

**In the United States Court of Appeals
for the Third Circuit**

No. 21-2603

FEDERAL TRADE COMMISSION,
Plaintiff-Appellee,

- v. -

HACKENSACK MERIDIAN HEALTH, INC. AND
ENGLEWOOD HEALTHCARE FOUNDATION,
Defendants-Appellants.

**On Appeal from the United States District Court for the
District of New Jersey, No. 2:20-cv-18140
(Hon. John Michael Vazquez, U.S.D.J.)**

**BRIEF OF NEW JERSEY HOSPITAL ASSOCIATION
AS AMICUS CURIAE**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 29(a)(4)(A) and Third Circuit L.A.R. 26.1, *amicus curiae* New Jersey Hospital Association makes the following disclosure:

Amicus Curiae New Jersey Hospital Association has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

New Jersey Hospital Association is not aware of any publicly held corporation not a party to this appeal that has a financial interest in the outcome of this proceeding.

Dated: September 22, 2021

s/ Richard Hernandez _____

Richard Hernandez

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Hospital Association*

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STATEMENT OF IDENTIFICATION AND INTEREST

Since 1918, the New Jersey Hospital Association (“NJHA”) has actively worked with its nearly 400 member healthcare organizations, including all 71 New Jersey acute care hospitals, to help them provide accessible, affordable and quality healthcare to New Jersey communities and patients. NJHA accomplishes its mission by providing leadership in policy and data analysis, education, community outreach, and by serving as an advocate to elected officials and tribunals at the state and federal levels on behalf of New Jersey’s acute care hospitals. NJHA also participates in the development of New Jersey policy at the legislative, agency and judicial levels and recommends improvements to enhance the quality, safety, and value of healthcare provided to patients throughout New Jersey.

Given NJHA’s mission to safeguard and improve patients’ access to quality and affordable healthcare, the NJHA has an interest in supporting hospital transactions that benefit New Jersey’s patients and communities, as determined by New Jersey’s extensive regulatory evaluation process. These state regulatory processes invite participation from all stakeholders in the New Jersey healthcare market, including the public, and represent a robust and independent evaluation of potential healthcare transactions by those agencies that are in the best position to know. In the instant case, the District Court’s issuance of a preliminary injunction preventing the proposed transaction between Hackensack Meridian Health, Inc. and

Englewood Healthcare Foundation failed to give due weight to these critical state regulatory evaluation processes. Accordingly, *amicus curiae* NJHA respectfully submits this brief by motion pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure in support of Appellants’ position that the District Court’s judgment failed to take into account several critical considerations.¹

SUMMARY OF ARGUMENT

This is an action by the Federal Trade Commission (the “FTC”) seeking to obtain a preliminary injunction blocking a proposed merger between two New Jersey-based nonprofit health systems, Appellants Hackensack Meridian Health, Inc. (“HMH”) and Englewood Healthcare Foundation, d/b/a Englewood Health (“Englewood,” and, collectively, “Appellants”) on antitrust grounds. This amicus brief will focus on two issues, which NJHA respectfully contends were not properly considered by the FTC and the District Court below: (1) New Jersey’s robust regulatory framework for evaluating nonprofit hospital transactions that resulted in approvals of this transaction; and (2) important public policy benefits of hospital mergers that result in strong hospitals and health systems available to provide high

¹ Pursuant to Rule 29(a)(4)(E) of the Federal Rules of Appellate Procedure, no party’s counsel other than the undersigned counsel for the NJHA authored this brief in whole or in part. No party, party’s counsel, or person contributed money to fund the preparation of this brief. McCarter & English LLP has represented Englewood Healthcare Foundation and Hackensack Meridian Health, Inc., but is not counsel to either party in the above-captioned matter.

quality services to New Jersey’s patients and communities.

First, this brief will address New Jersey’s two regulatory processes applicable to the evaluation of any proposed transaction that would result in the acquisition of a nonprofit acute care hospital by another entity. These processes – which are overseen by the New Jersey Department of Health and the New Jersey Attorney General’s Office, the state agencies that are responsible for health care in New Jersey and the protection of New Jersey’s charitable assets, respectively -- principally focus on determining whether a particular transaction is in the “public interest.” Notwithstanding these agencies’ well-supported findings and decisions that this transaction is in the public interest of New Jersey patients and communities, the FTC and the District Court substituted their own judgments based on the incorrect application of the federal antitrust laws² – thereby effectively undermining the purpose of these New Jersey processes and ignoring or disregarding the stakeholders who will benefit from this transaction.

Second, this brief will address the important public policy benefits to New Jersey patients and communities of hospital transactions in the New Jersey

² Based on NJHA’s review of the District Court’s heavily-redacted opinion, and its understanding of the arguments and facts asserted in Appellants’ opening brief, NJHA agrees that fundamental errors were made by the District Court in defining the relevant geographic market, finding that the transaction would be likely to substantially lessen competition, and failing to properly consider the transaction’s procompetitive benefits.

healthcare market. The District Court failed to consider benefits such as the development of innovative diagnostic and treatment protocols by integrated health systems which enables them to better respond to the needs of the communities they serve (including in public health emergencies such as the COVID-19 pandemic) and investments in staff, facilities and technology which expand the availability of quality care to a broader patient population. These important public policy considerations should have been considered by the District Court in its analysis of this transaction.

ARGUMENT

I. DUE DEFERENCE SHOULD BE AFFORDED TO THE THOROUGH REVIEW PROCESSES AND WELL-REASONED RECOMMENDATIONS OF NEW JERSEY'S DEPARTMENT OF HEALTH AND ATTORNEY GENERAL'S OFFICE.

New Jersey's statutory and regulatory framework for reviewing mergers or other changes of ownership of New Jersey's nonprofit hospitals provides ample safeguards – and its State regulatory agencies, in turn, act as diligent gatekeepers – to protect and police against any deterioration in the accessibility, availability and quality of hospital services in New Jersey. The FTC and the federal courts should accord due deference to the role of the New Jersey State regulatory agencies that are responsible for the health of New Jersey's citizens, the strength of New Jersey's hospitals and health systems, and the preservation of New Jersey's nonprofit hospital assets in their review of these important transactions, rather than disregarding these

extensive regulatory review processes as they have done in the instant action.

A. Applicable New Jersey Regulatory Framework

The State of New Jersey has implemented a robust statutory and regulatory framework for reviewing nonprofit hospital transactions, such as the merger between HMH and Englewood, in the form of the Community Health Care Assets Protection Act (CHAPA), P. L. 2000, c. 143 (N.J.S.A. 26:2H-7.10 et seq.). CHAPA specifically requires the New Jersey Attorney General’s Office, in consultation with the Commissioner of the Department of Health (“DOH”), to evaluate any transaction that would result in the acquisition of a nonprofit hospital by another New Jersey nonprofit corporation or by any for-profit or out-of-state entity, in order to determine if the acquisition is in the public interest. This determination may only be made based upon a finding that “appropriate steps have been taken to safeguard the value of the charitable assets of the hospital and to ensure that any proceeds from the proposed acquisition are irrevocably dedicated for appropriate charitable health care purposes.” *See* N.J.S.A. 26:2H-7.11(b). This process also requires a determination that the proposed transaction is “not likely to result in the deterioration of the quality, availability or accessibility of health care services in the affected communities.” *Id.* Stated differently, CHAPA is focused on preserving and protecting the health care services available to the communities in which the subject hospitals are located.

CHAPA defines the Attorney General’s role in transactions involving the

transfer of nonprofit hospitals. Specifically, CHAPA authorizes the Attorney General to review a proposed nonprofit hospital transaction, ascertain whether it is in the public interest, and thereafter advise the Superior Court of New Jersey, in an action to approve the transaction, “whether he supports or opposes the proposed acquisition, with or without specific modifications, and the basis for that position.” N.J.S.A. 26:2H-7.11(l); *see also* Am.App.12 (“It is the Attorney General’s duty to analyze the Proposed Transaction to determine its impact on the public interest and to ensure that the process is open to public comment and scrutiny in order to maximize the public’s confidence in the final decision.”).

In addition to the Attorney General’s review, the DOH is also tasked with analyzing the particular transaction to determine that “the proposed transaction is not likely to result in the deterioration of the quality, availability or accessibility of health care services in the affected communities.” N.J.S.A. 26:2H-7.11(b). The DOH is dedicated to upholding the principle “that access to healthcare services of the highest quality are of vital concern to the public health” by focusing its review of transactions on maintaining quality of care throughout the State. N.J.A.C. 8:33-1.2. To this end, the DOH’s review is intended to guard against transactions that are “harmful to the public interest” and approve those that “protect and promote the health of the inhabitants of the State.” *Id.* The DOH is responsible for the health of New Jersey citizens and evaluates whether proposed transactions are appropriate and

beneficial based on its evaluation of the healthcare needs in the State. This entails consideration of factors such as:

- “The availability of facilities or services which may serve as alternatives or substitutes,” N.J.A.C. 8:33-4.9(a)(1);
- “Availability of similar services at other institutions in or near the service area,” N.J.A.C. 8:33-4.10(b)(5); and
- “Provider’s historical and projected market shares,” N.J.A.C. 8:33-4.10(b)(5).

The DOH requires the submission of a licensure application for any transfer of ownership or membership of a licensed acute care hospital such as the instant transaction. This application requires the parties to provide detailed information about the proposed new owner and its track record of operating healthcare facilities for review by the DOH.³

B. Attorney General and DOH Review and Assessment

Here, after an extensive review of the proposed transaction – during which HMH and Englewood each provided a great deal of information regarding the synergies between their health systems and the anticipated benefits of the merger to the local communities, and a public hearing regarding the transaction in the Englewood service area, the Attorney General, in accordance with CHAPA, issued a well-reasoned 33-page recommendation letter (the “Attorney General’s

³ A copy of the CN-7 application can be found here:

<https://www.nj.gov/health/forms/cn-7.pdf>.

Recommendation Letter”) to the Superior Court of New Jersey, Chancery Division,⁴ categorically supporting the transaction as beneficial to, and in furtherance of, the public interest. *See generally* Am.App.1. The Attorney General’s Recommendation Letter documented the factual and legal bases supporting this determination (Am.App.14 – Am.App.31), including its finding that:

HMH has made a number of commitments to enhance Englewood Hospital’s ability to provide health care services, including funding strategic capital projects enhancing Englewood Hospital’s charitable mission and ability to provide key health care services to the community. Thus, we find that it is manifest under the circumstances of this transaction that the monetary and nonmonetary benefits to be conferred on Englewood Hospital by affiliating with HMH in accordance with the Agreement will be used for appropriate charitable health care purposes and will enhance Englewood Hospital’s ability to provide health care services”

Am.App.31 (emphasis added). The AG’s office also found that, that based on its “examination of the activities of the fiduciaries in negotiating the Agreement, as well as [its] review of the evidence provided of the substantial economic and non-economic benefits to be derived by Englewood from the Proposed Transaction, the Englewood Board was cognizant of the fiscal risks and benefits of the Proposed Transaction in furtherance of their fiduciary duties.” Am.App.29.

⁴ Upon completion of the AG’s Office’s review and receipt of its recommendations, CHAPA authorizes the New Jersey Superior Court, Chancery Division to review and approve transactions involving nonprofit hospitals in accordance with the Chancery Division’s general supervisory jurisdiction over nonprofit corporations.

The Commissioner of DOH likewise issued a letter (“DOH Commissioner’s Letter”) noting its review of the proposed transaction and its participation in the public hearing, and confirming that it “*does not believe the proposed transaction will result in the deterioration of the quality, availability or accessibility of health care in the impacted communities.*” See Am.App.35 (emphasis added).

The Superior Court of Bergen County approved the proposed transaction in a judgment dated December 23, 2020, thereby adopting the findings of the Attorney General’s Office and the Commissioner of DOH. Critically, neither the Attorney General’s Recommendation Letter nor the DOH Commissioner’s Letter nor the Superior Court’s decision expressed any concerns regarding the consolidation of these two health systems or the resulting impact of such consolidation on the quality, availability or accessibility of health care services in the affected communities.

NJHA respectfully submits that disregarding or discounting New Jersey’s extensive processes and the well-supported conclusions of its trusted State agencies must be discouraged. Given the roles of the DOH and AG’s Office as guardians of the public interest, their findings and conclusions should be respected and afforded substantial deference both by the FTC and our Courts. See, e.g., *Hyland v. Kirkman*, 157 N.J. Super. 565, 577 (Ch. Div. 1978); *IFA Ins. Co. v. New Jersey Dep’t of Ins.*, 195 N.J. Super. 200, 208 (App. Div. 1984). Indeed, with all due respect given, the DOH and the Attorney General’s Office are closer to, and more informed about,

New Jersey's health care system and needs than the FTC. The DOH Commissioner and Attorney General are qualified to review and evaluate whether a proposed hospital merger is (or is not) beneficial to patients, communities and other stakeholders in New Jersey, and whether, from a practical perspective, a given transaction will improve (or lead to deterioration in) the quality, availability and accessibility of healthcare services. In the instant transaction, these agencies and the New Jersey Superior Court determined that this transaction was in the public interest.⁵

NJHA respectfully submits that these New Jersey agencies and their rigorous processes for evaluating transactions such as the proposed HMH-Englewood merger, must be afforded substantial deference and respect, and that the FTC should be dissuaded from substituting the judgment of these responsible and diligent State agencies with its own.

II. THE DISTRICT COURT DID NOT PROPERLY CONSIDER THE IMPORTANT PUBLIC POLICY BENEFITS SUPPORTING APPROVAL OF THE TYPE OF MERGER PROPOSED BY APPELLANTS.

In recent years, nonprofit community hospitals have faced increasing

⁵ Moreover, the District Court ignored the Attorney General's explicit finding that HMH "has made a number of commitments to enhance Englewood Hospital's ability to provide health care services," opting instead to dismiss these commitments as largely inconsequential. *See, e.g., Fed. Trade Comm'n v. Hackensack Meridian Health, Inc. et al.*, Civil Action No. 2:20-cv-18140-JMV-JBC, at ECF No. 368, pp. 23-24, 57-58.

challenges in providing high quality services to their communities, including, among others, reductions in payments from governmental programs, increased regulation, and the cost of information technology systems and sophisticated medical equipment. These challenges have caused many New Jersey nonprofit hospitals to pursue affiliations with larger New Jersey health systems to help them address operational and financial challenges and provide clinical and financial resources to improve quality of care and accessibility and position them to be able to provide services to their communities for years to come.

Patients have experienced improvements in the quality of, and access to, care as a result of New Jersey's hospital mergers. Benefits of scale, an expanded capability to pursue innovative diagnostic and treatment models, and the ability to provide higher quality care to a larger patient population are all benefits New Jersey patients experience when hospital mergers that are beneficial to the community are permitted to proceed. The District Court's decision did not give appropriate weight to these factors, which, as discussed above, were evaluated by the DOH and the AG's Office as part of their review of the proposed transaction.

A. Benefits of Scale Should be Taken Into Consideration When Evaluating Hospital Mergers.

Integrated health systems and community hospitals are invaluable resources for their communities and patients every day of the year, and are a critical and essential resource during public health emergencies like the ongoing COVID-19

pandemic. During this pandemic, New Jersey's health systems were at the forefront of developing new and more efficient testing, more effective treatment protocols, procuring necessary equipment, and efficiently implementing wide-scale vaccination efforts. These initiatives and responses were possible only because health systems like HMH had the size and resources to execute them. Bergen County hospitals, including HMH's hospitals and Englewood, were at the epicenter of this pandemic in the spring of 2020 and their truly heroic efforts helped and continue to help New Jersey get through the pandemic.⁶

Aside from a public health emergency, New Jersey patients expect and need state-of-the-art health care, and hospitals must be permitted to engage in transactions that permit them to invest in the staff, facilities and technology needed to provide that care. Currently, New Jersey is facing both a nursing and physician shortage. Permitting hospitals to merge allows for the movement of staff to meet the changing needs of the communities they serve in real time.

