift, and the restriction(s) on the gift and any legal document(s) that created each gift. (Please include the completed attached chart.)

Transacting Parties/Affiliates

Year

Date of Gift	Name of Gift/Instrument	Restriction(s)	Value of Gift at Time of Gift	Current Value of Gift

30. Please provide a description of the plan as to how the new hospital will provide community benefit and charity care during the first five (5) years of operation.
31. Please provide a description of how the new hospital will monitor and value charity care services and community benefit.
32. Please provide the names of persons currently holding a position as an officer, director, board member, or senior level manager who will or will not maintain any position with the new hospital and whether any said person will receive any salary, severance, stock offering or any financial gain, current or deferred, as a result of or in relation to the proposed conversion, including, but not limited to, the individual's job description, employment or other contract or agreement to provide services under this corporate title, and total compensation, including, but not limited to, salary, benefits, expense accounts, membership, 401K, retirement plans, contribution agreements, benefit agreements and any other financial distributions of any kind, including deferred payments or compensation.
33. Please provide copies of capital and operating budgets or other financial projections for the new hospital during the first three (3) years of operation.
34. Please provide copies of plans relative to staffing during the first three (3) years at the new hospital.
35. Please provide:
 - a. A list of all medical services, departments, clinical services, and administrative services that shall be maintained at the new hospital; and,
 - b. A list of all medical services, departments, clinical services, and administrative services that are currently maintained at each affiliate hospital of the transacting parties.
36. Please provide a list of all medical services, that are proposed to be changed at each hospital of the transacting parties.
37. Please provide a description of criteria established by the board of directors of the existing hospital for pursuing a proposed conversion with one or more health care providers.
38. Please provide copies of reports of any due diligence review performed by each transacting party in relation to the proposed conversion. These reports are to be held by the attorney general and department of health as confidential and not released to the public regardless of any determination made pursuant to

RI General Laws § 23-17.14-32 and not withstanding any other provision of the general laws. Please include a description of the plans for ongoing due diligence efforts by the transacting parties and their affiliates throughout the proposed conversion review and other regulatory reviews, up to and including the Effective Date.

39. Please provide a description of request(s) for proposals issued by the existing hospital relating to pursuing a proposed conversion.
40. Please provide copies of reports analyzing affiliations, mergers, or other similar transactions considered by any of the transacting parties during the past three (3) years, including, but not limited to, reports by appraisers, accountants, investment bankers, actuaries, other experts, and any committee investigating the proposed conversion and any and all recommendations from the committee to the Board of Directors for each of the transacting parties and each of its affiliates.
41. Please provide a copy of proposed contracts or description of proposed contracts or arrangements with management, board members, officers, or directors of the existing hospital for severance, consulting services or covenants not to compete following completion of the proposed conversion.
42. Please provide a copy or description of all agreements or proposed agreements reflecting any current and/or future employment or compensated relationship between the acquiror (or any related entity) and any officer, director, board member, or senior level manager of the acquiree (or any related entity).
43. Please provide a copy or description of all agreements executed or anticipated to be executed by any of the transacting parties in connection with the proposed conversion.
44. Please provide copies of documents or descriptions of any proposed plan for any entity to be created for charitable assets, including but not limited to, endowments, restricted, unrestricted and specific purpose funds, the proposed articles of incorporation, by-laws, mission statement, program agenda, method of appointment of board members, qualifications of board members, duties of board members, and conflict of interest policies.
45. Please provide a description of all departments, clinical, social, or other services or medical services that will be eliminated or significantly reduced at the new hospital.
46. Please provide a description of staffing levels of all categories of employees, including full-time, part-time, and contract employees currently working at, or providing services to, the existing hospital and a description of any anticipated or proposed changes in current staffing levels, including, but not limited to, copies of plans relative to staffing during the first three (3) years at the new hospital(s).
47. Please provide current, signed original conflict of interest forms from all incumbent or recently incumbent officers, directors, members of the board, trustees, senior management, chairpersons or department chairpersons and medical directors on a form acceptable to the attorney general; "incumbent or recently incumbent" means those individuals holding the position at the time the application is submitted and any individual who held a similar position within one year prior to the application's acceptance).
48. If the acquiror is a for profit corporation that has acquired a not for profit hospital under the provisions of this chapter, the application shall also include a complete statement of performance during the preceding one year with regard to the terms and conditions of approval of conversion and each projection, plan, or description submitted as part of the application for any conversion completed under an application

submitted pursuant to this section and made a part of an approval for the conversion pursuant to § 23-17.14-7 or 23-17.14-8.

49. Please provide copies of IRS Form 990 for any transacting party required by federal law to file such a form for each of the five (5) years prior to the submission of the application.
50. Please provide the signed Closing Memorandum, including, but not limited to, certification, exhibits, and/or schedules required for the closing documents and/or other closing documents.
51. Please provide all exhibits and schedules (including any updates or supplements) to the Affiliation Agreement and/or Memorandum of Understanding.
52. Please provide a description of all departments, clinical, social, administrative or other services and/or medical services that will be added, eliminated, expanded or reduced at each proposed affiliate hospital if the proposed conversion is completed and state the reason(s).
53. Please provide all documents for plans to develop or change the existing services and/or develop new services and programs relating to facilities improvements, renovation, or construction, include estimated project date, steps/provisions, costs, and source of funding. (Please include the completed attached chart.)

Capital Improvement	Estimated Project Date	Step/ Provision	Cost	Identify Source of Funding

54. Please provide the name, address, phone number, occupation, and tenure of all officers, members of the Board of Directors, Trustee, Executives, and Senior Level Managers, including, for each position, current persons and persons holding position during the past three (3) years. (Please complete the attached chart.)

Transacting Parties/Affiliates

Year

Name:	
Address:	
Phone Number:	
Occupation:	
Tenure:	

55. Please provide any and all documents (including, but not limited to, letters, memoranda, reports, minutes, and the like) reflecting consideration of potential “partners” other than the transacting parties (including

affiliations, mergers, acquisitions, purchases or the like) by the transacting parties for the prior three calendar years, beginning January 1, to the present, including, but not limited to, the following:

- a. Any documents referring or relating to and/or reflecting identification of potential “partners”;
 - b. A description of criteria established by the board of directors of the existing hospital(s) for pursuing a proposed conversion with one (1) or more health care providers;
 - c. Copies of reports analyzing affiliations, mergers, or other similar transactions considered by any of the transacting parties during the past three (3) years, including, but not limited to, reports by appraisers, accountants, investment bankers, actuaries and other experts;
 - d. Any documents reflecting the advantages and/or disadvantages of any and all potential “partners”;
 - e. Any documents referring or relating to and/or reflecting offers made to the transacting parties and/or their affiliates by potential “partners”;
 - f. Any documents referring or relating to and/or reflecting discussions with any and all potential “partners”;
 - g. Copies of any and all proposals, bids presentations, correspondence, memoranda, and/or other forms of communication to or from actual or potential strategic partners or acquirors of any interest in the transacting parties and/or its affiliates, including, but not limited to, preliminary, modified or superseded proposals, bids, presentations or communications relating thereto and responses to any said proposals or the like;
 - h. Any proposals, or other presentation and discussion packet materials, both formal and informal, prepared for and/or provided by the transacting parties and their affiliate hospital or their consultants or advisors with respect to both the proposed conversion;
 - i. Copies of any opinions or memoranda addressing the state and federal tax consequences of the proposed conversion prepared for a transacting party or its’ affiliates by an attorney, accountant, or other expert, including whether the proposed conversion is proper under applicable federal and state tax code provisions; and
 - j. A list of the transaction costs and expenses by appropriate accounting classification incurred to date or to be incurred by the transacting parties and their affiliate entities involved, with respect to the proposed conversion, including: an itemization of all consulting fees incurred by the transacting parties and/or their affiliates in connection with the proposed transaction, including vendor, dates of service, services(s) provided and cost(s) and projected additional amounts, through closing, by category and payee.
56. Please provide a copy of the transacting parties’ affiliated hospital’s Credentialing Committee Guidelines, Policies and/or Procedures, including any contemplated changes thereto.
57. Please provide any and all minutes of any Clinical and Quality Monitoring Committee for the transacting parties and their affiliates for the prior 3 years from the date of the application through the present.
58. Please provide a complete description of the relationship of each transacting party and its affiliates within Rhode Island and outside Rhode Island.
59. Please provide any and all contracts, letters of engagement, memoranda and/or other documents referring, reflecting and/or relating to the scope of services to be rendered by each and every consultant or expert engaged, or to be engaged, by the transacting parties in connection with the Proposed Transaction or any other potential strategic partnership or affiliate.
60. Please provide any and all documents referring to agreements reflecting the salary, bonus and all other compensation, including but not limited to, those documents filed with the Securities and Exchange

Commission, Internal Revenue Service and/or any other governmental entity (but not including the individuals' federal or state income tax-returns), expense account, transportation subsidy, cafeteria plan, deferred compensation, pension plan, and retirement plan of the 25 highest compensated employees of each of the transacting parties and each of their affiliates.

61. Please provide any and all severance packages, contracts or any other documents relating to same, given, negotiated or renegotiated with any employee or former employee of the transacting parties and their affiliates for the prior 4 years from the date of the application through the present. Please include in your response any agreements to provide consulting services and/or covenants to not compete following completion of the proposed conversion as well as the existing ERISA benefit plan and severance agreements or arrangements.
62. Please provide an itemization of all loans outstanding, given, and/or forgiven in the last five years to any executive, employee or consultant of the transacting parties and/or their affiliates, including the terms of such loan.
63. Please provide a copy of the resignations of any Directors and Officers of each of the transacting parties and/or their affiliates related to the conversion.
64. Please provide a copy of the plan to integrate acquiree and/or their affiliates into the acquiror's and/or their affiliates model of service delivery, including finance, treasury, human resources, information services, communications, marketing, government relations, risk management and insurance, legal, strategic planning, development, purchasing, payor contracting, internal audit and compliance.
65. Please provide a description and quantification of the outstanding debts of acquiree and/or their affiliates, both between and among acquiree and/or their affiliates and to any third party entities, including, but not limited to:
 - a. The plans for disposition of each such debt if the proposed conversion is approved; and
 - b. A list of any indebtedness acquiree and/or their affiliates could forgive, extinguish, or otherwise write-off for acquiree and/or their affiliates, including:
 1. The amount of the original debt;
 2. The amount that would be forgiven, extinguished or otherwise written-off; and
 3. For any such debts written off within the preceding three (3) years, provide the amount forgiven, extinguished or otherwise written-off, the date of the write off, and the reason for the forgiveness, extinguishing or written-off.
66. Please provide a complete plan for acquiree and/or their affiliates to pay their system capital expenditure allocation for capital expenditures consistent with the approved acquiror's and/or their affiliates system capital budget or budget including, the amount of the share, calculated share, and source of for the payment of that share.
67. Please provide complete information concerning a complete description referring or relating to acquiror's and/or their affiliates development and implementation of an interface between computer information systems of acquiree and/or their affiliates. In your response, please include a complete description of the compatibility of the each of the transacting parties and/or their affiliates computerized information system, including, but not limited to, the ability to exchange information without an additional interface including

software

68. Please provide all existing agreement(s) between each of the transacting parties and/or their affiliates and physicians relating to access to electronic patient medical information.
69. Please provide an executive summary and document what efficiencies and/or inefficiencies were realized from any conversion, merger, affiliation, and/or consolidation involving any of the transacting parties and/or their affiliates since 1984, separately for each such transaction. Your discussion and documentation should include, but not be limited to, identification of efficiencies planned, whether efficiencies were realized or unrealized (including date) and resulting cost impact on the transacting parties and/or their affiliates.
70. Please provide any documents that indicate the efficiencies that are planned and/or projected from the proposed conversion of each of the transacting parties and/or their affiliates for a period starting with the Effective Date, running 10 years forward.
71. Please identify whether the acquirer plans to hold, own, or acquire an ownership or controlling interest greater than twenty percent (20%) in another hospital within one (1) year subsequent to the finalization and implementation.

Yes _____ No _____
72. Please provide a copy of the Hart-Scott-Rodino filing with the Federal Trade Commission and the United States Department of Justice related to the proposed conversion and the final determination by Federal Trade Commission or the United States Department of Justice concerning this filing.
73. Please provide copies of all government permits, licenses, or other approvals necessary to implement the proposed conversion.
74. Please provide a complete description concerning full disclosure of any lawsuits, investigations by foreign, federal, state or municipal boards or governments, administrative agencies, or arbitrators pending against each transacting party and its affiliates including, the amount of the potential claim, the amount of the cost to date, and any insurance coverage, including policy terms and amounts.
75. Please provide a list of insurance contracts in full force and effect for each transacting party and its affiliates, including professional, directors and officers and comprehensive general liability, including coverage limits, purpose of insurance, and duty of coverage, both currently and post conversion.
76. Please provide detailed information concerning any and all coverage provided by self-insured funds and/or captive insurance companies to provide coverage for risks, including but not limited to the amount of the self-insurance fund, claims paid, or claims pending.

77. Please provide a description by each transacting party and its affiliates with respect to Medicare and Medicaid programs, including but not limited to notice of de-certification, revocation, suspension or termination, or of threatened or potential re-certification, revocation, suspension or termination.
78. Please provide copies of Medicare cost reports for the last 5 years through the present for each transacting party and its affiliates.
79. For each transacting party and its affiliates that are not-for-profit entities, please provide the mission, charter, and organizational goals.
80. Please provide documents referring or relating to recent and projected growth in the number of credentialed medical providers for each of the transacting parties and their affiliates.
81. Please provide any and all documents referring and/or relating to the potential and/or actual strategic opportunities to expand services to a wider geographic area, including resources required and capital needs, and economic and demographic factors relating thereto.
82. Please provide all studies, reports, and memoranda analyzing and/or addressing the extent and timing of anticipated inpatient hospital utilization rate changes, both for the transacting parties and for any other entities.
83. Please provide all studies, reports, and memoranda analyzing and/or addressing the ability of the transacting parties and/or their affiliates to support medical and education research in the event the proposed conversion occurs.
84. Please provide all studies, reports, analyses, and plans regarding integration or coordination of clinical programs and related administrative functions post conversion.
85. Please provide all studies, reports, and memoranda analyzing and/or addressing the extent to which the clinical and administrative services provided by the transacting parties and their affiliate entities do and/or do not overlap and/or are complementary of one another.
86. Please provide the Corporate Compliance Program for each of the transacting parties and their affiliates.
87. Please provide agreements of the transacting parties and/or their affiliate medical providers with third-party payors.
88. Please provide By-Laws and Organization Chart for any Physician Services Organization or other medical provider organizations for each of the transacting parties and their affiliates.
89. Please provide a copy of the most recent JCAHO survey of each transacting party's affiliated hospital.
90. Please provide any and all documents referring or relating to cross-privileges of physicians affiliated with either of the transacting parties and their affiliates before and after the proposed conversion.
91. Please provide any and all documents referring or relating to performance measurement and outcomes, that the transacting parties and /or its affiliates have used in the last three (3) years.

92. Please provide copies of the patient satisfaction surveys the transacting parties and/or its affiliates disburse to patients to provide information.
93. Please provide all summary reports concerning patient satisfaction surveys for the transacting parties and/or its affiliates for the last three (3) years.
94. Please provide any and all documents referring or relating to the quality outcome measurements identified by the transacting parties and/or their affiliates for last three (3) fiscal years, including any adjustment factors.
95. Please provide any and all documents referring or relating to comparing hospital efficiency with costs for the transacting parties and /or its affiliates for the past five (5) years.
96. Please provide any and all contracts between any medical school and the transacting parties and/or their affiliates for reimbursement for costs, including, but not limited to, a complete description of the current and future terms and relationship with any medical schools.
97. Please provide any and all documents, agreements, contracts or the like, formal or informal, reflecting any current and/or potential employment or compensated relationship for senior management among or between the transacting parties and/or their affiliates.
98. Please provide any reports, projections, presentations or other documents that demonstrate and/or support the assertions of the transacting parties and/or their affiliates of the need for the proposed conversion to occur, including any similar document which projects the anticipated impact upon the transacting parties and their affiliates if the proposed conversion does not occur.
99. Please describe the direct and indirect medical education revenue received for the last 5 years through the present.
100. Please provide the number of interns and residents, including the sub-specialty, at the affiliate hospitals for the most recent five (5) years.
101. Please provide a complete description of the impact of the proposed conversion upon primary care at the transacting parties, and their affiliates, and the community.
102. Please provide all information referring or relating to the acquiror ensuring that any home care, home nursing care or hospice care providers are included as recognized providers of home care, home nursing care or, hospice care services after the conversion.
103. Please provide census for home care services furnished to patients post discharge and the entity that provided the home care services for each of the transacting parties and/or their affiliates pre-conversion for the last five (5) years.
104. Please provide any and all documents referring or relating to home care, home nursing care, or hospice providers which are transacting parties and/or their affiliates and their proposed conversion, including strategic planning, financial projection, and patient census.
105. Please provide any and all documents related to the development of the sale or that describe the use and any related strategic utilization plans of real estate of each of the transacting parties and/or their affiliates

including, but not limited, to real estate appraisal, business plan, strategic planning, and endowment planning (including a quantification of any current endowment of each such transacting party or their affiliate.)