In addition, transactions like the one proposed by Appellants enable the funding and support of innovation that would not be possible without increased

⁶ See HMH 2020 Annual Report ("2020 Annual Report"), found here: <https://www.hackensackmeridianhealth.org/wp-content/uploads/2021/08/2020-HMH-Annual-Report.pdf?x56982>, at 10-15, discussing HMH's contribution to New Jersey's Covid-19 response.

scale.⁷ Over the past 2-3 years, HMH developed its Center for Discovery and Innovation, which, among other things, developed a rapid COVID test early in the pandemic to address shortfalls in the availability and speed of statewide testing.⁸ HMH also established the first new medical school in New Jersey in decades to help address the significant physician shortage in New Jersey.⁹ This new medical school just graduated its first class, many of whom will stay and practice in New Jersey communities.¹⁰ The benefits of scale and the innovation it enables should be given great weight in evaluating proposed hospital transactions, and the DOH and AG's Office, are best positioned to evaluate a proposed merger's ability to address the healthcare needs of New Jersey's citizens and communities.

B. Transactions Similar to Appellants' Proposed Transaction Result in the Expansion of High Quality Care to a Larger Population.

Allowing properly evaluated hospital transactions to proceed increases the likelihood that smaller hospitals and healthcare systems are able to benefit from the talents, processes, and protocols developed, funded and implemented by New

⁷ See Am.App.49 – Am.App.50 (CHAPA Hr'g Tr.) at 11:25-12:5 (discussing increased access to healthcare and innovation in advanced medical care that would result from the financial component of the Appellants' proposed transaction).

⁸ See 2020 Annual Report at 15.

⁹ See HMH 2018 Annual Report, which can be found here: https://www.hackensackmeridianhealth.org/wp-content/uploads/2019/12/PP3094_HMHAnnualReport_FINAL_LowRes5.pdf?x56982, at 12.

¹⁰ See 2020 Annual Report at 20.

Jersey's larger health systems. One of the other public policy benefits of the scale of large integrated delivery systems such as HMH, is that such systems have the resources to develop and fund necessary tertiary and quaternary hospital services that are needed by New Jersey patients. The development of such services by New Jersey's leading integrated delivery systems permits New Jersey patients to receive those services in-state and closer to their homes.¹¹ The increased scale and resources of an integrated health system such as HMH permits the system to respond to federal governmental initiatives designed to increase the quality and reduce the cost of care, such as value-based payment programs and accountable care organizations. These models require significant investments and staffing, along with the capacity to assume risk, to redesign care that many community hospitals don't have and are barriers to participation. These governmental initiatives and the associated costs of participating in them have been one of the drivers of hospital consolidation in recent years. *See* Certification of Cathleen Bennett, submitted herewith, at ¶ 7. Englewood's Board of Trustees recognized this need and "unanimously agreed that it should seek a merger partner to address [its] competitive weaknesses and improve its quality of care." Appellants' Br. at 11.

¹¹ *See* Am.App.49 – Am.App.50 (CHAPA Hr'g Tr.) at 11:5-12:25 (discussing expanded care Englewood would be able to provide to patients if the transaction is permitted to proceed, including the expansion of tertiary and quaternary health care services offered to New Jersey patients and communities).

The CHAPA process reviewed Appellants' proposed initiatives aimed at improving the quality of patient care in Appellants' patient pool – including Appellants' proposed effort to develop or enhance various service lines in the Englewood service area, develop certain clinical programs, and institute charity care policies that provide similar or greater benefit to the community as those that currently exist – and determined it was appropriate to support the transaction as proposed without modification. *See Am.App.4.*

CONCLUSION

For the foregoing reasons, the District Court should have given greater weight to the analysis and conclusions of the New Jersey governmental agencies tasked with evaluating nonprofit hospital mergers. The New Jersey Attorney General's Office and the Department of Health carefully considered and reviewed the Appellants' proposed transaction and determined it met New Jersey's statutory and regulatory requirements, maintained a competitive healthcare market, and would be a positive development for the patients and communities served by the Appellants' hospitals. The District Court also failed to properly consider the important healthcare public policy reasons that support permitting hospital transactions that deliver benefits to the New Jersey patients and communities they serve.

Respectfully Submitted,

s/ Richard Hernandez _____

Richard Hernandez

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Hospital Association

CERTIFICATE OF BAR MEMBERSHIP

Pursuant to Third Circuit Local Appellate Rule 46.1, I, Richard Hernandez certify that I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit. Ashley Turner is also a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.

Dated: September 22, 2021

By: /s/ Richard Hernandez
Richard Hernandez
Counsel for *Amicus Curiae*

COMBINED CERTIFICATIONS

I certify that this brief complies with the type-volume limitation excluding the parts of the brief pursuant to Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 3,442 words, excluding the parts of the brief exempt by Federal Rule of Appellate Procedure 32(f). This brief also complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in proportionally spaced typeface using Microsoft Office Word 2016 in 14-point Times New Roman font.

Pursuant to Third Circuit Local Appellate Rule 31.1(c), I certify that the text of this electronic brief is identical to the text of the paper copies and that I have scanned the PDF version of this brief using McAfee VirusScan Enterprise version 8.8 and no virus was found.

Date: September 22, 2021

s/ Richard Hernandez

Richard Hernandez
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CERTIFICATE OF SERVICE

I certify that on September 22, 2021, I caused the foregoing brief to be electronically filed through the ECF system of the United States Court of Appeals for the Third Circuit, which caused counsel of record to be served by ECF.

Date: September 22, 2021

s/ Richard Hernandez _____

Richard Hernandez

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*Attorneys for Amicus Curiae New Jersey
Hospital Association*

**In the United States Court of Appeals
for the Third Circuit**

No. 21-2603

FEDERAL TRADE COMMISSION,
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- v. -

HACKENSACK MERIDIAN HEALTH, INC. AND
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Defendants-Appellants.

**On Appeal from the United States District Court for the
District of New Jersey, No. 2:20-cv-18140
(Hon. John Michael Vazquez, U.S.D.J.)**

CERTIFICATION OF CATHLEEN D. BENNETT

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I, CATHLEEN D. BENNETT, of full age, certify:

1. I am the President and Chief Executive Officer for the New Jersey Hospital Association (“NJHA”), a not-for-profit trade association organized under the laws of the State of New Jersey, which is located at 760 Alexander Road, Princeton, New Jersey 08534. I am personally familiar with the facts set forth herein. I submit this certification in support of NJHA’s motion for leave to appear and participate in the above-captioned matter as *amicus curiae*.

2. NJHA is a not-for-profit trade association established in 1918 and comprised of hospitals and other healthcare organizations throughout the State of New Jersey.

3. NJHA’s membership consists of nearly 400 member hospitals, health systems, nursing homes, home health agencies, hospice providers and other healthcare related businesses and education institutions statewide, including all of New Jersey’s acute care hospitals.

4. NJHA provides leadership in policy and data analysis, education, community outreach, and by serving as an advocate to elected officials and tribunals at the state and federal levels on behalf of New Jersey’s acute care hospitals.

5. NJHA also participates in the development of New Jersey policy at the legislative, agency and judicial levels and recommends improvements to enhance

the quality, safety, and value of healthcare provided to patients throughout New Jersey.

6. Given NJHA's mission to safeguard and improve patients' access to quality and affordable healthcare, NJHA has an interest in supporting hospital transactions that benefit New Jersey's patients and communities, as determined by New Jersey's extensive regulatory evaluation process.

7. The increased scale and resources of an integrated health system permits the system to respond to federal governmental initiatives designed to increase the quality and reduce the cost of care, such as value-based payment programs and accountable care organizations. These models require significant investments and staffing, along with the capacity to assume risk, to redesign care that many community hospitals don't have and are barriers to participation. These governmental initiatives and the associated costs of participating in them have been one of the drivers of hospital consolidation in recent years.

8. Because of the importance of this issue and the likelihood of its impact on New Jersey's healthcare industry, NJHA respectfully requests to participate and be heard as *amicus curiae*.

9. NJHA believes that its participation will not unduly prejudice any party to this litigation nor delay the progression of this case.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Dated: September 22, 2021

Cathleen D. Bennett

**In the United States Court of Appeals
for the Third Circuit**

No. 21-2603

FEDERAL TRADE COMMISSION,
Plaintiff-Appellee,

- v. -

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**AMICUS APPENDIX OF
NEW JERSEY HOSPITAL ASSOCIATION AS *AMICUS CURIAE***

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State of New Jersey

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December 10, 2020

Honorable Edward A. Jerejian, P.J. Ch.
Superior Court of New Jersey
Bergen County Justice Center
10 Main Street
Hackensack, NJ 07601

Re: Proposed Transaction between Englewood Healthcare Foundation, d/b/a Englewood Health and Hackensack Meridian Health, Inc. to Establish Hackensack Meridian Health, Inc. as the Sole Member/Parent Corporation of Englewood Hospital and Medical Center, Inc.

Dear Judge Jerejian:

This Office has completed its examination of the application submitted by Englewood Healthcare Foundation d/b/a Englewood Health ("Englewood"), a New Jersey nonprofit, tax-exempt corporation, to establish Hackensack Meridian Health, Inc. ("HMH"), a New Jersey nonprofit, tax-exempt corporation, as the sole member/parent corporation of Englewood Hospital and Medical Center, Inc. ("Englewood Hospital") and its affiliates (the "Proposed Transaction"). We reviewed the Proposed Transaction under the Community Health Care Assets Protection Act ("CHAPA"), N.J.S.A. 26:2H-7.10 to -7.14. This Office recommends the Court approve the Proposed Transaction, with the six (6) conditions set forth below. We do note that (discussed in Section IV.b.ii below) the Federal Trade Commission recently issued a complaint dated December 3, 2020, that may prevent the parties from consummating the Proposed Transaction.

Englewood is the sole member of Englewood Hospital, an acute care teaching hospital with 531 licensed beds, located at 350 Engle Street, Englewood, New Jersey. Englewood is also the sole member



December 10, 2020

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of Englewood Hospital and Medical Center Foundation, Inc. d/b/a Englewood Health Foundation (the "Foundation") and Englewood Healthcare Properties, Inc. (the "Nonprofit Subsidiary") as well as the sole shareholder of Englewood Healthcare Enterprises, Inc. (the "For-profit Subsidiary").

HMH was formed on July 1, 2016, through the merger of Hackensack University Health Network, Inc. and Meridian Health Systems, Inc. HMH is the parent organization of an integrated health care delivery system that includes HMH Hospitals Corporation and JFK Health System, Inc., which provides health care services to communities in Bergen, Essex, Hudson, Middlesex, Monmouth, and Ocean Counties, as well as the surrounding areas.

By letter dated October 22, 2019, this office received notice of the Proposed Transaction from Englewood. The letter stated that in accordance with the terms of a Definitive Agreement by and between Englewood and HMH dated September 23, 2019 (the "Agreement"), and contingent upon the receipt of all required approvals, Englewood will enter into a statutory merger, pursuant to the New Jersey Nonprofit Corporation Act, N.J.S.A. 15A:10-1 to -11, with and into HMH in accordance with the Proposed Transaction. HMH will become the sole corporate member of Englewood Hospital, the Foundation, and the Nonprofit Subsidiary and will exercise certain "reserved powers" over Englewood Hospital, the Foundation, and the Nonprofit Subsidiary as set forth in their amended governing documents and the governing documents of HMH. The powers reserved to HMH as sole member of Englewood Hospital will include, among other things, the following: (a) to approve the annual capital budget and operating budgets of Englewood Hospital; (b) to change the legal structure of Englewood Hospital; (c) to nominate and elect the trustees of Englewood Hospital; (d) to adopt or change the mission, purpose, philosophy, or objectives of Englewood Hospital; (e) to initiate and to approve the incurrence of debt by Englewood Hospital; and (f) to initiate and approve strategic plans of Englewood Hospital.

Englewood will file a Certificate of Merger and Plan of Merger with the State of New Jersey, Division of Revenue and Enterprise Services ("DORES"). The Certificate of Merger and Plan of Merger will establish HMH as the surviving entity of the merger between Englewood and HMH. Concurrently, Englewood Hospital and HMH will file Amended and Restated Certificates of Incorporation with DORES establishing HMH as Englewood Hospital's sole member.

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Englewood seeks the Court's approval for the establishment of HMH as the sole member of and the attendant change in control over Englewood Hospital, in accordance with CHAPA.

CHAPA requires that a nonprofit hospital licensed pursuant to N.J.S.A. 26:2H-1 et seq. satisfy the requirements of CHAPA before applying to the Superior Court of New Jersey for approval and prior to entering into a transaction that results in the acquisition of the hospital. The purpose of this submission is to advise the Court of our findings and recommendations associated with our examination of the Proposed Transaction under CHAPA.

As defined in CHAPA, the Proposed Transaction constitutes an "acquisition" of Englewood and Englewood Hospital by HMH. Under CHAPA, an acquisition means the "restructuring, merger, division, consolidation, transfer of control or other disposition of a substantial amount of assets or operations, whether through a single transaction or series of transactions, with one or more persons or entities." N.J.S.A. 26:2H-7.11. The Proposed Transaction constitutes a fundamental corporate change involving a statutory merger of Englewood into HMH and a transfer of control of a substantial amount of the operations and charitable assets of Englewood Hospital, requiring CHAPA review.

CHAPA mandates the participation of the Attorney General, the Commissioner of the Department of Health (the "Commissioner"), and the Superior Court in reviewing the Proposed Transaction. The Attorney General is required to ascertain whether the acquisition is in the public interest, with or without any specific modifications, by determining whether appropriate steps have been taken to safeguard the value of the charitable assets of the hospital being acquired. The Commissioner must determine whether the Proposed Transaction is likely to result in the deterioration in the quality, availability, or accessibility of health care services in the affected community. N.J.S.A. 26:2H-7.11(b).

Pursuant to N.J.S.A. 26:2H-7.11(1),

[u]pon completion by the Attorney General of the review of the application required by this act, the nonprofit hospital shall apply to the Superior Court for approval of the proposed acquisition. In that proceeding, the Attorney General shall advise the court as to whether the Attorney General supports or opposes the proposed acquisition, with or without any specific modifications, and the basis for that position.

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The Superior Court must ultimately approve the Proposed Transaction.