- 106. Please provide a *Cy Pres* Petition for the proposed conversion(s) of affiliate hospitals, other affiliate 501(c)(3) entities, and all that will be affected by the proposed conversion.
- 107. Please provide names and addresses of the intended board members for the Transacting Parties and their affiliates, post conversion.
- 108. Please complete the following table with regards to average hospital charge per discharge for the last three (3) years [Contact: Center for Health Data and Analysis of the Rhode Island Department of Health at (401) 222-2550].

Name of Hospital	Average Charge per Discharge		
	20	20	20
Acquiror & Affiliates (Transacting Parties)			
Acquiree & Affiliates (Transacting Parties)			
All Other Rhode Island Hospitals (Non Transacting Parties)			
Statewide Average			

- 109. Please address the following with regards to hospital based tertiary or specialty care services which shall include cardiac catheterization, positron emission tomography, linear accelerators, open heart surgery, organ transplantation, and neonatal intensive care services:
 - a. Describe and document existing contractual or other agreements between each of the transacting parties and/or their affiliates for tertiary or specialty care services; and
 - b. Describe the plans of each of the transacting parties and/or their affiliates for any future development of any type of tertiary or specialty care service starting from the Effective Date and projected over the period of 5 years thereafter.
- 110. Please address the following regarding projected impact of the proposed conversion on service areas of hospitals in Rhode Island:
 - a. In geographic representation of the state of Rhode Island identify all hospitals on such a map, and identify which hospitals would be impacted by the proposed conversion (those of the acquiror and acquiree and their affiliates);

- b. In a separate geographic representation of the state of Rhode Island identify the primary and secondary services areas of the acquiror and acquiree and their affiliates. Clearly distinguish those primary and/or secondary services areas of the acquiror and acquiree and their affiliates that overlap;
- c. In separate geographic representations of the state of Rhode Island, for each hospital that is not part of the acquiror and acquiree and their affiliates, identify to what extent their primary and/or secondary service areas are served by the acquiror and acquiree and their affiliates (separately for each such hospital); and,
- d. Discuss in detail the appropriateness of the conversion based on the market share of the service area of the acquiror and acquiree and their affiliates in consideration of the charge of the Director of Health to ensure a balanced health care delivery system to the residents of the state. In addition, discuss how the proposed conversion would contribute to a balanced health care delivery system to the residents of the state.

111. Please address the following regarding projected impact of the proposed conversion on hospitals in Rhode Island:

- a. Complete the table below with regards to the financial viability of the acquiror and acquiree and all of their affiliates that are licensed hospitals and all other hospitals in Rhode Island for the last three (3) years [Use the most recent version of the Hospitals Financial Dataset. At present this is: Hospital Financial Dataset 2006, published 12 July 2007, <http://www.health.ri.gov/chic/performance/hospitaldataset.xls>]:

Name of Hospital	20			20			20		
	Total Revenue	Net Income & Gains	Profit Margin %	Total Revenue	Net Income & Gains	Profit Margin %	Total Revenue	Net Income & Gains	Profit Margin %
Acquiror & Affiliates (Transacting Parties)									
Total Acquiror & Affiliates									
% of Statewide Total									
Acquiree & Affiliates (Transacting Parties)									
Total Acquiree & Affiliates									
% of Statewide Total									
All Other Rhode Island Hospitals (Non Transacting Parties)									
Total All Other Hospitals									
% of Statewide Total									
Statewide Total									

- b. Discuss in detail the financial viability of the acquiror and acquiree and all of their affiliates that are licensed hospitals following the proposed conversion(s) and compare that to the financial viability of all other hospitals in Rhode Island that are not part of the proposed conversions; and
- c. Discuss in detail the appropriateness of the conversion based on the impact of the proposed conversion(s) on the financial viability of the hospitals that would not be included in the proposed

conversion in consideration of the charge of the Director of Health to ensure a balanced health care delivery system to the residents of the state. In addition, discuss how the proposed conversion would contribute to a balanced health care delivery system to the residents of the state.

112. Please address the following regarding projected impact of the proposed conversion on market share of hospital beds in Rhode Island:

- a. Complete the table below with regard to hospital utilization of the acquiror and acquiree and all of their affiliates and all other hospitals in Rhode Island for last three (3) years [Contact: Center for Health Data and Analysis of the Rhode Island Department of Health at (401) 222-2550]. Please reproduce the table below for additional years, as needed:

Name of Hospital	Licensed Bed Capacity (# of beds)	Staffed Bed Capacity (# of Beds)	Hospital Utilization	
			# of Discharges	# of Patient Days
Acquiror & Affiliates (Transacting Parties)				
Total				
% of Statewide Total				
Acquiree & Affiliates (Transacting Parties)				
Total				
% of Statewide Total				
All Other Rhode Island Hospitals (Non Transacting Parties)				
Total				
% of Statewide Total				
Statewide Total				
Statewide Total				

- b. Discuss in detail the market share of the licensed bed capacity, staffed bed capacity and utilization volume of the acquiror and acquiree and all of their affiliates and compare that to the licensed bed capacity, staffed bed capacity and utilization volume of all other Rhode Island based hospitals that are not part of the proposed conversions (including identification of the post-conversion market share of bed capacity and utilization volume); and
- c. Discuss in detail the appropriateness of the conversion based on the share of licensed beds, staffed beds and utilization volume of the acquiror and their affiliates in consideration of the charge of the Director of Health to ensure a balanced health care delivery system to the residents of the state. And discuss how

the proposed conversion would contribute to a balanced health care delivery system to the residents of the state.

113. Please address the following with regards to hospital based tertiary or specialty care services which shall include cardiac catheterization, positron emission tomography, linear accelerators, open heart surgery, organ transplantation, and neonatal intensive care services [contact Office of Health Systems Development of the Rhode Island Department of Health at (401) 222-2788]:

- a. Identify the type, if any, of tertiary or specialty care services provided by each of acquiror and acquiree and all of their affiliates and all other hospital providing those services in Rhode Island for the last three (3) years. Please reproduce the tables for additional years, as needed.

Name of Hospital	Cardiac Catheterization			Linear Accelerators		Positron Emission Tomography	
	# of Cath Labs	# of Diagnostic Angiography Procedures	# of Coronary Angiography Procedures	# of Units	# of Radiation Therapy Treatments	# of Units	# of Treatments
Acquiror & Affiliates (Transacting Parties)							
Acquiror & Affiliates Total							
% of Statewide Total							
Acquiree & Affiliates (Transacting Parties)							
Acquiree & Affiliates Total							
% of Statewide Total							
All Other Rhode Island Hospitals (Non Transacting Parties)							
All Other Entities Total							
% of Statewide Total							
Statewide Total							
Statewide Total							

Name of Hospital	Open Heart Surgery	Neonatal Services		Organ Transplantation	
	# of Procedures	# of Beds	# of Inpatient Visits	Type	# of Procedures
Acquiror & Affiliates (Transacting Parties)					
Acquiror & Affiliates					

Total					
% of Statewide Total					
Acquiree & Affiliates (Transacting Parties)					
Acquiree & Affiliates Total					
% of Statewide Total					
All Other Rhode Island Hospitals (Non Transacting Parties)					
All Other Entities Total					
% of Statewide Total					
Statewide Total					
Statewide Total					

- b. Discuss in detail the impact on the market share of the acquiror and its affiliates, if the proposed conversion takes place, on each of the six tertiary or specialty care services (including identification of the post-conversion market share in each of those services); and
- c. Discuss in detail the appropriateness of the conversion based on the share of tertiary care services in consideration of the charge of the Director of Health to ensure a balanced health care delivery system to the residents of the state. And discuss how the proposed conversion would contribute to a balanced health care delivery system to the residents of the state.

APPENDIX A

DISCLOSURE OF OWNERSHIP AND CONTROL INTEREST

All applicants must complete this Appendix.

Please answer the following questions by checking either 'Yes' or 'No'. If any of the questions are answered 'Yes', please list the names and addresses of individuals or corporations on an attached sheet (identify each answer with the appropriate number of the question).

1. Will there be any individuals (or organizations) having a direct (or indirect) ownership or control interest of 5 percent or more in the acquiror or acquiree, that have been convicted of a criminal offense related to the involvement of such persons or organizations in any of the programs established by Titles XVIII, XIX of the Social Security Act?

Yes ___ No ___

B. Will there be any directors, officers, agents, or managers of the acquiror or acquiree who have ever been convicted of a criminal offense related to their involvement in such programs established by Titles XVIII, XIX of the Social Security Act?

Yes ___ No ___

C. Are there (or will there be) any individuals employed by the acquiror or acquiree in a managerial, accounting, auditing, or similar capacity who were employed by the applicant's fiscal intermediary within the past 12 months (Title XVIII providers only)?

Yes ___ No ___

D. Will there be any individuals (or organizations) having direct (or indirect) ownership interests, separately (or in combination), of 5 percent or more in the acquiror? (Indirect ownership interest is ownership in any entity higher in a pyramid than the applicant)

Yes ___ No ___ (Note, if the applicant is a subsidiary of a "parent" corporation, the response is 'Yes')

E. Will there be any individuals (or organizations) having ownership interest (equal to at least 5 percent of the facility's assets) in a mortgage or other obligation secured by the facility?

Yes ___ No ___

F. Will there be any individuals (or organizations) that have an ownership or control interest of 5 percent or more in a subcontractor in which the acquiror or acquiree has a direct or indirect ownership interest of 5 percent or more (please also identify those subcontractors).

Yes ___ No ___

G. Will there be any individuals (or organizations) having a direct (or indirect) ownership or control interest of 5 percent or more in the acquiror or acquiree, who have been direct (or indirect) owners or employees of a health care facility against which sanctions (of any kind) were imposed by any governmental agency?

Yes___ No___

- H. Will there be any directors, officers, agents, or managing employees of the applicant (or facility) who have been direct (or indirect) owners or employees of a health care facility against which any sanctions were imposed by any governmental agency?

Yes___ No___

APPENDIX B

**ELIMINATION OR REDUCTION IN EMERGENCY DEPARTMENT
AND PRIMARY CARE SERVICES**

Please provide a written plan describing the proposed reduction or elimination that shall include, at a minimum, the following information:

- a. description of the services to be reduced or eliminated;
- b. the proposed change in hours of operation, if any;
- c. the proposed changes in staffing, if any;
- d. the documented length of time the services to be reduced or eliminated have been available at the facility;
- e. the number of patients utilizing those services that are to be reduced or eliminated annually during the most recent three (3) years;
- f. aggregate data delineating the insurance status of the individuals served by the facility during the most recent three (3) years;
- g. data describing the insurance status of those individuals utilizing those services that are to be reduced or eliminated annually during the most recent three (3) years;
- h. the geographical area for which the facility provides services; and
- i. identification and description, including supporting data and statistical analyses, of the impact of the proposed elimination or reduction on:
 - 1) access to health care services for traditionally underserved populations, including but not limited to, Medicaid, uninsured and underinsured patients, and racial and ethnic minority populations;
 - 2) the delivery of such services on the affected community: emergency and/or primary care in the cities and towns whose residents are regularly served by the hospital (the "affected" cities and towns);
 - 3) other licensed hospitals or health care providers in the affected community or cities and towns; and
 - 4) other licensed hospitals or health care providers in the state.

APPENDIX C

DEBT FINANCING

Acquirors contemplating the incurrence of a financial obligation for full or partial funding must complete and submit this appendix.

Name of Acquiror: _____

1. Describe the proposed debt by completing the following:
 - a.) type of debt contemplated: _____
 - b.) term (months or years): _____
 - c.) principal amount borrowed: _____
 - d.) probable interest rate: _____
 - e.) points, discounts, origination fees: _____
 - f.) likely security: _____
 - g.) disposition of property (if a lease is revoked) _____
 - h.) prepayment penalties or call features: _____
 - i.) front-end costs (e.g. underwriting spread, feasibility study, legal and printing expense, points, etc.): _____
 - j.) debt service reserve fund: _____
2. Compare this method of financing with at least two alternative methods including tax-exempt bond or notes. The comparison should be framed in terms of availability, interest rate, term, equity participation, front-end costs, security, prepayment provision and other relevant considerations.
3. If this proposal involves refinancing of existing debt, please indicate the original principal, the current balance, the interest rate, the years remaining on the debt and a justification for the refinancing contemplated.
4. Present evidence justifying the refinancing in Question 3. Such evidence should show quantitatively that the net present cost of refinancing is less than that of the existing debt, or it should show that this project cannot be financed without refinancing existing debt. What if there's another justification?
5. If lease financing for this proposal is contemplated, please compare the advantages and disadvantages of a lease versus the option of purchase. Please make the comparison using the following criteria: term of lease, annual lease payments, salvage value of equipment at lease termination, purchase options, value of insurance and purchase options contained in the lease, discounted cash flows under both lease and purchase arrangements, and the discount rate.
6. Present a debt service schedule for the chosen method of financing, which clearly indicates the total amount borrowed and the total amount repaid per year. Of the amount repaid per year, the total dollars applied to principal and total dollars applied to interest must be shown.

7. Please include herewith, an annual analysis of your facility's cash flow for the period between approval of the application and the third year after full implementation of the project.

APPENDIX D

CHARITY CARE, BAD DEBT, AND MEDICAID SHORTFALL

Please complete a separate table for each of the transacting parties and/or their affiliates for the last five (5) years. Charity care and bad debt must be reported at costs (not charges). Please reproduce the table as needed.

For each of the transacting parties and/or their affiliates that are hospitals, charity care and bad debt costs are to be calculated by adjusting charges foregone (from the footnotes to the Audited Financial Statements) by the ratio of costs to charges (from Medicare Cost Report (Wrk. B, Pt. 1, Col. 25, Ln. 95 / Wrk. C, Pt. 1, Col. 8, Ln. 103; Bradley Hospital uses M.C.R Short-Form – Wrk. G-3, Ln. 4 /Ln. 1). [Source: Hospitals Financial Dataset 2006, published 12 July 2007, <http://www.health.ri.gov/chic/performance/hospitaldataset.xls>]

Name	
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20

Type of Healthcare Service	Charity Care \$	Bad Debt \$	Total Uncompensated Care
Total			
Total as % of Patient Revenue	%	%	%

EXHIBIT E

**STATE OF RHODE ISLAND
DEPARTMENT OF ATTORNEY GENERAL**

May 16, 2014

DECISION

Re: Initial Hospital Conversion Application of Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect East Hospital Advisory Services, LLC, Prospect CharterCARE, LLC, Prospect CharterCARE RWMC, LLC, Prospect CharterCARE SJHSRI, LLC, and Roger Williams Medical Center, St. Joseph Health Services of Rhode Island, CharterCARE Health Partners

The Department of Attorney General has considered the above-referenced application pursuant to R.I. Gen. Laws §§ 23-17.14-1, *et seq.*, the Hospital Conversions Act. In accordance with the reasons outlined herein, the application is **APPROVED WITH CONDITIONS**.

I. BACKGROUND

The first step in traversing the Hospital Conversions Act is the filing of an initial application with the Department of Attorney General (the “Attorney General”) and Rhode Island Department of Health (“DOH”). The parties filed their initial application (“Initial Application”) on October 18, 2013. The parties (collectively, “Transacting Parties”) to the Initial Application are identified below:

- **Roger Williams Medical Center (“RWMC”)**, a 220-bed acute care, community hospital located in Providence, Rhode Island. RWMC is a wholly-owned subsidiary of CharterCARE Health Partners (“CCHP”).¹
- **St. Joseph Health Services of Rhode Island (“SJHSRI”)**², a 278-bed acute care, community hospital located in North Providence, Rhode Island. SJHSRI’s ownership structure is such that CCHP is the sole Class A Member and the Bishop of Providence is the sole Class B Member.

¹ RWMC and SJHSRI will at times be referred to as the “Existing Hospitals” or “Heritage Hospitals.”

² Commonly known as Our Lady of Fatima Hospital

- **CharterCARE Health Partners**, The Existing Hospitals were converted to the current CCHP structure pursuant to a decision issued by DOH and the Attorney General in July 2009.
- **Prospect Medical Holdings, Inc.** (“PMH”) The Acquiror, pre-conversion, is an organizational structure existing under a parent entity, Prospect Medical Holdings, Inc. PMH is a Delaware corporation with its principal place of business located in Los Angeles, California. PMH is a health care services company that owns and operates hospitals and manages the provision of health care service for managed care enrollees through its network of specialists and primary care physicians.
- **Prospect East Holdings, Inc.** (“Prospect East”) a Delaware corporation which is a wholly-owned subsidiary of PMH. Prospect East will hold PMH’s interest in Prospect CharterCARE, LLC and the Newco Hospitals post-conversion.
- **Prospect East Hospital Advisory Services, LLC** (“Prospect Advisory”), a Delaware limited liability company, which is a wholly-owned subsidiary of PMH. Prospect Advisory will oversee and assist in the management of the day-to-day operations of Prospect CharterCARE, LLC post-conversion.
- **Prospect CharterCARE, LLC**, a Rhode Island limited liability company, which will own the entities that own and operate and hold licensure for the hospitals, post-conversion, the Newco RWMC and Newco Fatima³ (defined below). Prospect CharterCARE, LLC will be owned 85% by Prospect East and 15% by CCHP. However, the governing board of Prospect CharterCARE, LLC will be a 50/50 board as explained herein.
- **Prospect CharterCARE RWMC, LLC** (“Newco RWMC”), is a Rhode Island limited liability company, which will own and hold the licensure for Roger Williams Medical Center post-conversion. Newco RWMC will be wholly-owned by Prospect CharterCARE, LLC.
- **Prospect CharterCARE SJHSRI, LLC** (“Newco Fatima”) is a Rhode Island limited liability company, which will own and hold the licensure for Our Lady of Fatima Hospital post-conversion. Newco Fatima will be wholly-owned by Prospect CharterCARE, LLC.

See Response to Initial Application Question 1 and Exhibits C10A-1 through A-6; C10A-12

through 14; 10A-7 through 11 and 10 B, C and D⁴.

³ Newco RWMC together with Newco Fatima shall collectively hereinafter be referred to as “Newco Hospitals”.

⁴ For the purposes of this Decision, Prospect East Holdings, Inc., Prospect East Hospital Advisory Services, LLC, Prospect CharterCARE, LLC, and its “Subsidiaries”, Prospect CharterCARE RWMC, LLC, and Prospect CharterCARE SJHSRI, LLC, will be called collectively “Prospect”; Roger Williams Medical Center, St. Joseph

In its simplest form, the structure of the transaction outlined in the Initial Application (the “Proposed Transaction”) is a sale of the assets of CCHP to PMH.

PMH is proposing to form Prospect CharterCARE, LLC. PMH will retain an 85% ownership interest in Prospect CharterCARE, LLC. CCHP will be provided a 15% ownership interest in Prospect CharterCARE, LLC. The governing structure, however, will be such that PMH’s ownership interest will appoint 50% of the membership of the Prospect CharterCARE, LLC board, and CCHP’s ownership interest will appoint 50% of the membership of the Prospect CharterCARE, LLC board. The Transacting Parties refer to this concept as a “50/50 board.”

II. REVIEW CRITERIA

The review criteria utilized by the Attorney General for a hospital conversion involving a conversion of a non-profit hospital to a for-profit hospital⁵ is as follows:

- (1) Whether the proposed conversion will harm the public's interest in trust property given, devised, or bequeathed to the existing hospital for charitable, educational or religious purposes located or administered in this state;
- (2) Whether a trustee or trustees of any charitable trust located or administered in this state will be deemed to have exercised reasonable care, diligence, and prudence in performing as a fiduciary in connection with the proposed conversion;
- (3) Whether the board established appropriate criteria in deciding to pursue a conversion in relation to carrying out its mission and purposes;
- (4) Whether the board formulated and issued appropriate requests for proposals in pursuing a conversion;
- (5) Whether the board considered the proposed conversion as the only alternative or as the best alternative in carrying out its mission and purposes;
- (6) Whether any conflict of interest exists concerning the proposed conversion relative to members of the board, officers, directors, senior management, experts or consultants

Health Service of Rhode Island and CharterCARE Health Partners will be called collectively “CharterCARE” or “CCHP”.

⁵ R.I. Gen. Laws § 23-17.14-7(c). The Attorney General’s responsibility under the Hospital Conversions Act is to review the transaction selected by the Board(s) of Directors.

engaged in connection with the proposed conversion including, but not limited to, attorneys, accountants, investment bankers, actuaries, health care experts, or industry analysts;

(7) Whether individuals described in subdivision (c)(6) were provided with contracts or consulting agreements or arrangements which included pecuniary rewards based in whole, or in part on the contingency of the completion of the conversion;

(8) Whether the board exercised due care in engaging consultants with the appropriate level of independence, education, and experience in similar conversions;

(9) Whether the board exercised due care in accepting assumptions and conclusions provided by consultants engaged to assist in the proposed conversion;

(10) Whether the board exercised due care in assigning a value to the existing hospital and its charitable assets in proceeding to negotiate the proposed conversion;

(11) Whether the board exposed an inappropriate amount of assets by accepting in exchange for the proposed conversion future or contingent value based upon success of the new hospital;

(12) Whether officers, directors, board members or senior management will receive future contracts in existing, new, or affiliated hospital or foundations;

(13) Whether any members of the board will retain any authority in the new hospital;

(14) Whether the board accepted fair consideration and value for any management contracts made part of the proposed conversion;

(15) Whether individual officers, directors, board members or senior management engaged legal counsel to consider their individual rights or duties in acting in their capacity as a fiduciary in connection with the proposed conversion;

(16) Whether the proposed conversion results in an abandonment of the original purposes of the existing hospital or whether a resulting entity will depart from the traditional purposes and mission of the existing hospital such that a cy pres proceeding would be necessary;

(17) Whether the proposed conversion contemplates the appropriate and reasonable fair market value;

(18) Whether the proposed conversion was based upon appropriate valuation methods including, but not limited to, market approach, third party report or fairness opinion;

(19) Whether the conversion is proper under the Rhode Island Nonprofit Corporation Act;

(20) Whether the conversion is proper under applicable state tax code provisions;

(21) Whether the proposed conversion jeopardizes the tax status of the existing hospital;

(22) Whether the individuals who represented the existing hospital in negotiations avoided conflicts of interest;

(23) Whether officers, board members, directors, or senior management deliberately acted or failed to act in a manner that impacted negatively on the value or purchase price;

(24) Whether the formula used in determining the value of the existing hospital was appropriate and reasonable which may include, but not be limited to factors such as: the multiple factor applied to the "EBITDA" – earnings before interest, taxes, depreciation, and amortization; the time period of the evaluation; price/earnings multiples; the projected efficiency differences between the existing hospital and the new hospital; and the historic value of any tax exemptions granted to the existing hospital;

(25) Whether the proposed conversion appropriately provides for the disposition of proceeds of the conversion that may include, but not be limited to:

(i) Whether an existing entity or a new entity will receive the proceeds;

(ii) Whether appropriate tax status implications of the entity receiving the proceeds have been considered;

(iii) Whether the mission statement and program agenda will be or should be closely related with the purposes of the mission of the existing hospital;

(iv) Whether any conflicts of interest arise in the proposed handling of the conversion's proceeds;

(v) Whether the bylaws and articles of incorporation have been prepared for the new entity;

(vi) Whether the board of any new or continuing entity will be independent from the new hospital;

(vii) Whether the method for selecting board members, staff, and consultants is appropriate;

(viii) Whether the board will comprise an appropriate number of individuals with experience in pertinent areas such as foundations, health care, business, labor, community programs, financial management, legal, accounting, grant making and public members representing diverse ethnic populations of the affected community;

(ix) Whether the size of the board and proposed length of board terms are sufficient;

(26) Whether the transacting parties are in compliance with the Charitable Trust Act, chapter 9 of title 18;

(27) Whether a right of first refusal to repurchase the assets has been retained;

(28) Whether the character, commitment, competence and standing in the community, or any other communities served by the transacting parties are satisfactory;

(29) Whether a control premium is an appropriate component of the proposed conversion; and

(30) Whether the value of assets factored in the conversion is based on past performance or future potential performance.

In addition to reviewing the Initial Application submitted by the Transacting Parties and other publically available information, the Attorney General and DOH (the "Departments") jointly interviewed the following individuals:

CharterCARE

1. Kenneth H. Belcher, President/CEO of CharterCARE Health Partners
2. Michael E. Conklin, Jr., Chief Financial Officer, CharterCARE Health Partners
3. Joan M. Dooley, R.N., Chief Nursing Officer, CharterCARE Health Partners, RWMC
4. Patricia A. Nadle, R.N., Chief Nursing Officer, CharterCARE Health Partners, SJHSRI
5. Edwin J. Santos, Chairman of the CharterCARE Health Partners Board
6. Kathy Moore, Director of Finance, CharterCARE Health Partners
7. Addy Kane, Chief Financial Officer, Roger Williams Medical Center

Prospect

8. Thomas Reardon, President of Prospect Medical Holdings, Inc.
9. Samuel S. Lee, CEO, Prospect Medical Holdings, Inc.
10. Steve Aleman, Chief Financial Officer, Prospect Medical Holdings, Inc.
11. Barbara Giroux, Senior Vice President of Finance and Operations

The Hospital Conversions Act requires a public informational meeting. *See* R.I. Gen. Laws § 23-17.14-7(b)(3)(iv). A public notice was published regarding an informational meeting as well as soliciting written comments regarding the Proposed Transaction. The Attorney General and DOH jointly held this meeting in Providence at Gaige Hall Auditorium on the

campus of Rhode Island College.⁶ It was held on April 28, 2014, from 4 p.m. to 7 p.m. At the beginning of the session, the Transacting Parties were provided an opportunity to give a presentation regarding the Proposed Transaction; afterwards, public comment was taken. Over the course of the meeting, twenty-eight (28) speakers provided public comment. The comments were overwhelmingly in favor of the Proposed Transaction, with one in opposition and another raising concern as to whether Fatima Hospital would retain its Catholic identity. Several written comments were also received, the overwhelming majority of which supported the Proposed Transaction.

The Initial Application, along with the supplemental information provided, information gathered from the investigation, including publically available information and information resulting from interviews and public comment, were all considered in rendering this Decision.

III. PROCEDURAL HISTORY

In 2008 and 2009, the RWMC and SJHSRI systems were losing in excess of \$8 million dollars a year from operations alone.⁷ In an effort to stem those losses, those independent systems agreed to affiliate through the creation of CCHP. The purpose of the affiliation was to realize approximately \$15 million dollars in savings over 5 years, utilizing efficiencies created by the combined hospital systems as well as to preserve and expand health care services to the Existing Hospitals' communities.⁸ In 2009, the affiliation was approved by DOH and the

⁶ The Attorney General would like to thank the staff of Rhode Island College for their hospitality and for assisting us with use of the auditorium.

⁷ Initial Application, Response to Question 1

⁸ Id.

Attorney General.⁹ If the CCHP affiliation had not been approved, the RWMC and SJHSRI systems would have had difficulty in continuing to operate independently.¹⁰

CCHP operates a health care system in the City of Providence and the Town of North Providence which includes Roger Williams Medical Center and St. Joseph's Health System of Rhode Island.¹¹

Roger Williams Medical Center, defined above as RWMC, is a 220-bed acute care, community hospital located in Providence, Rhode Island. St. Joseph Health Services of Rhode Island, defined above as SJHSRI, operates Our Lady of Fatima Hospital, which is a 278-bed acute care, community hospital located in North Providence, Rhode Island.¹²

CCHP also operates a number of non-hospital facilities that will be included in the Proposed Transaction: Elmhurst Extended Care Facilities, Inc., Roger Williams Realty Corporation, RWGH Physician's Office Building, Inc., Roger Williams Medical Associates, Inc., Roger Williams PHO, Inc., Elmhurst Health Associates, Inc., Our Lady of Fatima Ancillary Services, Inc., The Center for Health and Human Services, SJH Energy, LLC, Rosebank Corporation and CharterCARE Health Partners Foundation ("CCHP Foundation").¹³

Significant operating efficiencies have been achieved as a result of the 2009 CCHP affiliation.¹⁴ Based on operating revenue alone, the combined CCHP hospital system reduced operating losses not including pension losses to approximately \$3 million dollars per year.¹⁵ Although a significant improvement, CCHP realized that the losses it was continuing to experience cannot be sustained and still ensure its continued viability. Furthermore, although

⁹ Id.

¹⁰ Id.

¹¹ Initial Application, Response to Question 1

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

capital expenditures have been made, the physical plants at the Existing Hospitals are aging and need upgrading.¹⁶

Of additional concern to CCHP is its pension funding (an issue that is impacting many hospitals throughout the country). If pension losses are taken into consideration, in fiscal year 2012, the CCHP system sustained losses of over \$8 million dollars which are increasing without additional contributions.¹⁷ Such losses cannot be sustained by CCHP. Facing these significant financial concerns, CCHP realized it needed additional capital to ensure its continued viability to fulfill its responsibilities to the citizens of Rhode Island which it serves.

In an effort to ensure the continued viability of the Existing Hospitals, in December of 2011, CCHP issued 22 Requests for Proposals (the "RFP") seeking a partner.¹⁸ In response to its RFP, CCHP received six (6) responses, which it reviewed and considered carefully.¹⁹ Among the responses it received was one from PMH in August of 2012.²⁰ CCHP conducted a vigorous and detailed review of all of the proposals it received.²¹ However, after receiving the response of PMH, CCHP then undertook extensive review of PMH's proposal and engaged in negotiations with PMH. In March of 2013, after a joint meeting of the boards of CCHP and the Existing Hospitals, and an analysis of a number of the different options before CCHP, CCHP chose PMH's proposal.²² In March of 2013, a Letter of Intent was executed by and between PMH and CCHP.²³ During the interval between March 2013 and the execution of the Asset Purchase Agreement on September 24, 2013, the Transacting Parties conducted extensive due diligence of each other. The Transacting Parties subsequently executed a First Amendment to the Asset

¹⁶ Id.

¹⁷ Id.; Report of James P. Carris, CPA.

¹⁸ 4/28/14 Testimony of Kenneth Belcher

¹⁹ Id. Response to Question 55

²⁰ Id.

²¹ Id.

²² Initial Application response to Question 14

²³ Id.

Purchase Agreement on February 27, 2014, to add Prospect CharterCARE Ancillary Services, LLC (“Ancillary”) to hold the licenses for the Prospect CharterCARE laboratories, among other things.²⁴

An Initial Application was submitted by the Transacting Parties on October 18, 2013. On November 18, 2013, the Departments informed the Transacting Parties that there were deficiencies to the Initial Application and requested additional information. On January 2, 2014 the Departments received a letter addressing the deficiencies within the Initial Application. On January 16, 2014, the Departments issued the Transacting Parties a notice of completeness letter.

On January 17, 2014, the Initial Application was deemed complete with the condition that new copies of the Initial Application be filed, incorporating the confidentiality decision made by the Attorney General wherein some documents that were originally requested to be deemed confidential were deemed public.

During the review, six (6) sets of Supplemental Questions consisting of two hundred and thirteen (213) questions were sent to and responded to by the Transacting Parties.