We have examined the application submitted by Englewood in response to our questions relating to the merger of Englewood with and into HMH and the resulting acquisition of the assets of Englewood Hospital, by HMH. We have also reviewed the transcript of the public hearing held on October 7, 2020, the comments submitted by interested parties concerning the Proposed Transaction, and applicable law. Based on our independent analysis of the information provided and for the reasons set forth below, this Office supports the acquisition of the assets of Englewood, including Englewood Hospital by HMH as described herein, without any modifications. Our recommendation is conditioned upon the Superior Court's applying the following to its approval of the Proposed Transaction:

1. the adoption by the governing bodies of Englewood Hospital, the Foundation, the Nonprofit Subsidiary, and HMH of the amendments to their respective Certificates of Incorporation and Bylaws, substantially in the form submitted with the CHAPA application, effectuating the changes resulting from the Proposed Transaction, provided that there be thirty (30) days prior written notice to and approval by the Acting Attorney General of any material changes to the proposed forms of governing documents that were submitted in the CHAPA application process;
2. the adoption of the Certificate of Incorporation and Proposed Bylaws of the Englewood Community Trust, Inc., substantially in the form submitted with the CHAPA application, provided that there be thirty (30) days prior written notice to and approval by the Acting Attorney General of any material changes to the proposed forms of governing documents that were submitted in the CHAPA application process;
3. the adoption of the Certificate of Merger and Plan of Merger by HMH and Englewood, substantially in the form submitted with the CHAPA application, provided that there be thirty (30) days prior written notice to and approval by the Acting Attorney General of any material changes to the proposed forms of Certificate of Merger and Plan of Merger that were submitted in the CHAPA application process;

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4. the Acting Attorney General shall reserve the right to reopen this action before this Court in the public interest, after consultation with the Commissioner, in the event that the above-referenced action or any related action results in relief that precludes the closing of the Proposed Transaction or results in the disclosure of material information that would affect the Acting Attorney General's findings and recommendation contained in this letter with respect to the Proposed Transaction;
5. in the event the parties materially alter the Proposed Transaction, Englewood shall make application to this Court to reopen this action and seek approval of the revised transaction; and
6. the parties shall provide to the Acting Attorney General as soon it becomes available any information arising from the above-referenced or related action, or otherwise that would supplement or update the information provided in response to the Acting Attorney General's requests for information under CHAPA concerning the Proposed Transaction, as well as any information regarding actions taken against the parties with respect to the Proposed Transaction, until such matter has been resolved.

In the case of a statutory merger like this one, in accordance with N.J.S.A. 15A:10-6(c) and (d), the separate existence of the merging corporation ceases and the surviving corporation as a matter of law possesses the rights, privileges, powers, and immunities of the merging corporation and is vested with all the real and personal property of the merging corporation. Further, the trustees of the surviving corporation are entitled to receive any devise or the proceeds thereof made for the use and purposes of the merging corporation and upon receipt of such devise, title to the property shall vest in the surviving corporation subject to any trust or restriction related thereto. N.J.S.A. 10-6(g). Thus, HMH will replace Englewood as the sole member of the Foundation, the Nonprofit Subsidiary, and as the sole shareholder of the For-profit Subsidiary, by operation of law.

In addition, the Department of Health (the "DOH") has issued a finding pursuant to CHAPA, specifically N.J.S.A. 26:2H-7.11(b). Writing in regard to the Proposed Transaction in a letter to Kevin Jespersen, Acting Attorney General of New Jersey (attached hereto

as Exhibit A), Commissioner Judith Persichilli, RN, BSN, MA, stated that, based on representations made by HMH, "[DOH] does not believe the [P]roposed [T]ransaction will result in the deterioration of the quality, availability or accessibility of health care in the impacted communities."¹

I. Descriptions of the Transacting Parties and the Proposed Transaction

The following sections are derived from Englewood's CHAPA application. They describe the parties and events leading up to the Proposed Transaction. They distill thousands of pages of documents, including minutes of meetings of the Board of Trustees and committees of Englewood and Englewood Hospital for approximately three years prior to the Proposed Transaction, as well as reports, analyses, and presentations prepared by representatives of Englewood, Englewood Hospital, and their advisors.

(a) Transacting Parties

(i) Englewood

Englewood is a New Jersey nonprofit tax-exempt corporation within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, that owns and operates Englewood Hospital. Englewood's vision is to be a leader in the region in creating a humanistic environment while providing state-of-the-art compassionate care. Englewood's mission is to (1) provide comprehensive, state-of-the-art patient services, (2) emphasize caring and other human values in the treatment of patients and in its relations with their families, and among employees, medical staff, and community, (3) serve as a center of education and research, and (4) provide employees and medical staff with maximum opportunities to achieve their personal and professional goals.

(ii) Other Englewood Entities

Englewood is also the sole member of the Foundation and the Nonprofit Subsidiary as well as the sole shareholder of the For-

¹ An email from Jean DeVitto, Executive Director of Certificate of Need & Licensing, dated May 12, 2020 (attached hereto as Exhibit B), concluded that the merger of Englewood into HMH with HMH becoming the sole member of Englewood Hospital does not require Certificate of Need review by the DOH or issuance of a Certificate of Need by the DOH.

profit Subsidiary. The Foundation, a New Jersey nonprofit corporation, has a charitable mission of fundraising for tax-exempt organizations, including Englewood Hospital, which provide health care and/or health education services to the public. The Nonprofit Subsidiary, is a New Jersey nonprofit corporation, which holds title to and manages property for the benefit of Englewood. The For-profit Subsidiary, provides healthcare services within Englewood Hospital's service area.

(iii) Hackensack Meridian Health

HMH was formed on July 1, 2016, through the merger of Hackensack University Health Network, Inc. and Meridian Health Systems, Inc. HMH is a nonprofit, tax-exempt New Jersey corporation organized for scientific, educational, and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. HMH's mission is to establish, maintain, sponsor, and promote activities relating to the improvement of human health and the provision of care to the sick, injured, and disabled.

HMH is the parent entity of a New Jersey health care system that provides a continuum of care -- in the home setting, in acute care hospitals, and in nursing and rehabilitation facilities. HMH operates an integrated healthcare delivery system that provides a full range of healthcare services to communities in Bergen, Essex, Hudson, Middlesex, Monmouth, and Ocean Counties and the surrounding communities. HMH is comprised of fourteen (14) hospitals and more than two hundred (200) ambulatory care centers, fitness centers, home health services, rehabilitation centers, and skilled nursing centers.

(b) Description of the Proposed Transaction

The parties seek to consummate the Proposed Transaction in which Englewood will merge statutorily with and into HMH, thereby causing HMH to become the sole corporate member of Englewood Hospital and the sole corporate member or sole shareholder, as applicable, of each of Englewood's other direct subsidiaries pursuant to the terms of the Agreement. Upon the Effective Date (as defined in the Agreement), HMH will exercise certain reserved powers over Englewood Hospital and its nonprofit affiliates identical to the reserved powers HMH exercises over many of its other subsidiaries, including HMH Hospitals Corporation (which owns and operates most of HMH's acute care hospitals).

(c) Chronology of Events Leading to the Proposed Transaction

In early 2018, the Executive Committee of the Englewood Board of Trustees (the "Executive Committee" and the "Englewood Board" respectively) engaged The Chartis Group, LLC ("Chartis") to help assess the current state of and future strategy of Englewood Hospital. On June 22, 2018, Chartis made a presentation before the Executive Committee, in which Chartis outlined several challenges Englewood would likely confront in the future, notably, increased competition from New York healthcare and hospital systems as well as the need for major capital commitments. Chartis recommended Englewood seek a stronger affiliation or merger with another health system in order to be able to achieve its strategic goals and best serve the community in the future. As of the date of the presentation, Chartis believed that seeking a stronger affiliation or merger was the proper course of action because Englewood had experienced recent increases in volume, revenue, and margins, which placed Englewood in a stronger negotiating position. Englewood and HMH had previously entered into a clinical affiliation on April 16, 2015. As a result of Chartis's presentation, the Executive Committee recommended to the Englewood Board and Englewood Hospital Board of Trustees (the "Hospital Board") that Englewood start to explore entering into a stronger affiliation or merger with another health system. The Executive Committee was concerned that the Englewood Hospital would be the last remaining independently owned hospital in the region and the possibility of having to face financial difficulties in the future. On July 20, 2018, the Executive Committee and Chartis recommended to the full Englewood Board that Englewood seek an affiliation with a "top-tier institution[] with the right culture, organizational fit and reputation for excellence" to help advance Englewood's strategic plan and goals with greater expertise, vigor, and resources for the benefit of the communities served by Englewood.

With the help of Chartis, Englewood identified and engaged with five (5) potential partners: HMH, Atlantic Health System ("AHS"), RWJ Barnabas Health ("RWJBH"), New York-Presbyterian, and NYU Langone. Discussions continued with the five (5) potential partners through the end of 2018. When discussing a potential deal with the five (5) potential partners, Englewood focused on eleven (11) "Deal Asks" commitments. Englewood received initial competing proposals from every potential partner, except NYU Langone, who withdrew from consideration before submitting a formal proposal. Englewood next removed AHS from the list of potential partners in favor of the synergies and proposal terms of

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the other three (3) potential partners. By February 22, 2019, the Executive Committee evaluated refined and updated "best and final" proposals from the two (2) remaining potential partners, HMH and RWJBH.

The Englewood Board prepared a high-level valuation for Englewood Hospital using a healthcare industry standard valuation method for acute care hospitals. Additionally, Englewood identified the need for up to \$500,000,000 in capital investment to fuel its continued growth and used this number in connection with negotiating capital commitments with potential strategic partners. Englewood utilized its estimated enterprise value when negotiating business terms, including proposed commitments.

By March 28, 2019 HMH had further developed its proposed business terms, to include additional clinical commitments, \$400,000,000 of fresh capital, a potential bridge loan between signing and Closing, a ten (10) year commitment to retain the Hospital Board, and a seat on the board of trustees of HMH Carrier Clinic, Inc., among other terms. On March 28, 2019, the Englewood Board and the Hospital Board reviewed these revised terms and found that with the increase in capital commitment, HMH's proposal was now within range of RWJBH's proposal. After comparing proposals and draft definitive agreements, Englewood decided by the middle of 2019 to focus on negotiating primarily with HMH.

With the help of Ropes & Gray LLP ("Ropes & Gray"), who hired Huron Consulting Services LLC to provide a financial analysis of the Proposed Transaction, and Jackson Lewis P.C., Englewood conducted extensive due diligence into HMH. Englewood's due diligence into HMH returned no concerns that would materially impact the ability of the Proposed Transaction to come to fruition.

On September 23, 2019, the Englewood Board and the Hospital's Board approved the final form of the Agreement and the Parties executed the Agreement. The Proposed Transaction was announced to the public on October 15, 2019.

II. CHAPA Review Process

By letter dated October 22, 2019, counsel for Englewood notified this office of the Proposed Transaction between Englewood and HMH. In accordance with the Agreement, Englewood would statutorily merge with and into HMH and HMH would be established as the sole member of Englewood Hospital, with certain reserved powers.

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In a letter dated November 5, 2019, we advised that the Proposed Transaction required CHAPA review. We provided Englewood with a substantial number of questions and requests for materials in order to elicit the information needed for us to initiate our review of the Proposed Transaction.

On February 3, 2020, we acknowledged receipt of Englewood's responses to our first set of questions constituting Englewood's initial application under CHAPA. This triggered the statutory thirty (30) day period to deem Englewood's application complete or ask completeness questions. Englewood's partially redacted initial application included copies of the Agreement, board minutes, consultants' reports, and a comprehensive description of the Proposed Transaction. As required by N.J.S.A. 26:2H-7.11(a)(1), Englewood published Notice of the Proposed Transaction in The Record, a newspaper of general circulation in Bergen County, and the Korea Daily, on February 7, February 14, and February 21, 2020. Notice of the Proposed Transaction was also published in El Diario on February 6, February 13, and February 20, 2020.

On March 2, 2020, we sent our first set of completeness questions. Englewood responded to the completeness questions on April 23, 2020. On May 7, 2020, we sent our second, and final, set of completeness questions, including a request for disclosure and inclusion in the public record of certain redacted documents.² Englewood responded to the completeness questions on May 18 and June 12, 2020. On September 11, 2020, we deemed Englewood's application complete. In accordance with N.J.S.A. 26:2H-7.11(f), Englewood's entire CHAPA application is available for public inspection by contacting the Office of the Attorney General.

On February 28, 2020, we received a letter from Health Professionals & Allied Employees ("HPAE"), commenting on the Proposed Transaction (the "HPAE Letter"). The HPAE letter is discussed below in Section IV (b).

On October 7, 2020, in accordance with N.J.S.A. 26:2H-7.11(f), representatives of the Acting Attorney General and the Commissioner conducted a joint public hearing in Bergen County, with members of the public provided with the opportunity to participate both in person and virtually. The hearing was held at 6:00 p.m. at The Pavilion at Kaplen JCC on the Palisades in Tenafly, New Jersey. The hearing provided members of the affected communities with the opportunity to comment on the Proposed

² Our Office reviewed unredacted documents via a confidential password protected web portal.

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Transaction. Notice of the public hearing was published in advance in the Bergen Record and El Diario on September 23, 2020 and the Korea Daily on September 24, 2020. Notice was also posted on Englewood Hospital's website. The public hearing was conducted by Division of Law Deputy Director Kavin K. Mistry on behalf of the Acting Attorney General and by Health Systems Specialist Scott Owens on behalf of the Commissioner.

Approximately thirty (30) people attended the hearing both in person and virtually. Statements were read by the President and Chief Executive Officer of Englewood, the Chairman of the Board of Trustees of Englewood, the Co-Chief Executive Officer of HMM, and the Chair of the Board of Trustees of HMM. Their remarks extolled the virtues of the strategic collaboration between Englewood and HMM and highlighted the positive impact the partnership will have on the provision of healthcare in the region.

Following remarks from the hospital trustees and executives, members of the public spoke about the Proposed Transaction, including; (1) Kathy Kaminsky, Vice President for Patient Care Services and Chief Nursing Officer of Englewood, who shared support of the Proposed Transaction and stated that the Proposed Transaction would enable Englewood to better meet and serve the needs of the community; (2) Dr. Stephen Brunnquell, President of Englewood Health Physician Network, who voiced support for the Proposed Transaction stating that it would help both Englewood and HMM provide better and expanded telemedicine services and increased cancer, diabetic, and behavioral health care, including addiction recovery; (3) Donna Ciufo, Vice President of Nursing Education Professional Practice and Leadership Development at HMM, spoke about the nurses at HMM and the relationship between the nursing staff and HMM; (4) Alice Barden, President of HPAE at the Hospital, expressed concerns with the Proposed Transaction as it relates to HMM's treatment of staff during the COVID-19 pandemic and the employment opportunities that would be available to nurses in the area who leave a position with either HMM or Englewood;³

³ During Alice Barden's remarks, it was requested that under CHAPA review the Acting Attorney General include two (2) conditions in our recommendation letter: (1) oversight of HMM regarding preparation and planning to ensure Englewood nurses and the whole staff have proper and un-expired PPE, as well as proper training in PPE; and (2) HMM modify its human resource practices to enable HMM employees to continue to make a living with overtime hours and to discontinue "blackballing" an employee who has been terminated. The requested recommendations are not within the scope of the Attorney General's authority or his review under CHAPA.

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and (5) Sara Ceretto, a certified registered nurse at HMM, who talked about how HMM as a whole prepared for and responded to the COVID-19 pandemic.

The public hearing was closed at approximately 7:20 p.m. and the public record for the Proposed Transaction was closed on October 21, 2020, without receipt of any additional public comment.

In accordance with N.J.S.A. 26:2H-7.11(1),

[a]ny person who filed a written comment or exhibit or appeared and made a statement in the public hearing held by the Attorney General pursuant to subsection f. of this section [N.J.S.A. 26:2H-7.11(f)] shall be considered a party to the proceeding, including consumers or community groups representing the citizens of the State.

III. Attorney General's Scope of Review under CHAPA

Under CHAPA, it is the responsibility of the Attorney General to examine and analyze transactions of this type, to obtain all material information, and to consider all of the pertinent factors enumerated in CHAPA before making a recommendation whether or not a hospital asset transfer or change of control is in the public interest and warrants support, with or without modification. It is the Attorney General's duty to analyze the Proposed Transaction to determine its impact on the public interest and to ensure that the process is open to public comment and scrutiny in order to maximize the public's confidence in the final decision.

The historical role of the Attorney General is to enforce the provisions of the charitable trust and charitable corporation laws to fully protect charitable assets for the benefit of the public. These laws recognize the principle that charitable trusts and charitable corporations are, unlike private, profit-making business entities, created to benefit the public. CHAPA provides that the Attorney General shall review the transaction "in furtherance of his common law responsibilities as protector, supervisor, and enforcer of charitable trusts and charitable corporations." N.J.S.A. 26:2H-7.11. The transaction will not be considered in the public interest unless the Attorney General determines that "appropriate steps have been taken to safeguard the value of the charitable assets of the hospital being acquired and to ensure that such assets are irrevocably dedicated for charitable health care purposes." N.J.S.A. 26:2H-7.11(b).

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The criteria the Attorney General is to consider in making a determination under CHAPA are found at N.J.S.A. 26:2H-7.11(c) and (d). The particular criteria to be considered in a transaction reviewed under CHAPA depend upon the corporate structure and the state of incorporation of the acquirer. The attention accorded to any single criteria in determining whether a particular transaction is in the public interest depends upon the specific facts and circumstances of the transaction under consideration.

Here, since the Proposed Transaction involves the transfer of control of the assets of a New Jersey non-profit hospital to a New Jersey non-profit health care system, only those criteria found at N.J.S.A. 26:2H-7.11(c) need to be considered here, as follows:

(1) [w]hether the acquisition is permitted under the "New Jersey Nonprofit Corporation Act," Title 15A of the New Jersey Statutes, and other applicable State statutes governing nonprofit corporations [entities, trusts, or charities];

(2) [w]hether the nonprofit hospital exercised due diligence in deciding to effectuate the acquisition, selecting the other party to the acquisition and negotiating the terms and conditions of the acquisition;

(3) [t]he procedures used by the nonprofit hospital in making its decision, including whether appropriate expert assistance was used;

(4) [w]hether conflicts of interest were disclosed, including, but not limited to, conflicts of interest related to board members of, executives of, and experts retained by, the nonprofit hospital, purchaser, or other parties to the acquisition;

(5) [w]hether any management contract under the acquisition is for reasonable fair value;

(6) [w]hether the acquisition proceeds will be used for appropriate charitable health care purposes consistent with the nonprofit hospital's original purpose or for the support and promotion of health care, and whether the proceeds will be controlled as charitable funds independently of the purchaser or parties to the acquisition; and

(7) [a]ny other criteria the Attorney General establishes by regulation to determine whether the proposed acquisition is in the public interest.

N.J.S.A. 26:2H-7.11(c).

In the event the acquiring entity was not organized as a domestic nonprofit corporation, the Attorney General would consider additional criteria. These include whether the selling hospital is receiving full and fair market value for its assets, the care taken in assigning a value to the existing hospital, the criteria used by the hospital trustees in deciding to pursue a conversion, and whether the hospital considered conversion as the best or only alternative to carry out its mission. N.J.S.A. 26:2H-7.11(d).

IV. Review of the Proposed Transaction under CHAPA

This section examines the Proposed Transaction under each of the above-referenced statutory criteria.

(a) Compliance With the Nonprofit Corporation Act - CHAPA Subsection (c) (1)

Pursuant to N.J.S.A. 26:2H-7.11(c) (1), the Attorney General shall consider, "[w]hether the acquisition is permitted under the 'New Jersey Nonprofit Corporation Act,' Title 15A of the New Jersey Statutes, and other applicable State statutes governing nonprofit entities, trusts or charities."

On May 22, 2019, the Executive Committee reviewed draft definitive agreement proposals from HMH and RWJBH. Englewood determined that HMH was the best potential partner for Englewood and Englewood Hospital. On September 23, 2019 a resolution was adopted by the Englewood Board and the Hospital Board approving the Agreement and on that same day, the Parties executed the Agreement.

Based upon our review of the materials submitted and applicable law, the Proposed Transaction is permitted by the New Jersey statutes governing nonprofit corporations. We respectfully request the Court condition its approval of the Proposed Transaction to include the following conditions:

1. the adoption by the governing bodies of Englewood Hospital, the Foundation, the Nonprofit Subsidiary, and HMH of the amendments to their respective Certificates

of Incorporation and Bylaws, substantially in the form submitted with the CHAPA application, effectuating the changes resulting from the Proposed Transaction, provided that there be thirty (30) days prior written notice to and approval by the Acting Attorney General of any material changes to the proposed forms of governing documents that were submitted in the CHAPA application process;

2. the adoption of the Certificate of Incorporation and Proposed Bylaws of the Englewood Community Trust, Inc., substantially in the form submitted with the CHAPA application, provided that there be thirty (30) days prior written notice to and approval by the Acting Attorney General of any material changes to the proposed forms of governing documents that were submitted in the CHAPA application process; and
3. the adoption of the Certificate of Merger and Plan of Merger by HMH and Englewood, substantially in the form submitted with the CHAPA application, provided that there be thirty (30) days prior written notice to and approval by the Acting Attorney General of any material changes to the proposed forms of Certificate of Merger and Plan of Merger that were submitted in the CHAPA application process.

**(b) Due Diligence Criteria - CHAPA Subsections
(c) (2) , (c) (3)**

Two significant due diligence criteria are found at N.J.S.A. 26:2H-7.11(c) (2) and (c) (3):

(2) Whether the nonprofit hospital exercised due diligence in deciding to effectuate the acquisition, selecting the other party to the acquisition and negotiating the terms and conditions of the acquisition; and

(3) The procedures used by the nonprofit hospital in making its decision, including whether appropriate expert assistance was used.

These statutory criteria do not require the Acting Attorney General to decide whether, as a factual matter, Englewood made optimal decisions in pursuing the Proposed Transaction. Rather, the statute simply requires, in part, that the Acting Attorney

General ascertain whether the Englewood Board exercised their duty of care in deciding to pursue this course of action and in the process they used to effectuate it. Although the term, "due diligence," is not defined in CHAPA, the New Jersey Nonprofit Corporation Act provides at N.J.S.A. 15A:6-14, as follows: "[t]rustees and members of any committee designated by the board shall discharge their duties in good faith and with that degree of diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in like positions."

"Due diligence" is defined to be such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case. Diligence Definition, Black's Law Dictionary (11th ed. 2019), available at Westlaw.

Along with the duty of care, there are two other components to the Englewood Board's fiduciary duty - the "duty of obedience" and the "duty of loyalty." The duty of obedience requires the Englewood Board to be faithful to the advancement of Englewood Hospital's charitable mission and purpose. The duty of loyalty requires that the Englewood Board must act solely in the interest of Englewood Hospital, which is the object of its fiduciary duty. To do so is the essence of acting in good faith.

In this case, we specifically inquire whether the members of the Englewood Board exercised their due diligence by: (i) establishing appropriate criteria and using appropriate procedures in deciding to effectuate the Proposed Transaction and considered how it would further Englewood's and the Englewood Hospital's mission and purpose; (ii) selecting the other party to the acquisition; and, (iii) negotiating the terms and conditions of the Agreement governing the Proposed Transaction.

(i) Effectuating the Proposed Transaction - CHAPA Subsections (c) (2), (c) (3)

As described, in part, in the chronology set forth in Section I(c), above, in the minutes of the meetings of Englewood and its Boards and Committees, and as explicated in Englewood's narrative responses to our inquiries, in 2018 and 2019, Englewood viewed a strategic partnership as a mechanism to increase the long-term viability of Englewood Hospital, specifically improve care, access to capital to support strategic plans, and access to difficult to recruit specialists.

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Chartis was hired in April 2018 by the Englewood Board to initially evaluate Englewood Hospital's strengths and weaknesses and, moving forward, whether Englewood Hospital could maintain the status quo, should seek to build on the existing affiliation with HMH, or evaluate other options. In the next phase, Chartis was hired to develop criteria to evaluate potential partners, initiate conversations with the same, and develop deal terms. During this phase Chartis was hired to solicit potential affiliation partners with the right fit, a reputation for excellence, and the ability to advance Englewood Hospital's strategic plans and goals.

Englewood posted operating revenue in excess of expenses for the years ending December 31, 2015 of \$12,210,000, December 31, 2016 of \$19,151,000, December 31, 2017 of \$32,469,000, and December 31, 2018 of \$14,532,000. As of September 30, 2019, Englewood had \$27,023,000 in operating revenue in excess of expenses.

While Englewood posted revenue gains for 2015-2018 and appeared to be progressing towards the same in 2019, Englewood was concerned about the long-term viability and profitability of remaining independent.

By 2018, the Executive Committee determined that in order for Englewood to better achieve its strategic goals and best serve the community in the future Englewood should merge with another health system. Englewood sought a partner that would help further eleven (11) "Deal Asks" commitments related to: (1) local and regional communities, (2) clinical services, (3) system services/resources for purposes of transaction synergies, (4) strategic planning, (5) capital expenditures, (6) philanthropy, (7) academic affiliations, (8) employees and medical staff, (9) governance, (10) population health, and (11) the Englewood brand.

It is evident from our review of Englewood's narrative responses to our questions and the meeting minutes of the Executive Committee, the Finance Committee, and the Strategic Planning Committee, that the Englewood Board and senior management engaged in a deliberate and thoughtful process, with expert assistance from Chartis and legal counsel. Englewood evaluated various options and ultimately decided to seek a strategic partnership with a large New Jersey nonprofit health care system that would carry forward Englewood's mission and vision of providing quality healthcare in the State of New Jersey.

Based upon the foregoing, we find that the Englewood Board exercised due diligence in deciding to effectuate an acquisition

and acted with due care in establishing parameters for pursuing a proposed partnership in furtherance of its mission and purpose in accordance with N.J.S.A. 26:2H-7.11(c)(2) and used appropriate expert assistance in accordance with N.J.S.A. 26:2H-7.11(c)(3).

**(ii) Selecting the Acquirer - CHAPA Subsections
(c) (2), (c) (3)**

In our review of hospital asset transfers, we have often found that the hospital seeking an acquirer, affiliate, or strategic partner will engage a consulting firm, investment banker, or other financial expert to assist them. The hired expert will gather a long list of potential strategic partners, affiliates, or acquirers for the hospital and will assist in facilitating the initial contact with the goal of soliciting offers. The hired expert will contact a select group of potential strategic partners, affiliates, or acquirers who have indicated an interest in the proposed transaction. The hired expert will then assist hospital trustees in analyzing responses to the initial contact against a set of criteria to compare, contrast, and narrow down the offers or bidders. A draft definitive agreement may be requested and additional questions may be asked until a final decision on a strategic partner or acquirer is reached. In this case, Englewood hired Chartis, a management consulting firm with a focus on the healthcare industry, for this purpose.

As discussed above, during the period from 2018 to 2019, the Englewood Board and senior management utilized the services of Chartis. The July 20, 2018 meeting of the Englewood Board reflect that the Board and Chartis preferred a "very targeted and defined" affiliation process with involvement of only those "top-tier institutions with the right culture, organizational fit and reputation for excellence" that had the ability to advance Englewood's strategic plan and goals with greater expertise, vigor, and resources for the benefit of the communities served by the Englewood Hospital. Chartis was asked to assess and engage in discussions with representatives from a select group of hospitals. Each health system was targeted based on its ability to satisfy the affiliation criteria above. Specifically, Chartis targeted HMH, AHS, RWJBH, New York-Presbyterian, and NYU Langone, as potential strategic partners.

In accordance with Englewood's "Deal Asks," Englewood, with the help of Chartis and other consultants, was able to narrow down the list of potential partners to two (2) candidates by February 22, 2019.

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Englewood received initial competing proposals from every potential partner, except NYU Langone, which withdrew from consideration before submitting a formal proposal. AHS was the next system to be next removed from the list of potential partners in favor of the synergies and proposal terms of the other three potential partners. New York-Presbyterian withdrew due to geographical reasons.

Once the two (2) finalists were identified, Englewood engaged the services of Ropes & Gray, to assist Englewood in selecting the top finalist. After HMH was identified by Englewood, Chartis, and Ropes & Gray as the best potential partner, Englewood engaged the services of Jackson Lewis P.C. and, through Ropes & Gray, Huron Consulting Services LLC, to help evaluate HMH as a strategic partner. It was decided by the Englewood Board that any decision regarding the affiliation would be based principally on the ability to improve and enhance access to care, access to capital to support Englewood's robust strategic plan, and access to difficult-to-recruit specialists.

RWJBH's February 22, 2019 "best and final" offer included \$700,000,000 in total capital commitments when factoring in transaction synergies. Comparatively, HMH's February 22, 2019 "best and final" offer included \$400,000,000 in total capital commitments when factoring in transaction synergies. Englewood, as part of the process of finding a transaction partner, had identified the need for up to \$500,000,000 in capital investment to fuel its continued growth. Englewood used the need for \$500,000,000 in capital investment in connection with negotiating capital commitments with potential strategic partners.

By March 28, 2019, HMH further developed its proposed business terms, to include additional clinical commitments, \$400,000,000 of fresh capital, a potential bridge loan between signing and Closing, a ten (10) year commitment to retain the Hospital Board, and a seat on the board of trustees of HMH Carrier Clinic, Inc., among other terms. The Hospital Board reviewed HMH's revised terms on March 28, 2019 and determined HMH's revised proposal to be within range of RWJBH's proposal. Based on the revised proposal submitted by HMH on March 28, 2019, by the middle of 2019, Englewood decided to focus on negotiating primarily with HMH. After conducting due diligence into HMH and the proposed deal terms, the Executive Committee and the Englewood Board determined that merging with HMH would be the right choice to ensure the long-term viability and success of Englewood and Englewood Hospital. It should also be noted that prior to the Proposed Transaction, Englewood and HMH had entered into a clinical affiliation on April 6, 2015.

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Furthermore, in evaluating both proposals and draft definitive agreements, Englewood determined that HMH would be in a better position to help reach and fulfill the eleven (11) "Deal Asks" commitments upon which Englewood was focused. Upon further investigation, Englewood determined that RWJBH's proposal was weaker than the proposal put forth by HMH because RWJBH required Englewood to meet certain metrics before capital commitments would be disbursed.

On September 23, 2019, the Englewood Board and the Hospital Board approved the final form of the Agreement which was executed by the Parties on that day.

Based on the foregoing and under the specific circumstances of the Proposed Transaction, we find that in accordance with CHAPA sub-sections (c)(2) and (c)(3), the Englewood Board engaged in a well-documented and reasoned decision-making process in choosing to form a strategic partnership with HMH, a large New Jersey nonprofit corporation operating an integrated health care delivery system.⁴ The Englewood Board used expert assistance to develop

⁴ Moreover, by letter dated February 7, 2020, from Mark E. Hopkins, Executive Director of the New Jersey Health Care Authority Facilities Financing Authority (the "Authority"), the Authority advised us that

[the Authority] has been made aware of the proposed establishment of [HMH] as the sole member of, *inter alia*, [Englewood], each a New Jersey nonprofit organization... As of December 31, 2019, HMH and its legacy organizations had \$1,130,350,206 in principal amount of bonds outstanding with the Authority. Englewood has a Master Lease through the Authority with an amount outstanding of \$8,812,353 as of December 31, 2019. The Authority has not been made aware of how the outstanding debt will be handled as a result of this [P]roposed [T]ransaction. The staff of the Authority has no objection to the [P]roposed [T]ransaction and we have no reason to believe the Authority Members would object. The Authority staff recognizes the continuing trend of mergers, acquisitions and consolidations into large health systems in New Jersey and throughout the country. To date it appears these trends have benefitted the hospitals involved and we have no reason to believe that the

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the terms of the Proposed Transaction between HMM and Englewood, which would help ensure the continued success and ability of the Englewood Hospital to provide its current level of health care to the surrounding community.