IV. DISCUSSION

As outlined above, the review criteria contained in the Hospital Conversions Act applicable to the Proposed Transaction consist of thirty (30) requirements. For organizational purposes we have addressed them grouped by topic below.

A. BOARD OF DIRECTORS

Numerous provisions of the Hospital Conversions Act involve a review of the actions of the board of directors of the existing hospital.²⁵ In the instant review, the Attorney General provided a review of the action of the board of directors leading to the Proposed Transaction.

²⁴ Response to Supplemental Question 3-15

1. Duties of the Board of Directors

The Hospital Conversion Act requires review of the decisions leading up to a conversion to ascertain whether the directors fulfilled their fiduciary duties to the hospital. The first criteria of the Hospital Conversions Act guiding the review of the actions of the board of directors in pursuing a conversion is governed by R.I. Gen. Laws § 23-17.14-7(c)(3). This section requires review of whether there was “appropriate criteria [used] in deciding to pursue a conversion in relation to carrying out [the hospital’s] mission and purposes.” With regard to this particular provision, the Board of Directors of CCHP (the “CCHP Board”) faced a situation where it was sustaining continued losses, despite its efforts to find and implement efficiencies throughout CCHP and its affiliates.²⁶ CCHP was also faced with aging infrastructure issues that needed to be addressed.²⁷ The need for capital to sustain its continued viability was a driving impetus in locating a partner as CCHP realized it could not address these issues on its own going forward.²⁸ The Attorney General finds that this condition of the Hospital Conversions Act has been satisfied.

The next section, R.I. Gen. Laws § 23-17.14-7(c)(4) requires a review of “[w]hether the board formulated and issued appropriate requests for proposals in pursuing a conversion.” In order to pursue an appropriate partner, CCHP issued twenty-two (22)²⁹ Requests for Proposals to a number of entities, listing a number of criteria.³⁰ These criteria included:

- (a) A commitment to the continued provision of quality health care services for the residents of Greater Providence, Rhode Island and the surrounding communities;

²⁵ See e.g., Hospital Conversions Act, R. I. Gen. Laws §§ 23-17.14-7(c) (3), (4), (5), (8), (9), (10), (11), (13), (14), (15), and (23).

²⁶ Initial Application, Response to Question 1

²⁷ Id.

²⁸ Initial Application, Responses to Questions 1, 13 and 14.

²⁹ 4/28/14 Public Hearing Testimony of Kenneth Belcher

³⁰ Initial Application Response to Question 14 and Exhibit 14A

- (b) A long-term commitment to CCHP, its medical staff and employees;
- (c) A demonstrated cultural fit with CCHP's mission and a shared strategic vision for the future of CCHP;
- (d) An established record of success in the use of various strategies for physician recruiting and assistance developing other ways to expand and enhance CCHP's range of services;
- (e) Access to sufficient capital to allow CCHP to maintain high quality care for its patients and improve its physical facilities;
- (f) Continued commitment to community benefit programs;
- (g) A structure of governance that allows for continued participation of the CCHP Board in the governance of CCHP, preferably a joint venture structure;
- (h) Commitment to maintaining existing services for a period of at least three years;
- (i) Quality and safety expertise to assure that CCHP exceeds quality and safety standards;
- (j) Proven ability to improve clinical outcomes/services as well as provide clinical and administrative support to assure a standard of excellence; and
- (k) Preservation and enhancement of academics.

The condition in the RFP reflecting the CCHP Board's desire for a long-term commitment to CCHP, its medical staff and employees, referenced at (b) above, fit with the Board's desire to engage in a joint venture model of governance that would permit continued CCHP input into the decision making and operations of the Existing Hospitals rather than to be simply acquired.³¹ This intended model of governance was shared by Prospect, as evidenced by the provisions of the Amended and Restated Limited Liability Company Agreement of Prospect CharterCARE, LLC (the "Prospect CharterCARE Operating Agreement"), which contains specific conditions for a 50/50 board representation by CCHP and Prospect, as well as

³¹ See Initial Application Response to Question 55.

establishment of local boards for the Existing Hospitals to provide continued local input into the operations of these facilities.³²

In its RFP, CCHP sought a substantial amount of information from its potential partners,³³ including:

- (a) Mission, Vision, Values;
- (b) Financial Strength;
- (c) Corporate Structure;
- (d) Ability to Pay or Finance Proposal;
- (e) Ability to Fund Capital Needs;
- (f) Desire to Sustain CCHP as a Full Service Acute Care System;
- (g) Commitment to Build CCHP Care Capabilities;
- (h) Desire to Support, Improve and Grow Medical Staff and Physician Alignment;
- (i) Approach to Physician Recruitment and Retention;
- (j) Community Benefit;
- (k) Future Governance Proposal for CCHP;
- (l) Continuing Roles for CCHP Management Team;
- (m) Growth Strategies;
- (n) Existing Affiliations;
- (o) Quality and Safety; and
- (p) Regulatory Impediments to Successful Venture.

The Attorney General finds that the CCHP Board's actions in connection with its issuance of the RFP and criteria employed satisfy the requirements of the Hospital Conversion Act. *See* R.I. Gen. Laws § 23-17.14-7(c)(3)(4).

An additional section requires review of "whether the board exercised due care in assigning a value to the existing hospital and its charitable assets in proceeding to negotiate the proposed conversion." *See* R.I. Gen. Laws § 23-17.14-7(c)(10).

³² *See* Initial Application Response to Question 7, Exhibit 18, Prospect CharterCARE Operating Agreement.

³³ *Id.*

2. Board Use of Consultants

Two criteria in the Hospital Conversions Act deal with a board's use of consultants. *See* R.I. Gen. Laws §§ 23-17.14-7(c)(8) and (9):

(8) Whether the board exercised due care in engaging consultants with the appropriate level of independence, education, and experience in similar conversions; and

(9) Whether the board exercised due care in accepting assumptions and conclusions provided by consultants engaged to assist in the proposed conversion.

As outlined in the Initial Application, the CCHP Board engaged a number of consultants, including Cain Brothers & Company, an investment banking firm, to assist it with evaluation of the proposals made by prospective suitors, as well as in negotiations once a prospective suitor was located.³⁴ It also retained a number of other consultants, including Cambridge Research Institute, The Camden Group, Drinker Biddle & Reath, LLP, Canon Design, Angell Pension Group and Schulte Roth Zubel, LLC to assist it with the process of review of the RFP proposals submitted and negotiation of the Proposed Transaction.³⁵ *See* R.I. Gen. Laws § 23-17.14-7(c)(8)(15).

Prospect also retained a number of consultants, including BDO, Cardno ATC, Lathan & Watkins LLP, Nixon Peabody, LLP, Rutan & Tucker, LLP, Groom Law Group, Chartered, Sills Cummis & Gross P.C. and Ferrucci Russo PC.³⁶

With regard to the care given “in accepting assumptions and conclusions provided by consultants,” the Attorney General is not privy to the advice provided by these consultants other than any documents submitted with the Initial Application process. It is unclear if more than advice regarding the regulatory process was provided by consultants in this portion of the transaction process. Accordingly, the Attorney General has found nothing to refute that the

³⁴ Initial Application, Response to Question 14.

³⁵ Initial Application, Response to Question 60, Exhibit 60B.

³⁶ Initial Application, Response to Question 60, Exhibit 60A.

CCHP Board's decision to accept the assumptions and conclusions provided by the consultants, to the extent there were any, was with due care and that criteria (6), (8), (9) and (15) of the Hospital Conversions Act have been satisfied. *See* R.I. Gen. Laws §23-17.14-7(c).

3. Remaining Board Criteria

Regarding the remaining criteria of this type, the Transacting Parties have disclosed management and operating agreements pertaining to the operations of Prospect CharterCARE, LLC, which entity shall own the Newco Hospitals post transaction. *See* R.I. Gen. Laws § 23-17.14-7(c)(14). The Transacting Parties have provided the Prospect CharterCARE Operating Agreement, which includes provisions for the formation of local boards for each Newco Hospital thereafter.³⁷ This operating agreement also provides for the local boards to consist of at least six individuals, with 50% being physicians and the other 50% being community representatives and the Hospital's CEO, with no board member serving more than a three-year term.³⁸

In addition, the Transacting Parties provided a Management Services Agreement, which will operate between Prospect CharterCARE, LLC and Prospect Advisory.³⁹ Prospect East, as the managing member of Prospect CharterCARE, LLC, has delegated its day-to-day management of the Newco Hospitals to Prospect Advisory under the Management Services Agreement (the "Management Agreement"), which provides for a number of services, including assistance with operational activities, once the Proposed Transaction has closed.⁴⁰ Prospect Advisory will work with senior leadership team members (the "Executive Team") of Prospect CharterCARE, LLC to run the day-to-day operations of the Newco Hospitals. The Executive Team shall be subject to the day-to-day supervision of Prospect Advisory, and together the

³⁷ Initial Application, Response to Questions 1, 18 and Exhibit 18 Article XII.

³⁸ Initial Application Exhibit 18, Article XII, Response to Question 7.

³⁹ Initial Application Exhibit 18.

⁴⁰ Id. Response to Question S3-20.

Executive Team and Prospect Advisory will report to Prospect CharterCARE, LLC's board (the "Board") and certain PMH executives. Prospect CharterCARE, LLC's Board will have ultimate power and authority over certain decisions. Since the filing of the Initial Application, the Management Agreement has been subsequently revised to clarify that should any conflicts arise between the Prospect CharterCARE Operating Agreement and the Management Agreement, such conflicts will be resolved in favor of the Prospect CharterCARE Operating Agreement. The Attorney General finds that R.I. Gen. Laws §23-17.14-7(c)(14) of the Hospital Conversions Act has been satisfied.

As part of the Initial Application process, the applicants also indicated that the only agreements they have made regarding future employment or compensated relationships relating to any officer, director, board member or senior manager of CCHP is the assumption by Prospect of the existing employment relationships of the current CCHP CEO, Kenneth Belcher and the other senior leadership team members.⁴¹ In addition, the applicants have stated that board members of the Prospect CharterCARE, LLC and the Newco Hospitals will not be compensated.⁴² As to any agreements between affiliates, DOH has mandatory conditions pursuant to the Hospital Conversions Act addressing this aspect of review. *See* R.I. Gen. Laws § 23-17.14-28.

The Asset Purchase Agreement does not include consideration that is based upon future or contingent value based upon success of the Newco Hospitals. *See* R.I. Gen. Laws § 23-17.14-7(c)(11). In fact, Prospect has confirmed that if the Newco Hospitals do not meet financial expectations, it will provide additional funding to them.⁴³ The terms of the Management Agreement were determined jointly by Prospect and CCHP, both of which were represented by,

⁴¹ Initial Application, Responses to Questions 35 and 36; Asset Purchase Agreement, Article VIII.

⁴² Response to Supplemental Question 3-38.

⁴³ Response to Supplemental Question S4-25.

and consulted with, legal counsel relating to the Proposed Transaction. *See* R.I. Gen. Laws § 23-17.14-7(c)(14),(15). The Attorney General finds that the statutory requirement of R.I. Gen. Laws § 23-17.14-7(c)(23) has been met.

Therefore, the additional miscellaneous Hospital Conversions Act criteria that must be reviewed regarding board actions have been satisfied.

B. CONFLICTS OF INTEREST

Numerous provisions of the Hospital Conversions Act deal with conflicts of interest.⁴⁴ The Attorney General has reviewed the criteria in the Act to determine whether the Transacting Parties and their consultants have avoided conflicts of interest.

1. Conflict of Interest Forms

As part of the Initial Application, certain individuals associated with the Transacting Parties were required to execute conflict of interest forms. These included officers, directors and senior management for Prospect and CCHP. Individuals completing the conflict of interest forms were asked to provide information to determine conflicts of interest such as their affiliation with the Transacting Parties, their relationships with vendors and their future involvement with the Transacting Parties. The Proposed Transaction also provides that the employment contracts of the Executive Team will be assumed by Prospect, without any additional compensation or benefit.⁴⁵ The Attorney General finds no conflict of interest occurred with respect to these agreements that are to be assumed by Prospect.⁴⁶ Further, the applicants have stated that board members of the Prospect CharterCARE, LLC and the Newco Hospitals will not be compensated.⁴⁷ After reviewing the conflict of interest forms, the Attorney

⁴⁴ *See* R.I. Gen. Laws §§ 23-17.14-7(c) (6), (7), (12), (22) and (25) (iv).

⁴⁵ *See* R.I. Gen. Laws §§ 23-17.14-7(c) (6), (7), (12), (22).

⁴⁶ *See* Initial Application, Responses to Questions 1, 15, 35, 36, Exhibit 18 Asset Purchase Agreement Article VIII.

⁴⁷ Response to Supplemental Question 3-38.

General determines that none of the submitted information revealed any conflict of interest.⁴⁸

See R.I. Gen. Laws §23-17.14-7(c)(6).

2. Consultants

The Hospital Conversions Act requires a review of the possibility of conflicts of interests with regard to consultants engaged in connection with the Proposed Transaction. R.I. Gen. Laws §§ 23-17.14-7(c)(6) and (7). The Attorney General notes that CCHP engaged several entities in its pursuit of a potential suitor, including Cain Brothers & Company, an investment banking firm, to assist it with evaluation of the proposals made by prospective suitors, as well as in negotiations once a prospective suitor was located.⁴⁹ It also retained a number of other consultants, including Cambridge Research Institute, The Camden Group, Drinker Biddle & Reath, LLP, Canon Design, Angell Pension Group and Schulte Roth Zobel, LLC to assist it with the process of review of the RFPs submitted and negotiation of the Proposed Transaction.⁵⁰ The Attorney General has determined that the criteria contained in R.I. Gen. Laws §23-17.14-7(c)(6) and (7) of the Hospital Conversions Act have been satisfied as to some, but not all of the consultants engaged because conflict of interest forms were not provided for Cambridge Research Institute, The Camden Group, Dr. Vincent Falanga (who is no longer affiliated with RWMC) and Schulte Roth Zobel, LLC, despite CCHP's efforts to obtain them. One should not be able to avoid providing a conflict form because of change in employment or affiliation. Clearly the forms from these individuals are relevant. These individuals have failed to cooperate with the Attorney General's review. Because no forms have been provided, the Attorney General has made an inference that a conflict of interest exists with regard to these individuals,

⁴⁸ *See* Initial Application, Response to Question 15

⁴⁹ Initial Application, Response to Question 14

⁵⁰ Initial Application, Response to Question 60, Exhibit 60B.

that any future dealings between Prospect and these individuals will be considered suspect, and in the event the Attorney General obtains additional information, further action may be taken.

3. Negotiations And Conflicts

After review of relevant documents obtained during the Attorney General's review, it has been determined that the individuals who represented the Existing Hospitals in negotiations of the Proposed Transaction had no impermissible conflicts of interest.⁵¹

4. Sale Proceeds And Conflicts

As contemplated by the structure of the purchase price outlined in the Asset Purchase Agreement, there will be no proceeds from the Proposed Conversion after the disposition of the liabilities of the Existing Hospitals not assumed by Prospect CharterCARE, LLC. Therefore, there is no need to address whether the Transacting Parties have appropriately provided for the disposition of proceeds.⁵²

5. Prospect Conflicts Of Interest

On behalf of Prospect, several consultants were also engaged including: BDO, Cardno ATC, Lathan & Watkins LLP, Nixon Peabody, LLP, Rutan & Tucker, LLP, Groom Law Group, Chartered, Sills Cummis & Gross P.C. and Ferrucci Russo PC.⁵³ After reviewing the conflict of interest forms submitted by Prospect, the Attorney General finds none of the forms submitted by Prospect revealed any conflict of interest.

In response to various questions, Prospect has indicated that it has identified certain leadership positions within its organization, post transaction.⁵⁴ Under the terms of the Asset Purchase Agreement, Management Agreement and Prospect CharterCARE Operating

⁵¹ R.I. Gen. Laws § 23-17.14-7(c)(22).

⁵² See R.I. Gen. Laws § 23-17.14-7(c)(25)(iv).

⁵³ Initial Application, Response to Question 60, Exhibit 60A.