Our review of the materials demonstrates that in the one (1) year it took Englewood to select a partner and enter into an agreement it was ultimately HMM's ability to satisfy the "Deal Asks" and capital commitment that caused Englewood to view HMM as the preferred strategic partner.

We received the HPAE Letter from HPAE, Local 5004 raising concerns about the Proposed Transaction. HPAE is a part of AFT/AFL-CIO. HPAE, Local 5004 represents eight-hundred (800) nurses at Englewood Hospital.

The HPAE Letter raised concerns regarding the Proposed Transaction, specifically with some of the terms of the Agreement and asked that our office include HPAE's concerns in completeness questions sent to Englewood.

HPAE's main concern focused on the "Material Reduction Trigger" found at Section 3.2.3.2 to 3.2.3.3 of the Agreement. The HPAE Letter sought clarity regarding the events leading up to and following the implementation of the "Material Reduction Trigger." Actions taken relating to the "Material Reduction Trigger" will be overseen by the independent Englewood Community Trust, Inc., a newly formed entity which will be responsible for overseeing and enforcing certain post-Closing covenants in the Agreement, discussed at Section IV(b)(iii), below. By way of the HPAE Letter, concerns over a lack of "predictive or warning measures for oversight of patient flow" was also raised. HPAE also requested that the Parties provide the relevant metrics in order to determine their feasibility.

The HPAE Letter also discussed "Voluntary Governmental Disclosures" as contained within section 2.2.3.4 of the Agreement and HPAE's desire for "a waiver for the twenty-days advance notice [of making a voluntary governmental disclosure] when it involves a health or safety issue, an allegation of CMS fraud, or any other situation that needs immediate notification of a government agency." It should be noted that this provision only applies in the time between when the Agreement was executed and the Closing of the Proposed Transaction.

merger of HMM and Englewood would be any different.

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HPAE also sought clarification as to: (1) the limitations the Agreement places upon Englewood's ability to enter into a new collective bargaining agreement or negotiations; (2) the spending of the Bridge Loan and what services would benefit from the loan; and (3) HMM's plan for "harmonization of employee benefit programs" (internal citations omitted) and what will be done to prevent errors in pay and accrued benefit time.

Finally, the HPAE Letter raised concerns regarding the security of HMM's "Epic platform for patient record system and other software systems at HMM." HPAE sought assurances that HMM has or will upgrade the security of its digital systems to prevent, to the extent possible, another breach of patient and worker security.

While the HPAE Letter does ask our office to raise additional questions to the Parties it does not state that HPAE opposes the Proposed Transaction. None of the concerns raised in the HPAE Letter involve the charitable assets of Englewood and/or Englewood Hospital. Therefore, we are satisfied with the information provided by the Parties in response to our inquiries and we did not think it necessary to pursue the lines of inquiry raised by HPAE in either our March 2, 2020 or our May 7, 2020 set of completeness questions. Furthermore, the concerns raised in the HPAE Letter apply to the contractual relationship between Englewood and HMM and potential collective bargaining agreements between HPAE and Englewood Hospital. Our office sees no reasons to interfere in those relationships.

We were recently made aware of a new circumstance that may impact the consummation of the Proposed Transaction. By letter dated December 4, 2020, Englewood advised our Office that the Federal Trade Commission ("FTC") has issued a Complaint dated December 3, 2020 (Docket 9399), against HMM and Englewood. In the Complaint, the FTC alleges that the Proposed Transaction, if consummated, may substantially lessen competition in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and is an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. The complaint may preclude the parties from consummating the Proposed Transaction unless and until such time as the matter is resolved.

In light of the foregoing, we respectfully request the Court condition its approval of the Proposed Transaction to include the following three conditions:

- (i) the Acting Attorney General shall reserve the right to

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reopen this action before this Court in the public interest, after consultation with the Commissioner, in the event that the above-referenced action or any related action results in relief that precludes the closing of the Proposed Transaction or results in the disclosure of material information that would affect the Acting Attorney General's findings and recommendation contained in this letter with respect to the Proposed Transaction;

(ii) in the event the parties materially alter the Proposed Transaction, Englewood shall make application to this Court to reopen this action and seek approval of the revised transaction; and

(iii) the parties shall provide to the Acting Attorney General as soon it becomes available any information arising from the above-referenced or related action, or otherwise that would supplement or update the information provided in response to the Acting Attorney General's requests for information under CHAPA concerning the Proposed Transaction, as well as any information regarding actions taken against the parties with respect to the Proposed Transaction, until such matter has been resolved.

(iii) Negotiation of the Definitive Agreement - CHAPA Subsection (c) (2)

As set forth above, following the receipt of proposals from four (4) of the five (5) potential partners, the Englewood Board eliminated one (1) potential partner in favor of the synergies and terms of the other three (3) potential partners. Another potential partner was removed from consideration by February 22, 2019, at which point the Executive Committee reviewed updated "best and final" proposals from the final two (2) potential partners, focusing on clinical initiatives, academic affiliations, commitments to employees and medical staff, reserved powers to be held by the potential partner, and governance structures, as well as the value that would be received for Englewood Hospital. As part of the process of evaluating the final two offers, the Executive Committee, with the help of Chartis, reviewed the proposed capital commitments against benchmarks for capital commitments in six (6) nearby transactions in the Northeast.

Following an April 8, 2019 meeting of the Executive Committee, Ropes & Gray, drafted a template definitive agreement to assist in the final negotiation of business terms with HMH and RWJBH. In the subsequent months, Englewood exchanged draft definitive

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agreements with both HMH and RWJBH, a process that resulted in the refinement of business terms.

At the Executive Committee meeting on May 22, 2019, the members reviewed the proposals from HMH and RWJBH and concluded that HMH's draft definitive agreement tracked its earlier submitted term sheet. Comparatively, RWJBH's draft definitive agreement differed in several material and negative ways from its previously submitted term sheet. Additionally, Englewood noticed that RWJBH became less responsive following the bid draft submission and subsequent discussions. In Englewood's view all of these factors taken together indicated that RWJBH was less committed to a potential transaction than Englewood had previously believed.

Based on the proposed investment by HMH, HMH's enhanced business terms, and the important synergies and efficiencies that would be realized by partnering with HMH, Englewood decided to focus its energies on negotiating with HMH.

It was determined by the Executive Committee that HMH's draft definitive agreement would put Englewood in the best position to enhance access to care for the community. As a result, the Executive Committee continued to negotiate business terms with HMH, providing updates to and receiving feedback from the Englewood Board and the Hospital Board.

In August 2019, the Executive Committee and Ropes & Gray resolved the final open business points in the Agreement and determined that an affiliation with HMH would put Englewood in the best position to enhance access to care for the community and recommended that Englewood pursue a transaction with HMH in accordance with the terms of the Agreement.

The materials submitted by Englewood establish that the parties to the Proposed Transaction engaged in a due diligence and negotiating process to reach an Agreement in accordance with N.J.S.A. 26:2H-7.11(c)(2).

The Agreement between Englewood and HMH was signed on September 23, 2019. In accordance with the terms of the Agreement, HMH agreed to certain ongoing obligations to Englewood Hospital after the Closing Date, including, but not limited to, the following:

1. For ten (10) years after the Closing Date, Englewood Hospital will operate as an acute care tertiary hospital as

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a separate legal entity with its own Board of Trustees. Following the ten (10) year period post-Closing Englewood Hospital and HMH may agree to merge Englewood Hospital with and into HMH Hospitals Corporation (or another HMH affiliate) that owns and operates most of HMH's acute care hospitals;

2. For ten (10) years after the Closing Date, Englewood Hospital will continue to offer the "Key Service Lines" of: cardiology (including cardiac and thoracic surgery), neurosciences (including neurosurgery), vascular surgery, oncology (including surgical oncology and breast care), maternal fetal medicine, neonatology, obstetrics and gynecology, orthopedics, behavioral health, and bloodless medicine. These "Key Service Lines" will be maintained at a pre-designated scope and volume;

3. HMH agrees to implement the "Clinical Initiatives" as set forth in Exhibit C to the Agreement consistent with an Integration Plan.⁵ These clinical and operational initiatives include: (1) HMH supporting the growth of Englewood Hospital's Medicare case mix index, (2) Englewood Hospital being part of the regional transfer center of the HMH Network, (3) HMH and Englewood Affiliates developing or enhancing various clinical service lines within the Englewood service area, (4) the Parties undertaking various capital projects on Englewood Hospital's campus, and (5) the parties achieving various operational commitments at Englewood Hospital, subject to the terms and conditions of the Agreement;

4. HMH will make the following financial commitments: (1) \$404,500,000 capital commitment to Englewood Hospital by the eighth (8th) anniversary of the Effective Date pursuant to a Capital Allocation Plan, (2) \$44,500,000 "Bridge Loan" on fair market value interest terms to be used by Englewood Hospital, between signing the Agreement and Closing, on capital and strategic projects approved in the sole

⁵ Our office reviewed an unredacted version of Exhibit C to the Agreement in a password protected online portal. In our May 7, 2020 letter to Englewood, our office requested that the Parties make Exhibit C a part of the CHAPA record and remove the redaction over the terms. By letter and attachment dated June 12, 2020, Englewood declined our request to provide an unredacted version of Exhibit C, citing "Proprietary Information Regarding Clinical Initiatives and Operational Commitments" and stating that the redaction "protect[s] proprietary information that would be helpful to the competitors of the [] Parties."

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discretion of the Englewood Board, with the possibility of the amount being increased based on potential actions of the Federal Trade Commission, with the amount not exceeding the \$404,500,000 capital commitment, and any outstanding amount of the "Bridge Loan" will be used to reduce the \$404,500,000 capital commitment, and (3) \$5,000,000 in additional operating funds to be provided on the third (3rd) anniversary of Closing and each anniversary thereafter for a total of seven (7) years, for use in the development of certain clinical programs at Englewood Hospital, and if need be some or all of such funds can be redirected to Key Service Lines or other clinical programs or services, as approved by the HMM Board and the Hospital Board;

5. Within one-hundred-eighty (180) days HMM will consider whether to refinance or restructure the existing debt of the Englewood Affiliates to permit the inclusion of the Englewood Affiliates into the HMM Network's Master Trust Indenture;

6. HMM commits to maintain the independent nature of the Foundation and ensure all gifts to the Foundation remain in the Englewood community and all donor restrictions are honored;

7. HMM will retain all Englewood employees for one (1) year after the Closing, providing Englewood management authority over employment decisions affecting Englewood employees, and honoring the terms of Englewood collective bargaining agreements and employment agreements with the Englewood management team;

8. For ten (10) years post-Closing Englewood and HMM will be entitled to have members on each other's Boards and Board Committees

9. HMM will maintain names of donor-restricted programs in accordance with any donor agreements and will allow Englewood to retain its name within HMM's master brand strategy; and

10. HMM will institute charity care policies at Englewood Hospital, which provide similar or greater benefit to the community as was provided pre-Closing.

The Agreement also includes provisions regarding the Englewood Community Trust, Inc. (the "Englewood Trust"), a newly formed entity which will be responsible for overseeing and enforcing certain post-Closing covenants in the Agreement,

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including the majority of the Clinical Initiatives but excluding the Operational Commitments as set forth in the Agreement, for ten (10) years post-Effective Date. The Englewood Trust will be governed by the Englewood Trust Board, comprised of five (5) people initially appointed by Englewood at Closing, with members of the Englewood Trust Board not concurrently serving as trustees for HMH or any of the HMH or Englewood Affiliates. Post-Closing the Englewood Trust Board is to meet semi-annually for ten (10) years and at each meeting, HMH executives are to provide a written update to the Englewood Trust Board regarding HMH's satisfaction of various post-Closing covenants. The Englewood Trust will be able to enforce HMH's obligations in certain post-Closing covenants through a meet and confer process, followed by an arbitration process if necessary, and ultimately a court order for specific performance, if needed. The Englewood Trust Board is prohibited from expanding its stated purpose under its organizing documents or using its funding for purposes outside of the Englewood Trust's stated purpose.

Funding for the Englewood Trust comes from a Reserve Fund at Closing as defined in the Agreement. The funds can only be used for its stated purposes in its organizing documents. The Englewood Trust will dissolve ninety (90) days following receipt of the final semi-annual report from HMH, unless the Englewood Trust is pursuing an enforcement action against HMH. Prior to dissolution, the Englewood Trust will transfer any assets it has remaining to the Foundation.

Even though CHAPA does not mandate that we determine whether fair market value is being paid, either in cash or in kind, in an asset transfer from a nonprofit hospital to another New Jersey nonprofit entity, in order for us to evaluate whether the Englewood Board exercised due diligence in negotiating the Agreement, attention should be paid to the member's deliberation of the fiscal risks and benefits of the Proposed Transaction.

Using the high-level valuation methodology prepared by the Englewood Board, as previously discussed, it was estimated that Englewood Hospital's enterprise value as an acute care hospital, as part of a larger health system, to be in the range of \$428,000,000 to \$558,000,000. Englewood utilized its estimated enterprise value when negotiating business terms, including proposed commitments. Additionally, Englewood identified the need for up to \$500,000,000 in capital investment to fuel its continued growth and used this number in connection with negotiating capital commitments with potential strategic partners.

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Four (4) of the of five (5) health systems involved in the affiliation process submitted proposed capital commitments. RWJBH proposed \$520,000,000 in fresh capital and a total capital commitment of \$500,000,000 to \$750,000,000 (assuming Englewood could self-fund \$250,000,000). HMH proposed \$225,000,000 of fresh capital for a \$400,000,000 capital commitment when factoring in transaction synergies. AHS proposed \$150,000,000 of guaranteed fresh capital, with a total capital commitment of \$300,000,000. New York Presbyterian informally proposed substantial fresh capital and total capital commitments, though substantially below the higher bidders.

However, Englewood did not just look at the monetary value of each offer, Englewood also considered other valuation metrics in evaluating potential partners. This competitive and holistic bidding process assisted the Englewood Board in assessing Englewood's value in connection with affiliation discussions, negotiating business terms, and evaluating the various offers.

RWJBH proposed capital commitment remained unchanged throughout the competitive bidding process, with RWJBH's final offer being \$520,000,000 of fresh capital commitment for a \$700,000,000 total capital commitment when factoring in transaction synergies.

By March 28, 2019 HMH had further developed its proposed business terms, to include additional clinical commitments, \$400,000,000 of fresh capital, a potential bridge loan between signing and Closing, a ten (10) year commitment to retain the Hospital Board, and a seat on the board of trustees of HMH Carrier Clinic, Inc., among other terms. On March 28, 2019, the Englewood Board and the Hospital Board reviewed these revised terms and found that with the increase in capital commitment, HMH's proposal was now within range of RWJBH's proposal. Furthermore, the Executive Committee also compared the capital commitments made by HMH against benchmarks for capital commitments in six (6) nearby transactions in the Northeast and found that the capital commitment offered by HMH was in excess of the benchmarks set in the other reviewed transactions. After comparing proposals and draft definitive agreements, Englewood decided by the middle of 2019 to focus on negotiating primarily with HMH.

As discussed above, the Agreement provides that by the eighth (8th) anniversary of the Effective Date, HMH will provide \$404,500,000 in capital commitment to Englewood and the Englewood Affiliates. HMH will also provide Englewood with a \$44,500,000 "Bridge Loan" to be used by Englewood between signing the Agreement

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and Closing on capital and strategic projects as approved in the sole discretion of the Englewood Board, with any outstanding amount of the "Bridge Loan" going towards the \$404,500,000 capital commitment. An additional \$5,000,000 for operating funds will be provided to Englewood on the third (3rd) anniversary of the Closing and each anniversary thereafter for a total of seven (7) years.

In addition, HMH will evaluate Englewood's debt (as set forth in Schedule 4.1.24 to the Agreement) within one-hundred-eighty (180) days after the Effective Date to determine whether to refinance or restructure the existing debt of the Englewood Hospital, the Foundation, and the Nonprofit Subsidiary to allow them to be included in the HMH Network's Master Trust Indenture, so that the Englewood Affiliates may benefit from more favorable credit terms resulting from the Proposed Transaction. HMH refinancing or restructuring the existing debt of Englewood would have a materially beneficial effect on the operating results of Englewood Hospital, the Foundation, and the Nonprofit Subsidiary, which would outweigh any burdens from Englewood Hospital and its affiliates joining HMH's obligated group and assuming liability for the debts of the other HMH system hospitals.

As such, Englewood will cede control to HMH of assets valued between \$428,000,000 and \$558,000,000 in exchange for financial commitments of approximately \$484,000,000. HMH will also consider refinancing or restructuring Englewood's debt as set forth in Schedule 4.1.24 to the Agreement. Englewood advised that it expects that the financial advantages of being part of a large system will far outweigh any disadvantages.

In view of the foregoing, we find that based on our examination of the activities of the fiduciaries in negotiating the Agreement, as well as our review of the evidence provided of the substantial economic and non-economic benefits to be derived by Englewood from the Proposed Transaction, the Englewood Board was cognizant of the fiscal risks and benefits of the Proposed Transaction in furtherance of their fiduciary duties.

Further, based upon our review of the Agreement, the materials submitted, and Englewood's responses to our inquiries, we conclude that the Englewood Board acted with due diligence and in accordance with its duty of care in entering into and negotiating the Agreement in accordance with N.J.S.A. 26:2H-7.11(c)(2).

(c) Conflicts of Interest - CHAPA Subsection (c)(4)

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A hospital trustee's duty of loyalty requires that they must act solely in the interest of the hospital, which is the object of their fiduciary duty. To scrutinize potential conflicts of interest in satisfaction of N.J.S.A. 26:2H-7.11(c)(4), we required all officers, trustees, and senior management of Englewood and HMH, as well as the consultants used by the parties in relation to the Proposed Transaction, to disclose any potential conflicts they might have concerning the Proposed Transaction. Each individual for whom a response was required submitted a completed Conflict of Interest Certification. Based upon our review of all of the certified responses, there appear to be no substantive conflicts of interest or self-dealing relating to the Proposed Transaction between Englewood and HMH, or among their respective officers, trustees, senior management, or consultants.

(d) Management Contracts - CHAPA Subsection (c)(5)

N.J.S.A. 26:2H-7.11(c)(5) requires the Attorney General to consider "[w]hether any management contract under the acquisition is for reasonable fair value." In response to our inquiry, Englewood advised that it is anticipated that current employment agreements between Englewood and certain members of Englewood's senior management team will be superseded by employment agreements between HMH and such executives, which will contain terms and conditions consistent with the employment agreements of similarly situated executives at HMH and that are approved by the HMH Board, Executive and Physician Compensation Committee. Based upon our review of Englewood's response to our inquiry, we conclude that any management contracts extended in conjunction with the acquisition will be for fair value in accordance with N.J.S.A. 26:2H-7.11(c)(5).

**(e) Use of the Acquisition Proceeds - CHAPA Subsection (c)(6); Safeguarding Englewood's Charitable Assets
N.J.S.A. 26:2H-7.11(b)**

Subsection (c)(6) of CHAPA asks the Attorney General to determine whether the acquisition proceeds will be used for appropriate charitable health care purposes and whether the proceeds will be controlled as charitable funds independently of the purchaser or parties to the acquisition.

As discussed above, there will be no payment of a purchase price for the change in control of the assets of Englewood Hospital, and there will no "net proceeds" arising from the change in control. Even though we deemed this transaction to be an "acquisition," as that term is broadly defined in CHAPA, Englewood

Hospital will continue to operate as a tax-exempt, nonprofit hospital in accordance with its charitable mission and purposes under the corporate control of HMH. HMH will exert control over the corporate governance of Englewood Hospital through the exercise of its reserved corporate powers. All assets of Englewood Hospital will remain in charitable control and will retain the charitable character of the pre-transaction assets. In exchange for this control, HMH has made a number of commitments to enhance Englewood Hospital's ability to provide health care services, including funding strategic capital projects enhancing Englewood Hospital's charitable mission and ability to provide key health care services to the community.

Thus, we find that it is manifest under the circumstances of this transaction that the monetary and nonmonetary benefits to be conferred on Englewood Hospital by affiliating with HMH in accordance with the Agreement will be used for appropriate charitable health care purposes and will enhance Englewood Hospital's ability to provide health care services.

In addition, in accordance with N.J.S.A. 26:2H-7.11(b), in order for the Proposed Transaction to be deemed to be in the public interest, the Attorney General must determine, "that appropriate steps have been taken to safeguard the value of the charitable assets of the hospital and their assets will continue to be used for appropriate charitable health care purposes consistent with their original purposes...."

We find that based on the foregoing, Englewood has entered into an Agreement with HMH that will protect the value of its charitable assets and that said assets will continue to be used in furtherance of Englewood Hospital's mission and purposes.

V. Findings of the Department of Health

The DOH has issued a finding pursuant to CHAPA, specifically N.J.S.A. 26:2H-7.11(b). Writing in regard to the Proposed Transaction in a letter to Kevin Jespersen, Acting Attorney General of New Jersey (attached hereto as Exhibit A), (attached hereto as Exhibit A), the Commissioner, stated that, based on representations made by HMH, "[DOH] does not believe the [P]roposed [T]ransaction will result in the deterioration of the quality, availability or accessibility of health care in the impacted communities."

VI. Conclusion

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When the Proposed Transaction is viewed in its entirety, the Acting Attorney General finds that, under all the circumstances, appropriate steps have been taken to safeguard the value of the charitable assets of Englewood Hospital and to ensure that such assets are irrevocably dedicated for charitable health care purposes. Further, the DOH believes the transaction will not result in the deterioration of the quality, availability, or accessibility of health care services in the impacted communities. As such, the Proposed Transaction appears to be in the public interest and, accordingly, receives our support, provided that the following conditions for approval be incorporated in the Court's Order approving the Proposed Transaction:

1. the adoption by the governing bodies of Englewood Hospital, the Foundation, the Nonprofit Subsidiary, and HMH of the amendments to their respective Certificates of Incorporation and Bylaws, substantially in the form submitted with the CHAPA application, effectuating the changes resulting from the Proposed Transaction, provided that there be thirty (30) days prior written notice to and approval by the Acting Attorney General of any material changes to the proposed forms of governing documents that were submitted in the CHAPA application process;
2. the adoption of the Certificate of Incorporation and Proposed Bylaws of the Englewood Community Trust, Inc., substantially in the form submitted with the CHAPA application, provided that there be thirty (30) days prior written notice to and approval by the Acting Attorney General of any material changes to the proposed forms of governing documents that were submitted in the CHAPA application process;
3. the adoption of the Certificate of Merger and Plan of Merger by HMH and Englewood, substantially in the form submitted with the CHAPA application, provided that there be thirty (30) days prior written notice to and approval by the Acting Attorney General of any material changes to the proposed forms of Certificate of Merger and Plan of Merger that were submitted in the CHAPA application process;
4. the Acting Attorney General shall reserve the right to reopen this action before this Court in the public interest, after consultation with the Commissioner, in the event that the above-referenced action or any

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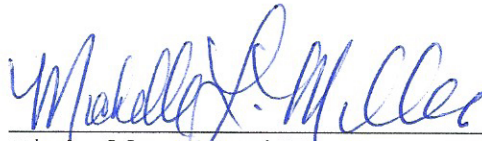
related action results in relief that precludes the closing of the Proposed Transaction or results in the disclosure of material information that would affect the Acting Attorney General's findings and recommendation contained in this letter with respect to the Proposed Transaction;

5. in the event the parties materially alter the Proposed Transaction, Englewood shall make application to this Court to reopen this action and seek approval of the revised transaction; and
6. the parties shall provide to the Acting Attorney General as soon it becomes available any information arising from the above-referenced or related action, or otherwise that would supplement or update the information provided in response to the Acting Attorney General's requests for information under CHAPA concerning the Proposed Transaction, as well as any information regarding actions taken against the parties with respect to the Proposed Transaction, until such matter has been resolved.

Respectfully submitted,

KEVIN JESPERSEN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By:



Michelle L. Miller
Director
Attorney ID # 03062-1994

c: Commissioner Judith Persichilli

EXHIBIT A



State of New Jersey
DEPARTMENT OF HEALTH

PO BOX 360
TRENTON, N.J. 08625-0360

www.nj.gov/health

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

JUDITH M. PERSICILLI, RN, BSN, MA
Commissioner

December 8, 2020

The Honorable Kevin Jespersen
Acting Attorney General of New Jersey
R.J. Hughes Justice Complex
P.O. Box 112
Trenton, NJ 08625-0112

Re: Proposed transaction between Hackensack Meridian Health, Inc.
and Englewood Healthcare Foundation, d/b/a Englewood Health

Dear Mr. Jespersen:

The Department of Health (Department) acknowledges the proposed transaction between Hackensack Meridian Health, Inc. (HMH) and Englewood Healthcare Foundation, d/b/a Englewood Health (Englewood). The Department is currently processing the licensure application regarding the transaction. This shall also confirm that the Department participated in a public hearing held in accordance with the Community Health Care Assets Protection Act.

Hackensack Meridian Health, a New Jersey nonprofit integrated health care system and its affiliates represents that it will continue all services currently being provided at their facilities. Upon closing HMH will become the parent of Englewood. Based on these representations, the Department does not believe the proposed transaction will result in the deterioration of the quality, availability or accessibility of health care in the impacted communities.

Please contact Deputy Commissioner Marcela Ospina Maziarz at 609-292-7874 if you have any questions concerning this review.

Sincerely,

A handwritten signature in blue ink that reads "Judith M. Persichilli".

Judith M. Persichilli, RN, BSN, MA
Commissioner

c: Maria Christensen
Jean DeVitto
Jay Ganzman
Felicia Harris
Gary Spiewak

EXHIBIT B

[EXTERNAL] FW: CON Confirmation for Englewood Transaction

Velocci, Frank F. <frank.velocci@faegredrinker.com>

Wed 5/20/2020 2:42 PM

To: Jay Ganzman <Jay.Ganzman@law.njoag.gov>; Lindsey Curewitz <Lindsey.Curewitz@law.njoag.gov>

 2 attachments (1 MB)

Jean DeVitto NJDOH CON Healthcare Facility Licensure 12.4.19.pdf; 048_Tab 004.b.iii_Letter from NJ Department of Health regarding no requirement for Certificate of Need, dated August 4, 2017.pdf;

Jay,

Thank you for the call just now. As discussed, we received the below from the DOH confirming the proposed transaction with EH does not require a CN. We have been told to accept the email instead of a letter because the DOH has been so overwhelmed. Please let me know if that is acceptable. Once you and Lindsey confirm I will loop in Rich and Gerard so we can include the email in our responses to your last set of questions. Thank you again.

Frank

Frank F. Velocci

Partner

frank.velocci@faegredrinker.com

+1 973 549 7078 direct / +1 973 202 3597 mobile / +1 973 360 9831 fax

Faegre Drinker Biddle & Reath LLP

600 Campus Dr.

Florham Park, New Jersey 07932, USA

Welcome to **Faegre Drinker Biddle & Reath LLP (Faegre Drinker)** – a new firm comprising the former Drinker Biddle & Reath and Faegre Baker Daniels. Our email addresses have changed with mine noted in the signature block. All phone and fax numbers remain the same.

This message and any attachments are for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message and any attachments.

From: DeVitto, Jean <Jean.DeVitto@doh.nj.gov>**Sent:** Tuesday, May 12, 2020 2:19 PM**To:** Esser, Kenneth <Kenneth.Esser@hackensackmeridian.org>**Cc:** Harris, Felicia <Felicia.Harris@doh.nj.gov>; Alexopoulos, Luisa <Luisa.Alexopoulos@doh.nj.gov>**Subject:** [External] - RE: CON Confirmation for Englewood Transaction

Note that this email originated outside of the Hackensack Meridian Health Network. DO NOT CLICK ON LINKS or OPEN FILE ATTACHMENTS unless you know and trust the sender.

Afternoon,

This does not require a CN. It is under review at the AG's office under the Community Health Care Assets Protection Act (CHAPA) since it is the substitution the sole corporate member of a not for profit organization.

Thank you

Jean DeVitto, Executive Director
Certificate of Need & Licensing
New Jersey Department of Health
120 South Stockton Street, 3rd Floor
P.O. Box 358
Trenton, NJ 08625-0358
Telephone # (609) 376-7888
Fax # (609) 341-2212



For COVID 19 updates, please continue to check the DOH we site for routinely updated information. <https://www.nj.gov/health/cd/topics/ncov.shtml>

For DOH COVID-19 Executive Directives, Waivers, or Guidance click here <https://www.nj.gov/health/legal/covid19/>

For the State of New Jersey COVID-19 Jobs and Hiring Portal click here <https://jobs.covid19.nj.gov/index.html>

Am.App.38

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DIVISION OF LAW & PUBLIC SAFETY

IN RE: ENGLEWOOD HOSPITAL CHAPA
PUBLIC HEARING
ON PROPOSED DEFINITIVE
AGREEMENT

TRANSCRIPT OF:
HEARING

October 7, 2020
Tenafly, NJ

B E F O R E:

JAY GANZMAN, Deputy Attorney
General

KAVIN K. MISTRY
Assistant Attorney General

LINDSEY CUREWITZ, Deputy Attorney
General

SCOTT OWENS
Health Systems Specialist

ROSENBERG & ASSOCIATES, INC.
Corporate Headquarters
23 Vreeland Road-Suite 204
Florham Park, New Jersey 07932
Telephone: (973)228-9100
Fax: (973)228-2634

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T R A N S C R I P T of the PUBLIC HEARING
ON PROPOSED DEFINITIVE AGREEMENT, said hearing
being taken by and before Jane E. Clancy, C.C.R.,
a Notary Public and Certified Court Reporter of
the State of New Jersey, at the Pavilion at the
Kaplan Center, 411 East Clinton Road, Tenafly,
New Jersey, on Wednesday, October 7, 2020,
commencing at 6:00 p.m.

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I N D E X

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1 MR. MISTRY: Good evening. I'd
2 like to call this public hearing to order. My
3 name is Kavin Mistry and I'm a Deputy Director of
4 the Division of Law. On behalf of Acting
5 Attorney General Andrew Bruck, I would like to
6 welcome everyone to this hearing, both those in
7 person and online. For those attending in
8 person, we ask that you please silence all
9 electronic devices. For those attending
10 remotely, we ask that you please remain on mute
11 when not speaking.