⁵⁴ See Initial Application, Response to Question 35.

Agreement, Prospect will hold an 85% ownership interest and thus will appoint certain individuals as its representatives, all of whom have provided Conflict of Interest Statements. A review of these documents and the interviews conducted with representatives of Prospect does not indicate that any conflict of interest exists with respect to the Proposed Transaction.⁵⁵ See R.I. Gen. Laws §§ 23-17.14-7 (c)(6),(7).

C. VALUE OF TRANSACTION

The following Hospital Conversions Act criteria deal with valuation of the Proposed Transaction. See R.I Gen. Laws §§ 23-17.14-7 (c)(17), (18) and (24):

(17) Whether the proposed conversion contemplates the appropriate and reasonable fair market value;

(18) Whether the proposed conversion was based upon appropriate valuation methods including, but not limited to, market approach, third party report or fairness opinion; and

(24) Whether the formula used in determining the value of the existing hospital was appropriate and reasonable which may include, but not be limited to factors such as: the multiple factor applied to the "EBITDA" – earnings before interest, taxes, depreciation, and amortization; the time period of the evaluation; price/earnings multiples; the projected efficiency differences between the existing hospital and the new hospital; and the historic value of any tax exemptions granted to the existing hospital.

Given their relevant expertise in this area, the Attorney General consulted with its expert, James P. Carris, CPA, ("Carris"), in making a determination regarding valuation. According to the analysis of Carris:

Is the Purchase Commitment from Prospect Medical Holdings, Inc. Fair and Reasonable?

As described in the Asset Purchase Agreement (APA), Prospect Medical Holdings (Prospect), through a series of subsidiaries, is acquiring substantially all the assets of CharterCARE Health Partners, Inc. (CCHP). The acquisition includes Roger Williams Medical Center (RWMC), a 220-bed acute care teaching hospital and Saint Joseph's Health System of Rhode Island (SJHSRI), which operates Fatima Hospital, a 278-bed acute care community hospital located in North Providence, RI.

⁵⁵ *Id.*, and Exhibit 18 (Asset Purchase Agreement, Prospect CharterCARE Operating Agreement and Management Agreement).

Additionally, there are a number of non-hospital health entities in CCHP, which are also included in the transaction.

At closing, CCHP will receive \$45 million in cash plus a 15% interest in the joint venture (Prospect CharterCARE) that will hold the acquired assets.

The APA requires that the \$45 million in cash proceeds be dispersed at closing as follows:

- \$16,550,000 to be used to fully redeem SJHSRI revenue bonds issued in 1999 by Rhode Island Health and Educational Building Corporation.

- \$11,062,500 to be used to redeem RWMC revenue bonds issued in 1998 by Rhode Island Health and Educational Building Corporation.

- \$3,387,500 to be used to redeem Roger Williams Realty Corporation revenue bonds issued in 1999 by Rhode Island Health and Educational Building Corporation.

- \$14,000,000 to be applied to the St. Joseph Pension Plan.

A detailed sources and uses schedule for the transaction has been provided by the parties.

Prospect has also committed \$50 million over a four year period (in addition to CCHP's routine capital commitment of at least \$10 million per year) to fund expansion and physical plant improvements to the existing entities. During the process, Prospect has agreed to guarantee the \$50 million long-term capital commitment of its subsidiary, Prospect East. This \$50 million may be subject to certain limitations and offsets but for the purposes of this analysis, is included at the full \$50 million.

CCHP's 15% interest in the joint venture is also subject to potential limitations, including a possible capital call. All parties to the transaction have given assurances that no capital call is anticipated in the foreseeable future.

Representatives of management and the Board of CCHP stipulated that if this transaction does not close, they would immediately begin the strategic partnering process again. The system does not have the ability to survive long-term with a "go it alone" strategy. This is borne out by the internal March 2014 consolidated financial statements, which shows a six-month, consolidated operating loss of approximately \$9 million.

A third party valuation analysis or fairness opinion was not completed with regard to the entire transaction. CCHP stated that its board did not undertake an appraisal since any potential valuation would have to be measured against the board's requirement for a joint venture model that included the retention of local ownership and local governance. Prospect stated that it looked at two methods of determining potential value. The first method was a multiple of twelve months trailing EBITDA and the second method was a multiple of enterprise value. Neither of these methods were deemed by the parties to be applicable in this situation. Accordingly, the parties

looked at the existing long-term debt, other outstanding obligations and future capital needs. CCHP in pursuing its joint venture model, as directed by its Board, was looking to resolve approximately \$31 million in long-term debt, to bring the St. Joseph's Pension Plan to a ninety (90%) percent funding level and fund future capital needs of approximately \$50 million. The parties therefore estimate the total consideration to be approximately \$95 million.

The purchase commitment from Prospect is fair and reasonable for the acquisition of CCHP and its affiliates. This is based on the criteria established by the CCHP Board, a review of available documentation, analysis of CCHP's current and historical operating performance as well as interviews and discussions with numerous individuals who participated in the processes and discussions which culminated in this transaction.

Moreover, given the considered and extensive review process employed by the CCHP Board and its finding that the terms of its deal with Prospect "were the best available from the remaining, interested parties," the information provided by Carris, as well as the offers of other bidders, the criteria under the Hospital Conversions Act regarding valuation of the Proposed Transaction has been met.

D. CHARITABLE ASSETS

The Attorney General has the statutory and common law duty to protect charitable assets within the State of Rhode Island.⁵⁶ In addition, the Hospital Conversions Act specifically includes provisions dealing with the disposition of charitable assets in a hospital conversion generally to ensure that the public's interest in the funds is properly safeguarded.⁵⁷ With regard to the charitable assets of CharterCARE, currently they are held by three entities: the CCHP Foundation, Roger Williams Medical Center and St. Joseph Health Services of Rhode Island.⁵⁸

⁵⁶ See e.g., R.I. Gen. Laws § 18-9-1, *et seq.*

⁵⁷ See, R.I. Gen. Laws § 23-17.14-7(c).

⁵⁸ Initial Application, Response to Questions 28 and 29.

1. Disposition of Charitable Assets

In the Initial Application, the Transacting Parties were asked to identify and account for all charitable assets held by the Transacting Parties.⁵⁹ Voluminous detail was provided which will not be detailed herein, but was thoroughly reviewed. Certain information regarding these assets is outlined below. This requirement has been satisfied by the Transacting Parties pursuant to the Hospital Conversions Act. In addition, it was represented that Prospect CharterCARE, LLC has no plans to change or remove the names associated with former gifts to the Existing Hospitals.⁶⁰

In addition, the Transacting Parties were required to provide proposed plans for the creation of the entity where all charitable assets held by the non-profit entities would be transferred.⁶¹ With regard to restricted funds, pursuant to the Hospital Conversions Act, in a hospital conversion involving a not-for-profit corporation and a for-profit corporation, it is required that any endowments, restricted, unrestricted and specific purpose funds be transferred to a charitable foundation.⁶² In furtherance of that requirement, CCHP indicated in the Initial Application that it intends to transfer all currently held specific purpose and restricted funds to the CCHP Foundation,⁶³ which will use the funds in accordance with the designated purposes. At the outset, the only change in the mission and the purpose of the CCHP Foundation will be that charitable assets will not be used for the operations of what would have become the Newco Hospitals due to their for-profit status. The mission and purpose of the CCHP Foundation would be to ensure use of charitable assets consistent with the historical donors' intent and community based needs. It would continue to serve as a community resource to provide accessible,

⁵⁹ Id.

⁶⁰ Response to Supplemental Question S-42

⁶¹ Initial Application, Question 29, R.I. Gen. Laws § 23-17.14-7(c)(25) and §23-17.14-22(a).

⁶² R.I. Gen. Laws § 23-17.14-22(a).

⁶³ See Initial Application, Response to Questions 28 and 29.

affordable and responsive health care and health care related services including disease prevention, education and research, grants, scholarships, clinics and activities within the community to facilitate positive changes in the health care system.⁶⁴ The strategic planning process for CCHP Foundation is ongoing.

Historically, a *Cy Pres* petition to the Rhode Island Superior Court is the legal vehicle to determine whether a donor's intent can be satisfied, and if not, to determine the next best alternative to honor the donor's intent. Because of the change of control of the Existing Hospitals and proposed transfer of their charitable assets to the CCHP Foundation, it was contemplated that a simple *Cy Pres* acknowledging that each Existing Hospital has charitable assets and that post conversion, the CCHP Foundation will honor the intent of the donors, would be the appropriate vehicle. However, as the financial situation of the Existing Hospitals, including with respect to the SJHSRI pension liability, continued to deteriorate during the regulatory review of the Initial Application, CCHP revised its plan as set forth in the Initial Application to reflect a more staggered process with respect to its restricted funds which required some adjustments to the basic form *Cy Pres* described above.

Due to the extent of the Existing Hospitals' liabilities, CCHP proposed that certain RWMC and SJHSRI restricted assets, in addition to unrestricted cash, would remain with the Heritage Hospitals during their wind-down period rather than transferring directly to the CCHP Foundation. Specifically, a total of approximately \$19.6 million dollars in restricted assets would be held by the Foundation (\$7.2 million dollars) and the Heritage Hospitals (\$12.4 million dollars). The revised *Cy Pres* plan was set forth in an outline of the proposed *Cy Pres* petition for each of the Heritage Hospitals with accompanying estimated opening summary balance

⁶⁴ Initial Application Response to Question 28.

sheets for both the Heritage Hospitals and the CCHP Foundation, provided to the Attorney General, and is described below.

A multi-year wind-down process is typical in the dissolution of a hospital corporation due to the time it typically takes to settle government cost reports and the like. It is particularly appropriate where the expected hospital's liabilities are projected to exceed the amount of the unrestricted assets available at the time of closing but where there is also an expectation that additional unrestricted assets will be available in the future, as is the case here. The corporation retains during the wind-down process those restricted charitable assets that provide unrestricted earnings which can be used to address its remaining liabilities, and the corporation remains open until such time as it is concluded that it has completed the winding-down of its affairs.

With respect to the period of time after the close of the Proposed Transaction when the Heritage Hospitals remain open, CCHP proposes to carry out the above-described process as follows:

CCHP Foundation

As a threshold matter, CCHP's *Cy Pres* petition would address any needed change in the CCHP Foundation mission to reflect the broader, community health oriented foundation focus. The *Cy Pres* petition will request approval for the transfer of charitable funds to the CCHP Foundation comprised of approximately \$7.2 million dollars in restricted assets comprised of restricted cash, endowment and earnings on endowment of approximately \$6.9 million dollars from RWMC and \$318,000 from SJHSRI.

The RWMC endowments contained within the sum being transferred to the Foundation total approximately \$4.2 million dollars. The *Cy Pres* petition will address the use of the RWMC endowment income for appropriate charitable purposes. The estimated annual income on such

amount is estimated at approximately \$210,000 annually assuming existing investment policy and allowing for a 5% distribution, within the 7% recommended maximum distribution.

CCHP also will seek *Cy Pres* approval to use approximately \$12.9 million dollars of the total accumulated temporarily restricted earnings on the RWMC endowment of approximately \$15.3 million dollars to satisfy RWMC's liabilities. The balance of approximately \$2.4 million dollars also would be moved to the CCHP Foundation for charitable purposes as it deems appropriate. The estimated annual income from the temporarily restricted endowments is approximately \$118,000 assuming the existing investment policy allowing for a 5% distribution, within the 7% recommended maximum distribution. There are no expected changes in the investment managers during the wind-down period.⁶⁵

RWMC also has a number of temporarily restricted funds whose purpose will not be fully expended before the closing of the Proposed Transaction. It is estimated that approximately \$285,000 in such restricted cash funds will be transferred to the CCHP Foundation. The purposes of these funds will be reviewed and adjusted to meet as close to the original donor intent as possible.

Finally, CCHP intends to request that approximately \$108,000 in SJHSHR temporarily restricted scholarship and endowment funds, and approximately \$209,000 in other temporarily restricted assets be transferred to the CCHP Foundation. The purposes of transferred funds will be similarly reviewed and adjusted to meet as close to the original donor intent as possible.

Heritage Hospitals

CCHP proposes to retain approximately \$24.3 million dollars of assets within the Heritage Hospitals for the time being, including approximately \$12.4 million dollars in restricted

⁶⁵ Response to Supplemental Question 3-30.

assets comprised of perpetual trusts, endowments and scholarships and temporarily restricted assets, as follows:

First, CCHP intends to seek *Cy Pres* approval to change the purpose of the approximately \$1.2 million dollars in SJHSRI's permanently restricted scholarship and endowment funds to be used to partially satisfy SJHSRI's liabilities, including but not limited to potential future funds and expenses relating to the pension plan.

Second, each of the Heritage Hospitals will each retain their respective right to the receive distributions from approximately \$10.8 million dollars in perpetual trusts, which will be used to pay their respective wind-down expenses. In addition, CCHP intends to seek trustee and *Cy Pres* approval to use the perpetual trust income received by RWMC to partially satisfy the payment of SJHSRI expenses, if needed, after all of RWMC's liabilities have been paid.

Finally, the *Cy Pres* petition will include a request that RWMC retain approximately \$421,000 in funds dedicated to expenses unique to RWMC. These include funds restricted for continuing medical education and surgical and oncology academic and research program for which RWMC will seek limited approval to pay only for the costs of such program at Newco RWMC that are over and above the routine, budgeted cost of operating these programs going forward.

To summarize, the *Cy Pres* disposition addressing the transfers to the CCHP Foundation on the one hand and adjustments to funds retained within the Heritage Hospitals on the other, as described above, will ensure that the Existing Hospital charitable assets are used for their intended purposes when that is consistent with law, and will seek court approval for an appropriate, comparable charitable use when the intended use would no longer be consistent with law, for example, because it would require that funds go to a successor, for-profit hospital.

In addition, at one or more future dates, upon confirmation that perpetual trust distributions and endowment earnings are no longer needed to address the liabilities of one or both Heritage Hospitals, one or more additional *Cy Pres* disposition(s) of any remaining restricted and unrestricted charitable assets of the Heritage Hospitals will take place to transfer funds to the CCHP Foundation. Trustee approval also will be required to re-direct future perpetual trust distributions to the CCHP Foundation.

With appropriate agreements with the CCHP Foundation, the Heritage Hospitals and CCHP that are approved by the court in *Cy Pres* proceedings to manage the restricted assets, the Attorney General finds that the Proposed Transaction will not harm the public's interest in the property given, devised or bequeathed to the Existing Hospitals for charitable purposes.⁶⁶

Promptly following the closing of the Proposed Transaction, CCHP will close the books on SJHSRI and RWMC and seek preliminary approval from the Attorney General as to the form and content of the post-closing *Cy Pres* petition described above. Thereafter, the RI Superior Court's consideration of said initial petition will take place within a reasonable period following closing of the Proposed Transaction.

Lastly, inasmuch as none of the existing CCHP entities are trustees for any of the holdings, they are not responsible for completing annual filings as required by R.I. Gen. Laws §18-9-13. *See* R.I. Gen. Laws §23-17.14-7(c)(26).

2. Maintenance of the Mission, Agenda and Purpose of The Existing Hospitals

The Hospital Conversion Act at R.I. Gen. Laws § 23-17.14-7(c)(16) and R.I. Gen. Laws § 23-17.14-7(c)(25)(iii) requires consideration of the following:

- Whether the proposed conversion results in an abandonment of the original purposes of the existing hospital or whether a resulting entity will depart from the

⁶⁶ R.I. Gen. Laws § 23-17.14-7(c) (1).

traditional purposes and mission of the existing hospital such that a cy pres proceeding would be necessary; and

- Whether the mission statement and program agenda will be or should be closely related with the purposes of the mission of the existing hospital.