12 This hearing is being held pursuant
13 to the Community Health Care Assets Protection,
14 which we refer to as "Chapa.". We are holding
15 this public hearing regarding the proposed
16 establishment of Hackensack Meridian Health, a
17 New Jersey nonprofit integrated health care
18 system, as the parent corporation of Englewood
19 Hospital and Medical Center, Inc. d/b/a
20 Englewood Hospital, a New Jersey nonprofit
21 501(c)(3) tax exempt corporation and its
22 affiliates.

23 Englewood Hospital is an acute care
24 teaching hospital with 531 licensed beds, located
25 at 350 Engle Street, Englewood, New Jersey.

1 Hackensack Meridian Health is the
2 parent organization of an integrated health care
3 delivery system that includes HMH Hospitals
4 Corporation and JFK Health System, which provides
5 health care services to communities in Bergen,
6 Essex, Hudson, Middlesex, Monmouth, and Ocean
7 Counties, and the surrounding areas.

8 As required by CHAPA, notice of
9 this public hearing was published in the Bergen
10 Record and El Diario on September 23, 2020, and
11 the Korea Daily on September 24, 2020. Notice
12 was also posted on Englewood's website and in the
13 Hospital. These proceedings are being
14 transcribed and the transcript will be available
15 upon request to the Attorney General's Office.
16 Members of the public may submit written comments
17 to the Acting Attorney General on or before
18 October 14, 2020.

19 If during registration, you did not
20 sign up to speak and now wish to do so, please
21 raise your hand, and for those participating
22 remotely, either hit the "raise hand" button at
23 the bottom of your screen or make sure your
24 camera is on and raise your hand. We will call
25 your name when it is your turn.

1 In order to accommodate everyone
2 who wishes to be heard, we ask that speakers
3 limit their comments to five minutes or less. We
4 will close the hearing at 7 p.m. or the close of
5 all comments, whichever is later. We kindly ask
6 that everyone who is attending this hearing in
7 person, please abide by all social distancing
8 guidelines, properly wear your masks, and refrain
9 from moving any furniture and/or signage, at all
10 times.

11 Anyone who is not willing to abide
12 by these guidelines will be asked to leave and
13 participate remotely.

14 This hearing is being conducted
15 jointly by the Attorney General's Office and the
16 Department of Health. I'll be conducting the
17 hearing on behalf of Acting Attorney General
18 Bruck. I'd like to introduce Health Systems
19 Specialist Scott Owens from the Department of
20 Health who will conduct this hearing with me on
21 behalf of Department of Health Commissioner
22 Judith Persichilli.

23 If this transacion is approved, it
24 is anticipated that Englewood will continue to
25 provide a full range of health care services to

1 the community. Before we call upon this
2 evening's speakers, we'd like to present a brief
3 chronology of the events leading up to this
4 hearing.

5 By letter dated October 22,
6 2019, Englewood notified the Attorney General's
7 Office of the proposed transaction. In response
8 to questions posed by our office, the parties
9 provided thousands of pages of due diligence
10 materials which are available upon request to the
11 Attorney General's office. After examination and
12 analysis of the information provided, on
13 September 11, 2020, we deemed Englewood's
14 application complete.

15 The Attorney General's role under
16 CHAPA is to determine whether the proposed
17 transaction, with or without any specific
18 modifications, is in the public interest. The
19 transaction will not be deemed to be in the
20 public interest unless the Acting Attorney
21 General determines that appropriate steps have
22 been taken to safeguard the value of the
23 charitable assets of the hospital. CHAPA also
24 calls upon the Commissioner to determine whether
25 the proposed transaction is likely to result in

1 the deterioration of the quality, availability,
2 or accessibility of health care services in the
3 community. Once our examination is complete, the
4 Acting Attorney General will submit his
5 recommendation to the Superior Court which has
6 final review over the transactions.

7 The object of this hearing is to
8 solicit comments from the parties and
9 stakeholders, including members of the public,
10 which will assist the regulators in assessing the
11 proposed transaction.

12 We will first hear from the
13 following representatives of Englewood and
14 Hackensack Meridian Health: Mr. Warren Geller,
15 President and CEO of Englewood, you are up first.

16 MR. GELLER: Good afternoon,
17 everyone. I'm Warren Geller, President and CEO
18 of Englewood Health. I would like to thank the
19 Attorney General's Office and the Department of
20 Health for calling this hearing today and giving
21 our community a chance to ask questions and learn
22 more about the proposed merger between Englewood
23 Health and Hackensack Meridian Health.

24 Englewood Health is an integrated
25 delivery system caring for patients across

1 Northern New Jersey, Rockland County, and beyond.

2 Our main facility is Englewood
3 Hospital located down the road from here in
4 Englewood, New Jersey. It's a 350 staff bed.

5 Last year we admitted over 18,000
6 in-patients and over 53,000 patients sought care
7 at our Emergency Department.

8 More recently, our hospital played
9 a critical role in the midst of this pandemic
10 of Covid 19.

11 When the virus hit our nation in
12 the spring, it quickly became clear that Bergen
13 County and beyond was in the epicenter of this
14 pandemic and Englewood Hospital successfully
15 treated thousands of patients.

16 I'm incredibly proud of how our
17 team responded. We came together in unison to
18 take our locations and community as we truly
19 cared for the sick of the sickest and our teams
20 did extraordinary work because of the support
21 they had from our community and one another.

22 We were also supported by our
23 friends and neighbors. Sometimes it was just
24 kind words of encouragement. Meals for the
25 frontline team members in their efforts in

1 wearing masks and maintaining social distancing
2 and washing their hands in order to truly flatten
3 the curve, and I thank all members of our
4 community for being partners in this care.

5 Englewood Health also has an
6 extensive physician network from the Englewood
7 Health Physician Network, EHPN, with over 100
8 locations across the region that last year
9 handled more than 810,000 patient appointments.

10 In addition, our health system
11 includes the Englewood Health Foundation, a
12 separate 501(C)(3) Corporation, New Jersey
13 nonprofit, that strives to build a charitable
14 legacy in supporting Englewood Health and by
15 extension, it supports all of you in our
16 community.

17 I personally joined Englewood
18 Health back 2009, and I have a great deal of
19 pride on what we've accomplished, our
20 achievements in patient volume, the acuity of
21 patients to care for, financial performance and
22 probably most importantly, patient safety, and
23 our outcomes.

24 But today, we are here to discuss a
25 new chapter in our 130-year history, as we seek

1 to integrate, fully integrate with Hackensack
2 Meridian Health and achieve a whole new level of
3 care for our community, not just now, but into
4 the future.

5 The proposed transaction involves
6 the merger of Englewood Health, which I may refer
7 to going forward as Englewood, into Hackensack
8 Meridian Health, which I may refer to as HMH.

9 As a result, HMH would become the
10 parent corporation of each of Englewood's
11 subsidiaries, a definitive agreement that we
12 established in September of 2019 with our
13 numerous benefits to the Englewood Health
14 community that would come from the merger,
15 including the development of Englewood's Hospital
16 as a tertiary health care provider in the
17 northern region, the expansion of access, the
18 quaternary and complex tertiary procedures, and
19 the building of two service lines. That's very
20 important to this community, including cardiology
21 and cardiac surgery, neurosciences, vascular
22 surgery, oncology, advanced maternal fetal
23 medicine, neonatology, orthopedics, behavioral
24 health and medicine and surgery.

25 Next, the investment of over four

1 hundred million dollars into Englewood's Health
2 facilities and services, all designed to increase
3 access and innovate advanced medical care for
4 anyone in our community that is in need of these
5 services.

6 Next, an affiliation with HMH's
7 Medical School that will enable Englewood
8 Hospital to become a tertiary, academic medical
9 center in the region allowing for and
10 accommodating for medical education and training,
11 access to clinical research and trial and an
12 advanced level of care.

13 Englewood will also benefit from
14 access to HMH's other partnership such as the HMH
15 Carrier Clinic, which is New Jersey's largest
16 provider of Behavioral Health Services.

17 When this kicks off, Englewood
18 Health and HMH will partner with the City of
19 Englewood on what we call the "Live Well
20 Project," a Community Outreach Program that
21 focuses on the prevention and early detection of
22 diabetes, a condition that poses a public health
23 crisis now and will have an even greater impact
24 and burden in the future if we don't do something
25 about it.

1 Next, the preservation of the
2 Englewood Health Foundation that I mentioned
3 earlier, as a local charity for the benefits of
4 patients and community members served by
5 Englewood Health with the commitment from the
6 leadership at HMH that all donor gifts will
7 benefit the intended communities and last, the
8 establishment of an independent nonprofit
9 corporation, the Englewood Trust, tasked with
10 ensuring that the patients and community members
11 served by Englewood Health receive the benefits
12 that are laid out in the definitive agreement.

13 Although we've experienced an
14 upward trajectory for several years now, this
15 proposed transaction will provide benefits to the
16 community that Englewood would clearly be unable
17 to provide as a stand alone entity. The proposed
18 transaction will provide patients and our
19 community members additional high quality care
20 options, improve the patient and family
21 experience, and strengthen our collective ability
22 to invest in the communities that we serve.

23 Together, Englewood and HMH will
24 demonstrate a joint commitment to address the
25 issue of affordability of health care for all and

1 provide greater access for not just the uninsured
2 but the under-insured patients.

3 Together, we're going to implement
4 numerous clinical initiatives to benefit our
5 patients and our merged health system will build
6 new ambulatory care centers out in the
7 communities closer to home so patients can
8 receive care on their schedule.

9 We are going to expand our cardiac
10 catherization facilities, build new OR's for
11 state-of-the-art equipment and diagnostics, a new
12 Endoscopy Suite and something near and dear to my
13 heart as a father of twins, a Neonatal Intensive
14 Care Unit for our smallest, most vulnerable
15 patients and the access to top-notch behavioral
16 health care cannot be understated. This pandemic
17 has put an emphasis on that and we need that
18 help.

19 We will also be able to access the
20 top highest level of pediatric care available in
21 the entire State of New Jersey.

22 At Englewood, we have a proud
23 history of service to our community and our
24 exceptional team will continue to serve patients
25 with that same level of excellence that they have

1 come to know and love that we have done for over
2 130 years.

3 This proposed transaction enables
4 us at Englewood to preserve our cherished local
5 identity while accessing the tremendous resources
6 that are inherent in a 1,700 hospital system with
7 a vast network.

8 The Englewood Health Foundation
9 will also continue to pursue its important
10 philanthropy programs to support the community
11 needs and enhanced care.

12 I am confident that together,
13 Englewood and HMH will be able to deliver the
14 most innovative and compassionate care for the
15 communities that we serve now and into the
16 future.

17 We look forward for the
18 commencement of this transaction so we could
19 officially take our relationship with HMH to that
20 next level.

21 Finally, I would be remiss if I
22 didn't take a moment to just provide some brief
23 comments to the Covid 19 Pandemic.

24 This pandemic has underscored the
25 importance of moving forward with the proposed

1 transaction promptly in order to enhance the
2 availability of integrated regional care to
3 efficiently allocate resources and standardized
4 best practices to combat this novel Corona virus
5 that we are all struggling with.

6 Although it's difficult to
7 determine or predict the impact that the pandemic
8 will have on the delivery of care and the
9 financial landscape of health care in general, I
10 could tell you that both Englewood and HMM are
11 committed to working together to appropriately
12 address these issues and we hope that the
13 Attorney General's Office and other regulators
14 will move promptly to conclude any review of this
15 transaction as soon as feasibly possible this
16 year so that we can commence integration and be
17 well-positioned for any potential resurgence that
18 we could face with Covid 19.

19 I thank you for your
20 time.

21 MR. MISTRY: Next up Mr. Richard
22 Lerner, Chairman of the Board of Trustees of the
23 Board of Englewood.

24 MR. LERNER: Good afternoon. I am
25 still Richard Lerner, Chair of the Board of

1 Trustees of Englewood Health.

2 Once again, I would like to thank
3 the Department of Health and the Attorney
4 General's Office for the opportunity to speak
5 today on behalf of the transaction.

6 Prior to becoming the Chair of
7 Englewood Health in 2020, I was serving as a
8 hospital board member since 2014 with Englewood
9 and became a member of the system board in 2016.

10 I also served and also currently
11 serve as Chair of the Professional Affairs
12 Committee, which is our committee that oversees
13 and guides quality patient safety in all of our
14 facilities.

15 Our decision to join a larger
16 system resulted from a thoughtful process that
17 involved our entire Board of Trustees who are all
18 committed to providing the highest quality health
19 care for Englewood's community.

20 Since we began working more closely
21 with Hackensack University Health Network, now
22 Hackensack Meridian Health, it has become
23 apparent that we need to be more closely aligned
24 in order to establish joint efforts to improve
25 health care for our communities.

1 Our track record of dedication to
2 our communities has demonstrated that the
3 proposed transaction is the best course of action
4 to ensure the continued success of Englewood
5 Health's mission to deliver world class care to
6 our surrounding communities.

7 In early 2018, our Board initiated
8 a process to assess the current state and future
9 strategy of Englewood.

10 In June of 2018, the Board elected
11 to pursue an effort to join another health system
12 in order to help Englewood achieve several
13 strategic goals that would best serve our
14 community, many of which were eloquently
15 described before.

16 The Board initiated a targeted and
17 defined affiliation process which considered
18 multiple health care systems with complementary
19 cultures and reputations for excellence.

20 The Board tasked its Executive
21 Committee with leading Englewood's strategic
22 affiliation efforts. The Executive Committee
23 undertook an extensive and thoughtful competitive
24 bidding process involving well-respected health
25 systems within its service areas in New York and

1 New Jersey.

2 In the end, after substantial due
3 diligence and deliberations, we unanimously
4 concluded that Hackensack Meridian Health was a
5 partner that was best able to help us deliver on
6 our mission of providing access to the highest
7 levels of quality health care in our community.

8 The signing of the definitive
9 agreement in September of 2019 was the
10 culmination of an affiliation process that lasted
11 over 18 months. During that time, Englewood
12 assessed its long-term strategic initiatives,
13 developed affiliation criteria, evaluated initial
14 proposals and follow-up responses from the
15 region's most reputable health systems, refined
16 transaction structures and deal terms and
17 negotiated term sheets, as well as bid draft
18 agreements with two affiliation finalists.

19 Englewood identified a minimum
20 level of capital investment that was needed to
21 fuel our continued growth, and we use this number
22 along with other fair market value considerations
23 in connection with negotiating capital
24 commitments with our potential strategic
25 partners.

1 In addition, Englewood conducted
2 comprehensive legal and financial due diligence
3 of Hackensack Meridian Health to further ensure
4 that HMH was the best strategic partner possible.

5 The Board concluded that no other
6 health system could revive the clinical synergies
7 and operational efficiencies that HMH would
8 provide.

9 The Board's decision to pursue the
10 proposed transaction focused on building the most
11 effective and efficient system possible for the
12 benefit of the communities that we serve.

13 Warren Geller has already laid out
14 many of the tangible benefits that will come from
15 this agreement and I concur that the proposed
16 transaction serves the long-term best interest of
17 Englewood's patients, their families, the
18 surrounding communities, our medical staff and
19 our employees.

20 We very much look forward to the
21 proposed transaction's approval in the beginning
22 of this new chapter in our one hundred thirty
23 year history.