RWMC and SJHSRI share the same mission; namely, “as an Affiliate of the System shall be to foster an environment of collaboration among its partners, medical staff and employees that supports high quality, patient focused and accessible care that is responsive to the needs of the communities it serves.”⁶⁷ CCHP “is organized and shall be operated exclusively for the benefit of and to support the charitable purposes of Roger Williams Hospital, St. Joseph Health Services of Rhode Island and Elmhurst Extended Care Services, Inc.....”⁶⁸ CCHP Foundation finds its origins in the SJ Foundation, formed on February 27, 2007 “to hold and administer charitable donations on behalf of SHHSRI.”⁶⁹ In December of 2011, a Petition for Cy Pres, *In Re: CharterCARE Health Partners Foundation, P.B. No. 11-6822*, was filed and granted by the Rhode Island Superior Court (Silverstein, J.) allowing the transfer of the restricted funds that were raised by the SJ Foundation to SJHSRI.”⁷⁰ “Subsequent to and as part of the CCHP affiliation, on August 25, 2011, the organizational documents of SJ Foundation were revised to change its name to CharterCARE Health Partners Foundation and to make CCHP its sole member.”⁷¹ “On September 9, 2011, CCHP Foundation secured from the IRS a determination that it was 1) exempt from tax under section 501(c)(3) of the Internal Revenue Code (IRC), and 2) a public charity under section 509(a)(3) of the IRC.”⁷²

While implied in Prospect’s for-profit status that profit is an issue that will be considered, Prospect has committed that Prospect CharterCARE, LLC “will adopt, maintain and adhere to

⁶⁷ Initial Application, Exhibit 10(C)(D), *See also* Response to Supplemental Question S5-2.

⁶⁸ Initial Application, Exhibit 10(B), *See also* Response to Supplemental Question S5-2.

⁶⁹ Initial Application, Response to Question 29.

⁷⁰ Initial Application, Response to Question 28.

⁷¹ Id.

⁷² Id.

CCHP's policy on charity care and or adopt policies and procedures that are at least as favorable to the indigent, uninsured and underserved as CCHP's existing policies and procedures."⁷³ It has further stated that, should a conflict arise between the charitable purposes of the Existing Hospitals and profit-making that the charitable purposes of the Existing Hospitals shall prevail.⁷⁴ The Attorney General finds that R.I. Gen. Laws §23-17.14-7(c)(16) of the Hospital Conversions Act has been satisfied.

The Attorney General has also considered that Prospect has purchased eight other hospitals over the course of its existence, some of which have included distressed hospitals⁷⁵, and has stated that it has never closed or sold any of its hospitals.⁷⁶ Although there is no evidence that the Proposed Transaction will differ significantly from the stated purposes of the Existing Hospitals, it is necessary that a *Cy Pres* be filed and granted both to ensure the proper utilization of the remaining restricted funds and because this hospital conversion includes the conversion of two non-profit entities' assets for use by for-profit entities.

Further, Rhode Island law requires that all licensed hospitals, whether non-profit or for-profit, provide unreimbursed health care services to patients with an inability to pay.⁷⁷ Therefore, Prospect will be required even as a for-profit hospital to provide a certain amount of charity care and has agreed to do so.⁷⁸

Finally, in consideration of whether the new entity will operate with a similar purpose, pursuant to Section 13.15 of the Asset Purchase Agreement entitled "Essential Services" Prospect has agreed to maintain the Newco Hospitals as acute care hospitals with a "full

⁷³ Initial Application Response to Question 59(c).

⁷⁴ Exhibit 18 to Initial Application, Asset Purchase Agreement, Section 13.14; *see also* Response to S3-14.

⁷⁵ Interview of Thomas Reardon.

⁷⁶ Response to Supplemental Question 4-25.

⁷⁷ R.I. Gen. Laws §§ 23-17.14-15(a)(1), (b) and (d).

⁷⁸ *See* Initial Application Exhibit 18, Asset Purchase Agreement, Article 13.14 and Management Agreement.

complement of essential clinical services for a period of at least five years immediately following the Closing Date.”⁷⁹ In addition, Prospect has stated that there are no current plans to discontinue any CCHP systems services, accreditations, and certifications, including those of the CCHP affiliates.⁸⁰ These include health care and non-healthcare community benefits.⁸¹ As with any acquisition, it is likely that some changes will take place after Prospect takes over the Existing Hospitals. In fact, Prospect has indicated that it will be undertaking strategic initiatives collaboratively to improve services rendered to patients.⁸² Further, as part of its long term capital commitment to CCHP, Prospect has also committed to making improvements of a bricks and mortar nature to the Existing Hospitals.⁸³ Accordingly, the Proposed Transaction does include a potential that some changes will occur at the Existing Hospitals.

3. Foundation for Proceeds

In addition to addressing charitable assets, the Hospital Conversions Act requires an independent foundation to hold and distribute proceeds from a hospital conversion consistent with the acquiree's original purpose.⁸⁴ With regard to the Proposed Transaction, the Asset Purchase Agreement does not include a purchase price that will produce traditional proceeds as it is structured upon payment of certain obligations and commitment to future investments in the hospital. Accordingly, R.I. Gen. Laws § 23-17.14-22 does not require a foundation for receipt of proceeds. Nonetheless, CCHP Foundation is an existing publicly supported foundation which stands ready to receive the restricted funds associated with the Heritage Hospitals in accordance with the plan described above. It is anticipated that the amount of such funds are sufficient for

⁷⁹ See Asset Purchase Agreement Article 13.15; Initial Application Response to Questions 53, 57 and 59.

⁸⁰ Response to Supplemental Question S3-53.

⁸¹ See e.g. Exhibit S3-19; Exhibit S4-20, and Final Supplemental Response 4-20.

⁸² Initial Application, Exhibit 18 Asset Purchase Agreement Article 13.13.

⁸³ Initial Application, Response to Question 1.

⁸⁴ R.I. Gen. Laws § 23-17.14-22(a) and R.I. Gen. Laws § 23-17.14-7(c)(16).

the operation of an independent community health care foundation. However, should the CCHP Foundation board determine in the future that it would be more cost effective to do so, it may seek *Cy Pres* approval to transfer the restricted assets to an independent foundation consistent with the Hospital Conversions Act.

E. TAX IMPLICATIONS

There are three criteria in the Hospitals Conversions Act that deal with the tax implications of the Proposed Transaction.⁸⁵ Currently, CCHP and the Existing Hospitals are non-profit corporations organized pursuant to Rhode Island law. Upon the purchase of their assets by Prospect, the resulting entities will be for-profit entities and no longer immune from certain tax obligations. Clearly, this has an impact on the tax status of these entities.⁸⁶ This transaction represents the second hospital conversion transaction in Rhode Island where nonprofit hospitals are changing to for-profit entities. Review of the Initial Application indicates that this decision to become for-profit entities was made after careful consideration by CCHP that the terms of this transaction were the best available to CCHP among the proposals from the remaining interested parties.⁸⁷ Accordingly, the wisdom of choosing a for-profit company to purchase a non-profit hospital is not a matter that warrants in-depth consideration given the circumstances.

With regard to tax implications, one of Prospect's conditions of closing the transaction with CharterCARE stated in the Initial Application referenced that the closing is contingent upon property tax stabilization/exemption ordinances with the host communities of Providence and

⁸⁵ See R.I. Gen. Laws §§ 23-17.14-7(c)(20), (21) and (25)(ii).

⁸⁶ The question posed by R.I. Gen. Laws § 23-17.14-7(c)(21) is whether the tax status of the existing hospital is jeopardized." This characterization does not apply to the Proposed Transaction as not only is it jeopardized, it is knowingly being changed from non-profit to for-profit.

⁸⁷ See Initial Application, Response to Request 55.

North Providence.⁸⁸ The Transacting Parties have indicated that these negotiations are ongoing with the communities to be affected and are anticipated to be resolved with a potential need for further procedural hearings to occur after May 16, 2014.⁸⁹ The Attorney General is advised by Prospect that they are progressing steadily toward a resolution of this issue. The determination as to whether tax stabilization or exemption will be granted to Prospect for the Existing Hospitals is beyond the Attorney General's jurisdiction and is therefore left to the affected communities to determine.

In addition to real estate taxes, typically Prospect would be required to pay Rhode Island sales and use tax in certain situations. *See* R.I. Gen. Laws § 44-18-1 *et seq.*, and 44-19-1, *et. seq.*

As for the remaining review criteria contained in R.I. Gen. Laws §23-17.14-7(c)(20), regarding "whether the conversion is proper under applicable state tax code provisions," the Transacting Parties are required to obtain a certificate from the State of Rhode Island prior to closing that the Proposed Transaction is proper under applicable state tax code provisions. Accordingly, the Attorney General finds that once the required certificate has been obtained from the State of Rhode Island, which is a requirement of closing of the Proposed Transaction, that this particular criterion under the Hospital Conversions Act will be met.

CCHP also sought legal counsel regarding federal tax implications with respect to CCHP serving as the 15% member of for-profit Prospect CharterCARE, LLC. CCHP has stated that the structure of the Proposed Transaction permits it to act exclusively in furtherance of its exempt purposes and only incidentally for the benefit of PMH. However, because this area of tax law may continue to evolve in the future, should CCHP's tax-exempt status ever be jeopardized due to its participation in the Prospect CharterCARE, LLC, CCHP may cause PMH

⁸⁸ See Initial Application, Response to Question 45.

⁸⁹ Response to Supplemental Question S4-12.

to buy out its interest if there is no other satisfactory resolution. This process and the distribution of the additional proceeds would be subject to Attorney General oversight consistent with this decision.⁹⁰ Finally, CCHP has stated that it will take any reasonable steps to ensure that both it and the CCHP Foundation will preserve their current exempt status following the close of the Proposed Transaction⁹¹.

Regarding the tax status of the entity receiving the proceeds, no proceeds are contemplated and the new entities will be for-profit. *See* R.I. Gen. Laws § 23-17.14-7(c)(25)(ii).

F. NEW ENTITY

The Attorney General must review certain criteria pursuant to the Hospital Conversions Act that deals with the corporate governance of the new hospitals after the completion of the Proposed Transaction.⁹² Below is an outline of the review of such requirements.

1. Bylaws and Articles of Incorporation

One issue that must be examined is whether the new entity has bylaws and articles of incorporation. The new corporate entity that will purchase the assets of CCHP is Prospect Medical Holdings, Inc. (“PMH”). PMH is a Delaware corporation incorporated on May 14, 1999 with its principal place of business in Los Angeles, California. *See* Initial Application Exhibit 10(a). The current bylaws for PMH were provided by the Transacting Parties. *Id.* Therefore, bylaws and articles of incorporation have been provided for PMH.⁹³

PMH is a health care services company that owns and operates hospitals and manages the provision of health care services for managed care enrollees through its network of specialists and primary care physicians. PMH is the parent entity with regard to the eight (8) acute care and

⁹⁰ Response to Question S10

⁹¹ Final Supplemental Responses Miscellaneous p. 6.

⁹² *See e.g.*, Hospital Conversions Act, R.I. Gen. Laws §§ 23-17.14-7(c)(25) (i), (v), (vi), (vii), (viii), and (ix).

⁹³ Initial Application Exhibit 10A-1.

behavioral hospitals located in California and Texas. In total, PMH owns and operates approximately 1,082 licensed beds and a network of specialty and primary care clinics.⁹⁴

PMH is owned by Ivy Intermediate Holdings, Inc. (“IIH”), a Delaware corporation, incorporated on July 23, 2010, with its registered place of business in Wilmington, Delaware.⁹⁵ The current bylaws for IIH were provided by the Transacting Parties. *Id.* Therefore, bylaws and articles of incorporation have been provided for IIH.⁹⁶

Ivy Holdings, Inc. (“IH”), a Delaware corporation, incorporated on December 14, 2010, with its registered place of business in Wilmington, Delaware, owns 100% of the stock of IIH.⁹⁷ IH is a holding company for this stock ownership, having no other assets, liabilities or operations.⁹⁸ Bylaws were provided by the Transacting Parties for IH.⁹⁹

Pursuant to the Asset Purchase Agreement,¹⁰⁰ the ownership interest of PMH will be held by a newly formed LLC, Prospect East Holdings, Inc., (“Prospect East”) a Delaware LLC, formed on August 20, 2013, with its principal place of business located in Wilmington, Delaware.¹⁰¹ Prospect East is structured to be the PMH entity that will hold ownership interest in any health care facilities acquired by PMH on the East Coast. The current bylaws for Prospect East were provided by the Transacting Parties. *Id.* Therefore, bylaws and articles of incorporation have been provided for Prospect East.¹⁰²

Prospect CharterCARE, LLC, a Rhode Island limited liability company, is a joint venture between Prospect East and CCHP and will hold 100% of the ownership interests in the entities

⁹⁴ Initial Application p. 1.

⁹⁵ Initial Application, Exhibit 10A-12.

⁹⁶ Id.

⁹⁷ Initial Application, Exhibit 10A-11.

⁹⁸ Initial Application, p. 2.

⁹⁹ Initial Application, Exhibit 10A-11.

¹⁰⁰ Asset Purchase Agreement, p. 2.

¹⁰¹ Initial Application, p. 2, Ex. 10A-6.

¹⁰² Id.

that will hold the licensure for the Existing Hospitals, post conversion.¹⁰³ Prospect CharterCARE, LLC was formed on August 20, 2013, with its principal place of business in Los Angeles, California and will be owned 85% by Prospect East and 15% by CCHP. Prospect East is the managing member of Prospect CharterCARE, LLC and is responsible for the day-to-day management of the Newco Hospitals with certain decisions subject to Board approval pursuant to Section 8.3 of the Prospect CharterCARE Operating Agreement. Prospect East as the managing member of Prospect CharterCARE, LLC has delegated through the Management Agreement the day-to-day management of the Newco Hospitals to Prospect Advisory Services, LLC (“Prospect Advisory”), an affiliate of PMH. The governing board of Prospect CharterCARE, LLC will be a 50/50 board¹⁰⁴ (the “Board”) with half of its members selected by and through Prospect East’s ownership and the other half of the members selected by and through CCHP’s ownership. The Board shall be the organized, governing body responsible for the management and control of the operations of the licensed hospitals, their conformity with all federal, state and local laws and regulations regarding fire, safety, sanitation, communicable and reportable diseases and other relevant health and safety requirements.¹⁰⁵ The Board shall define the population and communities to be served and the scope of services to be provided.¹⁰⁶ The Board shall also determine policy with regard to the qualifications of personnel, corporate governance, and the policy for selection and appointment of medical staff and granting of clinical privileges.¹⁰⁷ Bylaws were not provided for Prospect CharterCARE, LLC as typically

¹⁰³ Newco Hospitals.

¹⁰⁴ Initial Application, Revised 7(c).

¹⁰⁵ Id.

¹⁰⁶ Id.

¹⁰⁷ Id.

such organizations do not have Bylaws. However, an operating agreement was provided by the Transacting Parties.¹⁰⁸

Prospect Advisory, a Delaware Limited Liability Company was formed on August 20, 2013, with its principal place of business in Los Angeles, California and is solely owned and controlled by PMH.¹⁰⁹ As described above, Prospect East has delegated the day-to-day management of the Newco Hospitals to Prospect Advisory through the Management Agreement and Prospect Advisory will receive a monthly management fee equal to two percent (2%) of the Net Revenues¹¹⁰ of Prospect CharterCARE, LLC. Prospect Advisory will work with the Executive Team of Prospect CharterCARE, LLC to run the day-to-day operations of the Newco Hospitals. The Executive Team shall be subject to the day-to-day supervision of Prospect Advisory, and together the Executive Team and Prospect Advisory will report to Prospect CharterCARE, LLC's Board and certain PMH executives. Prospect CharterCARE, LLC's Board will continue to have ultimate power and authority over certain decisions pursuant to Section 8.3 of Prospect CharterCARE Operating Agreement. The Bylaws were not provided for Prospect Advisory, as typically such organizations do not have Bylaws. It does not have a board of directors.¹¹¹ However, an operating agreement was provided by the Transacting Parties.¹¹²

Prospect CharterCARE RWMC, LLC ("Newco RWMC"), is a Rhode Island limited liability company, which will own and hold the licensure for Roger Williams Medical Center

¹⁰⁸ Initial Application, Ex. 18.

¹⁰⁹ Initial Application, p. 35, Ex. 10A-7.

¹¹⁰ Net Revenues means total operating revenues derived, directly or indirectly, by Prospect CharterCARE, LLC with respect to the Newco Hospitals, whether received on a cash or on a credit basis, paid or unpaid, collected or uncollected, as determined in accordance with generally accepted accounting principles net of (A) allowance for third party contractual adjustments and (B) discounts and charity care amounts (not including any bad debt amounts), in each case as determined in accordance with GAAP. Management Agreement, Section 5.2(b).

¹¹¹ Id.

¹¹² Initial Application, Ex. 10A-7.

post-conversion. Newco RWMC will be wholly-owned by Prospect CharterCARE, LLC¹¹³ and its principal business office will be located in Los Angeles, California. Bylaws were not provided for Newco RWMC, as typically such organizations do not have Bylaws. However, an operating agreement was provided by the Transacting Parties.¹¹⁴ It will be solely operated by Prospect CharterCARE, LLC.¹¹⁵

Prospect CharterCARE SJHSRI, LLC (“Newco Fatima”) is a Rhode Island limited liability company, with its principal business office located in Los Angeles, California.¹¹⁶ It will own¹¹⁷ and hold the licensure for Our Lady of Fatima Hospital post-conversion. Bylaws were not provided for Prospect CharterCARE SJHSRI, LLC, as typically such organizations do not have Bylaws. However, an operating agreement was provided by the Transacting Parties.¹¹⁸ It will be solely operated by Prospect CharterCARE, LLC.¹¹⁹

Prospect CharterCARE Ancillary Services, LLC (“Ancillary Services”) is a Rhode Island limited liability company, with its principal place of business located in Los Angeles, California. It will hold the licensure for Prospect CharterCARE labs.¹²⁰ Bylaws were not provided for Prospect CharterCARE Ancillary Services, LLC, as typically such organizations do not have Bylaws. However, an operating agreement was provided by the Transacting Parties. It will be solely operated by Prospect CharterCARE, LLC.

¹¹³ Initial Application Response to Question 5.

¹¹⁴ Initial Application, Ex. 10A-9.

¹¹⁵ Id.

¹¹⁶ Initial Application Ex. 10-10.

¹¹⁷ Initial Application response to Question 5.

¹¹⁸ Initial Application, Ex. 10A-9.

¹¹⁹ Id.

¹²⁰ First Amendment to Asset Purchase Agreement, Response to Supplemental Question S3-15; Miscellaneous Exhibit 1.

Prospect CharterCARE, LLC, which will hold the ownership of the entities that hold the licensure for the Existing Hospitals, post conversion,¹²¹ will be managed by Prospect East Holdings, Inc, a Delaware corporation, whose registered place of business is Wilmington, Delaware and is wholly-owned by PMH.¹²² Bylaws were provided by the Transacting Parties for Prospect East Holdings.¹²³

Accordingly, R.I. Gen. Laws § 23-17.14-7(c)(25)(v) has been satisfied.

2. Board Composition

In addition to bylaws and articles of incorporation, specific criteria that must be considered regarding the new corporate entities include analysis of the composition of the new boards. Specifically, the Hospital Conversions Act requires review of:

- (vi) whether the board of any new or continuing entity will be independent from the new hospital;
- (vii) whether the method for selecting board members, staff, and consultants is appropriate;
- (viii) whether the board will comprise an appropriate number of individuals with experience in pertinent areas such as foundations, health care, business, labor, community programs, financial management, legal, accounting, grant making and public members representing diverse ethnic populations of the affected community; and
- (ix) whether the size of the board and proposed length of board terms are sufficient.

See R.I. Gen. Laws §§ 22-17.14-7(c)(25)(vi), (vii), (viii) and (ix).

First, it is important to state that in the Asset Purchase Agreement, PMH and CCHP have proposed a post-conversion structure in which those two entities will form a joint venture, Prospect CharterCARE, LLC, to own and operate all of the health care entities associated with CCHP including, without limitation, the two acute-care, community hospitals that currently operate as Roger Williams Medical Center and Our Lady of Fatima Hospital, as well as an

¹²¹ Newco Hospitals.

¹²² Initial Application p. 2, Exhibit 12A-2, 10A-6.

¹²³ Initial Application, Ex. 10A-6.

extended care facility in Providence known as Elmhurst Extended Care. Prospect CharterCARE, LLC would operate under a 50/50 board composition, which will permit CCHP to retain a significant degree of control in the ongoing ownership and governance of Prospect CharterCARE, LLC to ensure the continuance of its local mission, as well as to provide it with access to the capital and other resources held by PMH to address the challenges of today's health care industry and continue to serve the citizens of Rhode Island.¹²⁴ Given the unique structure of the Proposed Transaction, it is necessary to also discuss the powers that will continue to be held by CCHP to advance these objectives.

Pursuant to the Prospect CharterCARE Operating Agreement, the Transacting Parties have agreed to form a board of directors that has the overall oversight and ultimate authority over the affairs of Prospect CharterCARE, LLC and its Subsidiaries.¹²⁵ As stated above, the Prospect CharterCARE Board will be a 50/50 board with half of its members selected by and through Prospect East's ownership and the other half of the members selected by and through CCHP's ownership.¹²⁶

The Board would be comprised of eight (8) members: four (4) directors appointed by CCHP (including at least one (1) physician) and four directors appointed by Prospect East.¹²⁷ Board members would serve for a term of one to three years, at the discretion of the owner that elected or appointed the individual.¹²⁸ Board members could be removed with or without cause by the owner that elected or appointed the director.¹²⁹ However, if CCHP's ownership interest in Prospect CharterCARE, LLC is reduced to 5%, at any time, because it elects not to or is unable

¹²⁴ Initial Application p. 7, Exhibit 18, Prospect CharterCARE Operating Agreement, Section 8.3.

¹²⁵ The Newco Hospitals, Prospect CharterCARE Elmhurst, LLC, and Prospect CharterCARE Physicians, LLC, p. 1 of Prospect CharterCARE Operating Agreement.

¹²⁶ Exhibit 18, Prospect CharterCARE Operating Agreement, Section 12.1.

¹²⁷ Id.

¹²⁸ Id.

¹²⁹ Id.

to contribute to a capital call then one of the CCHP appointed directors would resign and CCHP would only appoint three (3) directors.¹³⁰ In this case, the Board would be comprised of seven (7) instead of eight (8) directors.¹³¹ Note that Prospect has stated that it does not expect to make any such capital calls within the first three (3) years post-closing.¹³²

As previously described, Prospect East is the managing member of Prospect CharterCARE, LLC and is responsible for the day-to-day management of the Newco Hospitals with certain decisions subject to Board approval pursuant to Section 8.3 of Prospect CharterCARE's Operating Agreement. Prospect East as the managing member of Prospect CharterCARE, LLC has delegated through the Management Agreement the day-to-day management of the Newco Hospitals to Prospect Advisory. Prospect Advisory will work with the Executive Team of Prospect CharterCARE, LLC to run the day-to-day operations of the Newco Hospitals. The Executive Team shall be subject to the day-to-day supervision of Prospect Advisory, and together the Executive Team and Prospect Advisory will report to Prospect CharterCARE, LLC's Board and certain PMH executives. Prospect CharterCARE, LLC's Board will have ultimate power and authority over certain decisions.

Section 8.3 of Prospect CharterCARE's Operating Agreement sets forth the Board's reserved powers including but not limited to: changing the mission or the and purpose of Prospect CharterCARE, LLC or any of its Subsidiaries, decisions involving development and approval of strategic planning, decisions regarding annual operating and capital budgets, changes to the charity policy of Prospect CharterCARE, LLC and its Subsidiaries, approving reduction of essential services at either Newco Hospital, engaging in any merger, consolidation, share exchange or reorganization of Prospect CharterCARE, LLC and its Subsidiaries, and approving a

¹³⁰ Id.

¹³¹ Id.

¹³² Response to Supplemental Question S4-3.

decision to dissolve or liquidate the Prospect CharterCARE, LLC or any of its Subsidiaries.¹³³

Board approval would be exercised by the Board as a body with each owner's directors having a majority vote.¹³⁴ Thus, through this agreement, the leadership of CCHP retains significant decision making input into the continued operations of Prospect CharterCARE, LLC and its Subsidiaries. Meetings of the Board are required to occur at least on a quarterly basis with at least one meeting held in person (face-to-face).¹³⁵ Special meetings of the Board may be called by Prospect Advisory as the manager, the chairman or any three (3) members of the Board.¹³⁶

In addition to the Board, Prospect CharterCARE, LLC will also form a local board for each of the Newco Hospitals.¹³⁷ These local boards would be comprised of at least six (6) individuals.¹³⁸ One half the of the local board members would be physicians from the Newco Hospitals' medical staff, and the other half of the local board members would be the Newco Hospitals' local CEOs and community representatives.¹³⁹ Local board members would be limited to three (3) year terms.¹⁴⁰ The local boards would be responsible for matters such as medical staff credentialing, recommendations regarding strategic and capital plans, providing guidance to the Prospect CharterCARE, LLC board on local market and community concerns, considerations, strategies, issues and politics as well as responding to other requests made by Prospect CharterCARE, LLC's board of directors.¹⁴¹

In Response to Question 7 of the Initial Application, the Transacting Parties state that PMH has yet to determine the identities of the four (4) board members comprising its 50% share

¹³³ Section 8.3 of Prospect CharterCARE's Operating Agreement.

¹³⁴ Id. at Sections 1.6, 11.12, 12.2.

¹³⁵ Id. at Section 12.3.

¹³⁶ Id.

¹³⁷ Id. at Section 12.4.

¹³⁸ Id.

¹³⁹ Id.

¹⁴⁰ Id.

¹⁴¹ Id.

of the Prospect CharterCARE, LLC Board. Meanwhile, CCHP has designated its four (4) board members comprising its share 50% of the Board. The Transacting Parties further state that the members of the Board of Directors of Newco RWMC and Newco Fatima have been determined since the filing of the Initial Application.

Accordingly, the composition of the boards of Prospect CharterCARE, LLC and those of the Newco Hospitals are sufficiently clear to ensure the independence from the hospitals and the diversity of experience required by the Hospital Conversions Act. There is no overlap between and among the boards of the CCHP Foundation, CCHP, the Heritage Hospitals, Prospect CharterCARE, LLC and the Newco Hospitals' boards. *See* R.I. Gen. Laws §22-17.14-7(c)(25)(v)(vi) and (viii).¹⁴² As discussed above, the initial boards have been set and there is a methodology in place for their selection as well as the number and terms of directors. *See* R.I. Gen. Laws §22-17.14-7(c)(25)(vii). Therefore, the Hospital Conversions Act criteria regarding the boards of the new entities has been fully met.

G. CHARACTER, COMMITMENT, COMPETENCE AND STANDING IN THE COMMUNITY

An important and encompassing portion of the Hospital Conversions Act review criteria requires review of “[w]hether the character, commitment, competence and standing in the community, or any other communities served by the transacting parties are satisfactory” *See* R.I. Gen. Laws § 23-17.14-7(c)(28). As stated above, although PMH is the owner/operator of eight (8) other hospitals¹⁴³ through its established chain of command through the various associated limited liability company entities discussed above, PMH will exercise its primary control over CCHP and the Existing Hospitals through its subsidiary Prospect CharterCARE, LLC. As

¹⁴² Response to Supplemental Questions S3-8, S3-12.

¹⁴³ Initial Application, p. 1, Response to Question 4.

described above, Prospect CharterCARE, LLC will be comprised of a 50/50 board, each appointed by PMH and CCHP.¹⁴⁴

1. Character

As stated above, PMH was incorporated on May 14, 1999. *See* Initial Application Exhibit 10A-1. PMH is a health care services company that owns and operates approximately 1,082 licensed beds and a network of specialty and primary care clinics.¹⁴⁵ The central function of operating hospitals is patient care. DOH's review focuses more directly on the topic of character of the acquiring entity and has identical review criteria regarding this topic;¹⁴⁶ therefore, the Attorney General will rely on and defer to DOH's expertise and experience relating to Prospect's character in the communities in which it operates. Nonetheless, the Attorney General did not find any types of complaints against the current owners of Prospect, such as from the Department of Justice or the Office of Inspector General.

2. Commitment

Pursuant to the Asset Purchase Agreement, PMH has agreed to a number of financial commitments, including an up to \$50 million dollar capital commitment to CCHP within four (4) years of the closing of the Proposed Transaction, in addition to normal and routine capital expenditures of at least \$10 million dollars per year.¹⁴⁷ These improvements include investing in technology, equipment, quality improvements, expanded services and physician recruitment.¹⁴⁸ Other than financial commitments, Prospect has promised that the Newco Hospitals will continue to provide a full complement of essential clinical services for the term of

¹⁴⁴ Initial Application, Response to Question 1, Exhibit 18, Asset Purchase Agreement, Section 12.1.

¹⁴⁵ Initial Application, Response to Question 1.

¹⁴⁶ *See* R.I. Gen. Laws § 23-17.14-8 (b)(1).

¹⁴⁷ *See* Asset Purchase Agreement, Section 2.5 and Initial Application Response to Question 1. PMH has since agreed to guarantee Prospect's obligations under the Asset Purchase Agreement regarding this \$50 million dollar commitment.

¹⁴⁸ *See* Responses to Initial Application Questions 1, 57, Asset Purchase Agreement Section 13.17.

five (5) after the closing date.¹⁴⁹ Prospect agrees to maintain the Catholic identity of all legacy SJHSRI locations and ensure that all services at SJHSRI locations are rendered in full compliance with the Ethical and Religious Directives.¹⁵⁰ Prospect has also made a commitment that, should a conflict arise between the charitable purposes of the Existing Hospitals and profit-making that the charitable purposes of the Existing Hospitals shall prevail.¹⁵¹ A commitment has also been made with respect to limitations on a sale of the interests held by PMH and Prospect East for a period of five (5) years. *See* Asset Purchase Agreement Section 13.18(b).¹⁵² In addition, Prospect has asserted that it is committed to preservation of jobs at the Existing Hospitals, post conversion, which will assist in providing continuity in care and leadership under the 50/50 board of Prospect CharterCARE, LLC post conversion.¹⁵³

3. Competence

As stated above, PMH has a track record of operating eight (8) hospitals in other states over the course of 15 years, some of which were financially distressed when acquired.¹⁵⁴ Moreover, Prospect indicates that it has never abandoned or closed a hospital that it has purchased.¹⁵⁵ In addition, Prospect has indicated that, should the Newco Hospitals fail to meet financial expectations that have been projected, Prospect would provide further funding to support them.¹⁵⁶

¹⁴⁹ Initial Application, Response to Question 57; *See* Asset Purchase Agreement Section 13.15.

¹⁵⁰ Ethical and Religious Directives (“ERDs”) promulgated by the United States Conference of Catholic Bishops and adopted by the Bishop of the Roman Catholic Diocese of Providence, RI.; *See* Asset Purchase Agreement Section 13.16.

¹⁵¹ Exhibit 18 to Initial Application, Asset Purchase Agreement, Section 13.14; *see also* Response to S3-14.

¹⁵² Additional options exist to the Transacting Parties, which commence on the fifth anniversary of the closing date. *See* Asset Purchase Agreement, Sections 13.18 (b)(c) and (d) and in the Prospect CharterCARE Operating Agreement.

¹⁵³ *See* Initial Application, response to Question 1, Exhibit 18 Asset Purchase Agreement, Article VIII.

¹⁵⁴ Interview of Thomas Reardon.

¹⁵⁵ Response to Supplemental Question S4-25.

¹⁵⁶ *Id.*

The term competence can have multiple meanings and connotations. The Attorney General reviewed the relevant competence with a focus on the ability to successfully operate the Newco hospitals after the Proposed Transaction. The central function of operating hospitals is patient care. DOH's review focuses more directly on health services and has identical review criteria regarding this topic;¹⁵⁷ therefore, the Attorney General will rely on and defer to DOH's expertise and experience relating to Prospect's track record for quality services in its other hospitals. Prospect has made several representations about patient care and health services. Specifically, it represents that its hospitals are currently accredited by the Joint Commission and in good standing.¹⁵⁸ The other relevant component to competence in this context is the ability to manage the business side of a hospital. In its fifteen (15) year history, Prospect has acquired eight (8) hospitals, many of which were financially-distressed. During interviews conducted pursuant to the Hospital Conversions Act review, the Attorney General found that Prospect's management team has years of experience in operating community hospitals. Further, as outlined hereafter, the Attorney General's expert has found that the finances of Prospect are in line with companies acquiring distressed community hospitals which appears to be a signal of some level of success.

4. Standing in the Community

The issue of standing in the community is interrelated with overlapping inquiries to the question of character. Overall, given the totality of the circumstances, the Attorney General finds that Prospect's character, commitment, competence, and standing in the community meet the threshold and are satisfactory for the purposes of a Hospital Conversions Act review.

¹⁵⁷ See R.I. Gen. Laws § 23-17.14-8 (b)(1).

¹⁵⁸ See Initial Application Response to Question 64.

H. MISCELLANEOUS

In addition to the provisions outlined above, there are also a few additional requirements of the Hospital Conversions Act that do not fit into any of the categories outlined above. They are outlined individually below.

1. Rhode Island Nonprofit Corporations Act

The Hospital Conversions Act requires that a hospital conversion comply with the Rhode Island Nonprofit Corporations Act. R.I. Gen. Laws §§ 7-6-1, *et. seq.* (the "Nonprofit Act").¹⁵⁹ The Nonprofit Act is comprised of 108 sections. Many of these sections discuss the governance requirements of non-profit corporations. First, the Attorney General makes no finding regarding whether the Prospect entities, as they are all for profit entities and the Nonprofit Act does not apply to them. With respect to CCHP, the Proposed Transaction is permissible under the Non-Profit Corporation Act and the Proposed Transaction was approved by the CCHP Board who has been represented by legal counsel throughout these proceedings and during negotiations.¹⁶⁰ Based upon the above, the Attorney General finds that this condition has been satisfied.

2. Right of First Refusal

The Hospital Conversions Act requires review of whether the Proposed Transaction involves a right of first refusal to repurchase the assets. *See* R.I. Gen Laws § 23-17.14-7 (c)(27). The Asset Purchase Agreement contains no such right of first refusal to CCHP to repurchase the assets being acquired by Prospect.

¹⁵⁹ *See* R.I. Gen Laws § 23-17.14-7 (c)(19).

¹⁶⁰ *See* R.I. Gen Laws §§ 7-6-5 and 7-6-49; Initial Application Response to Question 1; Response to Supplemental Question S3-17.

3. Control Premium

With regard to the one remaining review provision of the Hospital Conversions Act, there is no control premium included in the Proposed Transaction. R.I. Gen. Laws § 23-17.14-7(c)(29).

4. Additional Issues

There are four issues that the Attorney General will address in addition to the enumerated review criteria that have come to light during the review process.

a. Prospect's Ability to Fund Transaction

The Attorney General's expert, Carris has reviewed the financial information provided by Prospect and has concluded as follows:

Does Prospect have the Resources to Finance this Transaction as Well as Ongoing Commitments to CCHP?

As reported in Prospect's 2013 audited financial statements, Prospect generated approximately \$80 million in operating income for the year ended September 30, 2013. Operating revenues totaled \$713.6 million and operating expenses totaled \$633.6 million. Earnings before interest, taxes, depreciation and amortization (EBITDA) for 2013 totaled \$98.7 million. Prospect's audited financial statements show consistent growth and profitability from 2010 through 2013.

Prospect's September 2013 balance sheet shows cash & equivalents of \$86.3 million, total current assets of \$241.7 million and total assets of \$578.9 million. For liabilities, the financial statements report current liabilities of \$148.2 million, total liabilities of \$610 million and net equity of (\$32.0) million. The current ratio for 2013 was 1.63.

In 2013, Prospect distributed \$88 million to its primary investor. Prospect's management and representatives have given assurances that this was a one-time event and that there are no plans to make a similar distribution in the foreseeable future.

Prospect will fund this transaction out of existing cash and an available line of credit. Based on the APA, Prospect will fund \$45 million at closing and an additional \$12.5 million in year one (one-fourth of \$50 million), for a total of \$57.5 million in the first 12 months.

During various meetings, representatives of Prospect's senior leadership team made further representations that the financial status of Prospect permits it to fund the closing of the transaction and also meet the ongoing capital commitments. The parties also gave assurances that the \$50 million capital commitment has been disclosed and agreed to by Prospect's board of

directors and lenders. Assurances were also given that the \$50 million is being funded out of available liquidity and will not violate any of Prospect's existing loan covenants.

Based on the financial documentation submitted by Prospect and the representations of its management and other representatives, the company has the financial resources to fund this transaction, including the \$50 million in long-term capital commitments. Prospect capacity to meet future capital commitments could be constrained if the company enters into other transactions that (in total) exceed its available financial resources and/or its ability to access capital. Future commitments could also be constrained by a deterioration of financial performance or a material change in market conditions.

Given the opinion of Carris, absent any exigent circumstances or, as aptly pointed out by Carris, any acquisition plan or other commitments that would over-extend Prospect, it currently appears to have the financial ability to fund the Proposed Transaction.

b. Mandatory Conditions

Among the changes to the Hospital Conversions Act in 2012 was the imposition of mandatory conditions on for-profit acquirors. *See* R.I. Gen. Laws § 23-17.14-28. The Legislature crafted eight (8) such conditions for DOH with a wide variety of topics. *See* R.I. Gen. Laws § 23-17.14-28(b). As for the Attorney General, one such condition was imposed, namely: "the acquiror's adherence to a minimum investment to protect the assets, financial health, and well-being of the new hospital and for community benefit." *See* R.I. Gen. Laws § 23-17.14-28(c). With regard to these pre-determined conditions, if either Department deems them "not appropriate or desirable in a particular conversion," such Department must include rationale for not including the condition. *See* R.I. Gen. Laws § 23-17.14-28(b) and (c). The Attorney General finds that to the extent that such condition is applicable, the Transacting Parties have satisfied it by the obligations contained in the Asset Purchase Agreement and no additional condition will be added other than those already imposed.

c. Use of Monitor

Another change to the Hospital Conversions Act in 2012 was to include a requirement that a for-profit acquiror file reports for a three (3) year period. *See* R.I. Gen. Laws § 23-17.14-28(d)(1). In addition, such section requires that the Attorney General and DOH “monitor, assess and evaluate the acquiror's compliance with all of the conditions of approval.” *See* R.I. Gen. Laws § 23-17.14-28(d)(2). Further, there shall be an annual review of “the impact of the conversion on health care costs and services within the communities served.” *Id.* The costs of these reviews will be paid by the acquiror and placed into escrow during the monitoring period. *See* R.I. Gen. Laws § 23-17.14-28(d)(3). No Initial Application can be approved until an agreement has been executed with the Attorney General and the Director of the DOH for the payment of reasonable costs for such review. *Id.* The Transacting Parties have executed a Reimbursement Agreement dated, January 24, 2014. The Attorney General’s conditions will be monitored by an individual or entity chosen by the Attorney General and paid for by Prospect. An agreement with such monitor and Prospect will be drafted and executed prior to the Closing on the Proposed Transaction.

d. Health Planning

As during the course of any HCA review, there has been some discussion in the health care community about the continuing role of CCHP in the Rhode Island health care system, post-acquisition, particularly since the Existing Hospitals will become for profit entities. The Attorney General notes that the Hospital Conversions Act in its present form is not a health planning tool. Although there has been much talk about creating a so-called state health plan, that goal has not yet been reached. Therefore, it is not the position of the Attorney General to

use the Hospital Conversion Act to effectuate health planning that should be properly done elsewhere with input from a variety of groups. The Hospital Conversion Act contains a set of criteria, it does not allow for the Attorney General to opt for a different model or to suggest a different suitor for CCHP. However, the question to be answered by this review is whether this particular transaction meets the criteria of the Hospital Conversions Act.

V. CONCLUSION

While the Act is no guarantee that a hospital will not be sold to an entity with a different plan in mind than what the surrounding community may value, the Act at the very least provides a minimum framework for review of a hospital transaction. The Attorney General hopes that Prospect CharterCARE, LLC becomes everything it has promised to be for the citizens of Rhode Island. As with all of the Attorney General's reviews pursuant to the Hospital Conversions Act, this Decision represents this Department's best efforts and a careful review of the Proposed Transaction given the information available.

Wherefore, based upon the information provided above in this Decision, the Proposed Transaction is **APPROVED WITH CONDITIONS**. These conditions are outlined below.

VI. CONDITIONS

1. There shall be no board or officer overlap between or among the CCHP Foundation, CCHP, and Heritage Hospitals.
2. There shall be no board or officer overlap between or among the Prospect entities and the CCHP Foundation, CCHP and the Heritage Hospitals.
3. Complete appointment of board members for Prospect CharterCARE, LLC and its Subsidiaries, and for CCHP Foundation, CCHP and Heritage Hospitals, within sixty (60) days after the close of the transaction, and provide final notice to the Attorney General of the identities of such appointees, along with a description of their experience to serve as board members.
4. For the next three (3) years following the close of the transaction, provide the Attorney General the names, addresses and affiliations of all members appointed to any board of

Prospect CharterCARE, LLC and its Subsidiaries, CCHP Foundation, CCHP and the Heritage Hospitals.

5. For the next three (3) years following the close of the transaction, Prospect CharterCARE, LLC and its Subsidiaries, and CCHP Foundation, CCHP and the Heritage Hospitals shall provide corporate documents to the Attorney General to evidence compliance regarding board composition as required by this Decision. In addition, the aforementioned entities shall provide to the Attorney General any proposed amendments to their corporate documents 30 days prior to amendment.
6. For the next three (3) years following the close of the transaction, upon any change in what was represented by the Transacting Parties in the Initial Application and supplemental responses in connection with the approval of this transaction, reasonable prior notice shall be provided to the Attorney General.
7. For the next three (3) years following the close of the transaction, provide reasonable prior notice to the Attorney General identifying any post closing contracts between any of the Transacting Parties and any of the current officers, directors, board members or senior management.
8. That (a) a proposed opening balance sheet for the CCHP Foundation and the Heritage Hospitals as of the close of the transaction identifying the source and detail of all charitable assets to be transferred to the CCHP Foundation be provided to the Attorney General promptly following the close of the transaction; (b) a proposed *Cy Pres* petition satisfactory to the Attorney General be prepared promptly following the close of the transaction allowing certain charitable assets to be transferred to the CCHP Foundation and requesting that other charitable assets remain with the Heritage Hospitals, in each case for disbursement in accordance with donor intent, with such proposed modifications as agreed to by the Attorney General, and (c) the approved *Cy Pres* petition be filed with the Rhode Island Superior Court.
9. That the transaction be implemented as outlined in the Initial Application, including all Exhibits and Supplemental Responses.
10. That all unexecuted agreements provided in support of the Initial Application and Supplemental Responses be executed by the Transacting Parties in the form and substance presented.
11. Promptly after the 180th day following the close of the transaction, brief in an interview with the Attorney General the terms of the final Prospect CharterCARE, LLC's Strategic Plan adopted by the Board. In the event the Attorney General requires a copy of such plan, Prospect CharterCARE, LLC may seek a court order protecting the confidentiality thereof.
12. For the next three (3) years following the close of the transaction, provide the Attorney General with a copy of any notices provided to or received by a party under the Asset

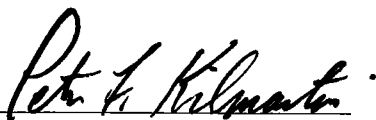
Purchase Agreement.


13. For the next three (3) years following the close of the transaction, provide the Attorney General with a copy of any notice(s) out of the ordinary course; e.g., Office of Inspector General, Securities and Exchange Commission, Internal Revenue Service and Centers for Medicare and Medicare Services, received by the Transacting Parties from any regulatory body.
14. That the Transacting Parties comply with applicable state tax laws.
15. All CCHP entities being acquired (e.g. not CCHP, CCHP Foundation or the Heritage Hospitals) shall be wound down and dissolved and all necessary documents must be filed with applicable state agencies, including, but not limited to the Secretary of State and the Division of Taxation.
16. That all costs and expenses due from the Transacting Parties pursuant to the Reimbursement Agreement dated, January 24, 2014, be paid in full prior to close of the transaction.
17. That PMH guarantee the full amount of Prospect East's financial obligations contained in the Asset Purchase Agreement pursuant to the form of guaranty approved by the Attorney General.
18. Prospect CharterCARE, LLC shall report annually to the Attorney General on the proposed form submitted to the Attorney General concerning the funding of its routine and non-routine capital commitments under the Asset Purchase Agreement until the long term capital commitment as defined in the Asset Purchase Agreement has been satisfied.
19. That Prospect provide information on a timely basis requested by the Attorney General to determine its compliance with the Asset Purchase Agreement and the Conditions of this Decision.
20. The Transacting Parties shall enter into an amendment to the Reimbursement Agreement dated January 24, 2014 for retention by the Attorney General of expert(s) to assist the Attorney General until all matters relating to the approval of the Initial Application are fully and finally resolved.
21. That Prospect complies with the Reimbursement Agreement dated, January 24, 2014, for retention by the Attorney General of an expert to assist the Attorney General with enforcing compliance with these Conditions. Further, Prospect shall enter into an additional agreement outlining the terms of its obligations regarding cooperation with the Attorney General and any expert retained to assist the Attorney General with enforcing compliance with these Conditions.

22. That Prospect CharterCARE, LLC and its affiliates shall provide any transition services to CCHP Foundation, CCHP and the Heritage Hospitals pursuant to separate agreements, terminable by the CCHP affiliate at will and provided by the Prospect affiliate at cost.
23. For the next three (3) years following the close of the transaction, notify the Attorney General of any actions out of the ordinary course taken in connection with the SJHSRI pension or any material changes in its operation and/or structure.
24. For the next three (3) years following the close of the transaction, provide the Attorney General notice of a proposed change of ownership of Prospect East or PMH.
25. For the next three (3) years following the close of the transaction, provide CCHP Foundation, CCHP and the Heritage Hospitals with a right of first refusal to match the price to acquire any asset comprised of a line of business or real estate of Prospect CharterCARE, LLC and its Subsidiaries that it proposes to sell.
26. For the next three (3) years following the close of the transaction to the extent there is a sale of any Purchased Assets comprised of a line of business or real estate, the associated sale proceeds shall remain within Prospect CharterCARE, LLC for the benefit of the operation of the Newco hospitals.
27. The Transacting Parties shall provide a Tax Certificate from the State of Rhode Island that the transaction is proper under state tax laws prior to closing.
28. In connection with a sale of assets as defined in paragraph 26 above, if at the time of such a sale Prospect CharterCARE, LLC's membership interest has been diluted to less than fifteen (15%) percent, then fifteen (15%) of the net sales proceeds from the transaction shall go to CCHP to restore its membership interest up to fifteen (15%) percent. Said monies shall be credited against any future member distributions made to CCHP by Prospect CharterCARE, LLC.
29. Anyone subject to the Ethics Commission shall not be eligible to be a board member.
30. Within three (3) years of the closing of this Transaction, provide notice to the Attorney General of any complaints received from OIG, CMS or state agencies.

All of the above Conditions are directly related to the proposed conversion. The Attorney General's APPROVAL WITH CONDITIONS is contingent upon the satisfaction of the Conditions. The Proposed Transaction shall not take place until Conditions 10, 14, 16, 17, 20, 21 and 27 have been satisfied. The Attorney General shall enforce compliance with these

Conditions pursuant to the Hospital Conversions Act including R.I. Gen. Laws § 23-17.14-30.


Peter F. Kilmartin
Attorney General
State of Rhode Island


Genevieve M. Martin
Assistant Attorney General

NOTICE OF APPELLATE RIGHTS

Under the Hospital Conversions Act, this decision constitutes a final order of the Department of Attorney General. Pursuant to R.I. Gen. Laws § 23-17.14-34, any transacting party aggrieved by a final order of the Attorney General under this chapter may seek judicial review by original action filed in the Superior Court.

CERTIFICATION

I hereby certify that on this 16th day of May, 2014, a true copy of this Decision was sent via electronic and first class mail to counsel for the Transacting Parties:

Patricia K. Rocha, Esq.
Adler Pollack & Sheehan
One Citizens Plaza -8th Floor
Providence, RI 02903

W. Mark Russo, Esq.
Ferrucci Russo, P.C.
55 Pine Street- 4th Floor
Providence, RI 02903