24 Thank you very much for your time
25 and attention.

1 MR. MISTRY: Thank you. Our next
2 speaker is Mr. Robert Garrett, Co-Chief Executive
3 Officer of Hackensack Meridian Health. Mr.
4 Garrett.

5 MR. GARRETT: Good evening,
6 everybody. I'm Bob Garrett and I'm the CEO at
7 Hackensack Meridian Health.

8 I also would like to very much
9 thank our colleagues from the Attorney General's
10 Office and the Department of Health for calling
11 this meeting and really allowing the public the
12 opportunity to comment on the proposed merger
13 between Hackensack Meridian Health and Englewood
14 Health.

15 Today, as I stand here, Hackensack
16 Meridian Health is 17 hospital network with three
17 academic medical centers, nine community
18 hospitals, two childrens' hospitals and two
19 rehabilitation hospitals and more than five
20 hundred outpatient care sites and physicians'
21 offices located throughout the State of New
22 Jersey.

23 At Hackensack Meridian we have more
24 than 36,000 team members and 7,000 physicians.
25 Our network has some of the best hospitals in the

1 nation. In fact, four are ranked among the top
2 10 in New Jersey according to US News and World
3 Report. They include our flagship hospital right
4 here in Bergen County, Hackensack University
5 Medical Center.

6 Also on that list is Jersey Shore
7 University Medical Center in Monmouth County in
8 Neptune, New Jersey, River View Medical Center in
9 Red Bank, New Jersey, and Ocean Medical Center in
10 Brick, New Jersey, as part of our Ocean County.

11 Our entire network has also been
12 recognized as one of 10 in the nation, one of 10
13 in the entire nation for its strong finances and
14 financial performance by Becker's Hospital
15 Review.

16 This is essential to our ability to
17 deliver innovative, high quality and
18 compassionate care. The level of care that we
19 provide at any of our facilities is second to
20 none. The heart and the soul of our organization
21 is our physicians, our nurses and our entire
22 clinical team.

23 We believe that nurses are
24 especially important to achieving the vision of
25 consistently delivering high quality cost

1 efficient care.

2 We are the first hospital and
3 health system in the country to achieve magnet
4 recognition for nursing excellence from the
5 American Nurses Credentialing Center and we have
6 been hailed as a national leader in the delivery
7 of quality nursing care.

8 Now, I want to talk a little bit
9 about the importance of partnerships and
10 alliances in health care today.

11 At Hackensack Meridian Health we
12 strive for innovative ways to deliver high
13 quality patient centered care that's convenient
14 and also, affordable at the same time. We
15 believe partnerships and alliances are critical
16 to taking care of the residents of the State of
17 New Jersey and fulfilling our charitable mission
18 which is the reason we would like to partner with
19 Englewood Health. Together we can provide the
20 community with greater access to care, more
21 innovative treatment and enhanced outpatient
22 services.

23 This proposed merger also allows
24 both Hackensack Meridian and Englewood Health to
25 better coordinate care and better integrate

1 population health strategies to ensure that we
2 invest in prevention as much as curing illness.
3 This is especially important in underserved
4 communities that we serve. We believe that a
5 merger with Englewood Health will address these
6 issues and deliver real value.

7 We have made major strides as a
8 network since Hackensack Meridian launched just
9 over four years ago. We opened the Hackensack
10 Meridian School of Medicine, the first private
11 Medical School to open in nearly 60 years on the
12 campus of the former Hoffman LaRoche in Nutley
13 and Clifton, New Jersey.

14 We are training a new generation of
15 physicians for a new state of health care. We
16 launched a center for discovery and innovation on
17 the campus as well, same campus in Nutley and
18 Clifton, a state-of-the-art facility which will
19 offer world renowned researchers, a support to
20 develop novel therapies for some of the world's
21 most difficult diseases such as cancer, diabetes,
22 dementia, antibiotic resistant infection and
23 autoimmune disorders.

24 The center, just a year old, one
25 year old, contributed major breakthroughs during

1 the Covid 19 Pandemic. The CDI, as we refer to
2 it, created New Jersey's first commercial rapid
3 test which reduced wait times from days to hours
4 and proved to be a game changer early in the
5 pandemic.

6 The center is also playing a major
7 role in convalescent therapy, clinical trials to
8 potentially offer a cure for this global menace
9 that we are facing.

10 Hackensack Meridian Health is at
11 the forefront of innovative research. In fact,
12 we are participating in several clinical trials
13 to develop therapies to battle Covid 19
14 including an antibody cocktail developed by
15 Regeneron Pharmaceuticals on a list, which has
16 been on a list of experimental remedies
17 prescribed to President Donald Trump.

18 Our network is also participating
19 in the Moderna Covid 19 clinical trial, vaccine
20 trial. To date, we have enrolled more than one
21 hundred volunteers and are working toward a total
22 enrollment of three hundred. This is another
23 example of our proud commitment to innovation and
24 to be part of a solution in fighting this global
25 pandemic.

1 These important areas of focus at
2 Hackensack Meridian, education, research and
3 innovation will directly support the
4 long-standing mission of Englewood Health to
5 offer the most advanced treatment and convenient
6 care to the communities that they serve.

7 Our partnership with Englewood will
8 also focus on developing new treatments in
9 oncology, cardiology, orthopedics and more to
10 enhance health care throughout our state.

11 In 2016, we made history in
12 announcing a 10-year strategic partnership with
13 Memorial Sloan Kettering Cancer Center. Together
14 we are developing a network wide standard of care
15 for clinical care delivery and providing patients
16 with access to more than eight hundred clinical
17 trials.

18 The John Theurer Cancer Center in
19 Hackensack University Medical Center is also part
20 of the NCI designated Georgetown Lombardi
21 Comprehensive Cancer Consortium. This unit
22 committed to enhancing research which includes
23 focusing on ways to eliminate gaps in outcomes
24 based on race and ethnicity.

25 In 2019, we formed a historic

1 partnership with Carrier Clinic, the states
2 leading behavioral health provider to make care
3 more accessible, more integrated and to provide
4 more evidence based therapies.

5 Since Carrier joined our network,
6 we have made major strides to treat addiction and
7 mental illness as the chronic disease that they
8 are.

9 We opened the state's first
10 behavioral health urgent care center in Neptune
11 and will soon open a destination state-of-the-art
12 addiction treatment center in Mahwah, New Jersey.
13 Too many of our young residents in particular are
14 seeking addiction treatment services out of state
15 and we want to have a state-of-the-art center
16 right here in New Jersey to serve the needs of
17 our communities.

18 Now, I want to talk a little bit
19 about the benefits and goals of the proposed
20 transaction between Hackensack Meridian and
21 Englewood Health. We believe that Hackensack
22 Meridian and Englewood Health share a similar
23 culture and a vision for health care which makes
24 this proposed merger in partnership one that
25 allows for new and more robust collaborations

1 between our two organizations.

2 Our network has committed a very
3 sizable four million dollar capital investment in
4 Englewood Health. This investment will position
5 Englewood Health as a tertiary hub in Northern
6 New Jersey with a focus on areas such as cardiac
7 care, neurosciences, oncology, robotic surgery,
8 women's health and neonatal intensive care.

9 Other areas of specialty include
10 comprehensive stroke services, thoracic surgery,
11 behavioral health and an extensive ambulatory
12 care network throughout our region.

13 Englewood's expanded role as a
14 tertiary hub will support and facilitate the
15 expansion and new development of quaternary and
16 complex tertiary programs at Hackensack
17 University Medical Center.

18 This synergy between Hackensack and
19 Englewood will provide access to care in New
20 Jersey for our residents. It will reduce out
21 migration to New York City and provide more
22 affordable care for the residents of New Jersey.

23 Additionally, the Hackensack
24 Meridian School of Medicine will enable
25 Englewood to become an academic hub in this

1 region.

2 We also note that Englewood Health
3 will benefit by Hackensack Meridian Health's
4 partnerships with other institutions such as
5 Memorial Sloan Kettering and the Carrier Clinic,
6 New Jersey's largest behavioral health provider.

7 Clearly, clearly, both
8 organizations stand to benefit from this
9 potential merger which will afford Englewood
10 Health a statewide geographic footprint and
11 enhanced care in the Hackensack Meridian network
12 which directly reaches two thirds of New Jersey's
13 residents.

14 However, as with all the services
15 that we provide, it is our communities that will
16 benefit us from having access to these needed
17 services here in New Jersey.

18 Keeping families together
19 particularly during these very difficult times
20 and providing innovative and expanded treatment
21 that's so sorely needed. We are proud. We are
22 both proud of our legacies of providing
23 innovative treatments to today's patients.

24 We believe this potential merger
25 helps us build a better health care system for

1 the future as well.

2 Simply put, ladies and gentlemen,
3 patients are the real winners here.

4 As a result, we respectfully
5 request swift approval of this very important
6 final proposed transaction.

7 Thank you all very much for your
8 time and attention and attendance this evening.

9 MR. MISTRY: Thank you. Next up
10 Mr. Frank Fekete, Chair of the Board of Trustees
11 of Hackensack Meridian Health.

12 MR. FEKETE: Good afternoon. This
13 is Frank Fekete and I am the Chair of the
14 Hackensack Meridian Health Board of Trustees. I
15 too would like to thank the Department of Health,
16 the Attorney General's Office for giving us the
17 opportunity to have this public hearing.

18 Prior to the formation of
19 Hackensack Meridian Health I served many years as
20 a member of the Hackensack University Medical
21 Center Board of Trustees.

22 On July 1, 2016, Hackensack
23 University Health Network and Meridian Health
24 merged to form Hackensack Meridian Health which
25 is a comprehensive and truly integrated health

1 care network.

2 Our Board has an impressive caliber
3 of business and community leaders. Members
4 contribute time and expertise to enhance
5 Hackensack Meridian's mission to provide the full
6 spectrum of patient centered care and services
7 here in New Jersey.

8 Our Board members were
9 collaborative with leadership, physicians and
10 team members. Our physicians, nurses and health
11 care team professionals partnership to improve
12 the quality and safety of patient care, and each
13 and every one of our partnerships we aim to
14 completely integrate and enhance services. We
15 want to make it easier for our patients to
16 receive high quality, convenient and affordable
17 health care.

18 Our Board's very thoughtful
19 evaluation of Englewood Health determined we are
20 a good thing.

21 We conducted many months of due
22 diligence where a thorough review of clinical
23 regulatory service and financial issues occurred
24 prior to Hackensack Meridian Health and Englewood
25 Health signing a definitive agreement to merge.

1 We believe our missions are aligned
2 and both organizations are committed to
3 investing in vital health services to enhance
4 care.

5 We believe this merger will ensure
6 that the residents of North Jersey continue to
7 receive nationally recognized treatment close to
8 home.

9 Now, let me speak a little bit
10 about the benefits of the proposed transaction.
11 The shared vision of this merger will expand
12 areas of care needed in North Jersey including,
13 complex tertiary and quaternary hospital
14 services, new ambulatory care centers, expanded
15 cardiac services, oncology and more.

16 Englewood Health will also receive
17 a substantial investment from HMH so it can
18 continue a one hundred thirty year tradition of
19 providing comprehensive innovative care for
20 communities throughout North Jersey including the
21 underserved.

22 The merger will expand an array of
23 options for patients due to Hackensack Meridian's
24 existing partnerships with Memorial Sloan
25 Kettering Cancer Center and the Carrier Clinic.

1 Today, we know we must fully
2 integrate behavioral health care into health
3 care.

4 Communities served by Englewood
5 Health will now have access to the network's new
6 addiction treatment center which is opening in
7 Bergen County next month so patients don't have
8 to leave the state for care.

9 The joining of Hackensack Meridian
10 Health and Englewood Health will create a higher
11 quality, stronger, more accessible and innovative
12 health care system.

13 Together, these organizations will
14 strive to benefit the communities they proudly
15 serve.

16 With that being said, we
17 respectfully request a swift approval of the
18 proposed transaction. Thank you very much.

19 MR. MISTRY: Thank you. We will
20 now open up the hearing for public comment. The
21 first speaker to be called is Ms. Kathy Kaminsky,
22 the Chief Nursing Officer of Englewood Health.

23 MS. KAMINSKY: Okay, thank you and
24 good evening and I would like to thank the
25 Attorney General's Office as well as the

1 Department of Health.

2 As mentioned, my name is Kathy
3 Kaminsky. I am a Senior Vice President for
4 Patient Care Services and the Chief Nursing
5 Officer at Englewood Health.

6 I personally have been in Englewood
7 for many years, in fact, 35 years to be exact.
8 It is my second home and as a steward of this
9 hospital, I am here to share my support for this
10 merger.

11 I started out at Englewood as a
12 unit secretary and then soon became a staff
13 nurse. Over the years, I have been a firsthand
14 witness to the ever-changing role that hospitals
15 played for their communities and the evolving
16 demands required of its nurses, physicians,
17 administrators and other staff to fulfill this
18 role.

19 Through integration with
20 Hackensack, Englewood team members will have
21 increased education and training opportunities
22 to improve their skills and to meet the demands
23 now and in the future.

24 Innovative technology is
25 revolutionizing health care and it's further

1 developing as we speak. Not only telemedicine,
2 but also, remote monitoring which creates easier
3 and helps providers focus more on prevention and
4 wellness and the electronic medical records
5 sophisticated analytical tools and new frontiers
6 like artificial intelligence can help providers
7 detect optimum treatment patterns, know what's
8 working best to keep patients healthy and out of
9 hospitals.

10 But technology is a significant
11 investment, often daunting or outright
12 prohibitively expensive for stand alone hospitals
13 or small networks.

14 Other types of innovation are
15 driving when, where and how health systems serves
16 patients and their communities. This often
17 extends beyond the hospital's walls and not only
18 during the episodes of illness.

19 We must continue to improve access
20 to primary care and outpatient services, partner
21 with other organizations to enhance individual
22 and public health and develop new programs
23 founded on a commitment to prevention and
24 wellness as well as create programs that serve
25 the cultural, social and holistic needs of

1 specific populations.

2 Being part of a larger health
3 system will allow us to effectively and
4 efficiently engage in these efforts. This growth
5 needs to be balanced with quality.

6 As we expand our services to meet
7 the communities needs, we must continuously
8 recommit our efforts to improve patient safety
9 and quality and to focus on the value of care
10 that we provide.

11 This merger will allow our hospital
12 and health system to share and implement best
13 practices, harness so-called big data and pull
14 resources to reduce waste, provide efficient care
15 and create the safest environment for our
16 patients as well as for our team members.

17 As a Chief Nursing Officer, I am
18 incredibly proud of our Englewood nurses.
19 Every day our nurses have a profound impact on
20 our patients, their families and our community.

21 Englewood recognizes the central
22 role that nurses play in the delivery of high
23 quality state and patient centered care. This is
24 reflected in the fact that our Englewood Health
25 nurses have been recognized by the Magnet

1 Recognition Program from the American Nurses
2 Credentialing Center four consecutive times since
3 2002.

4 We are proud to be among the few
5 hospitals in the nation to have earned this
6 recognition for quality of patient care, nursing
7 excellence and innovation and professional
8 nursing practice.

9 By joining with another health
10 system that also values its nurses, we can take
11 the practice of nursing to new heights.

12 The Covid 19 Pandemic brought the
13 issue of team member safety sharply into focus.
14 I could not be more proud of how our hospital
15 rose to this unprecedented challenge and the
16 commitment of our nurses, doctors and every
17 member of our team. But one of the challenges we
18 faced was the acquisition and allocation of
19 resources, equipment, PPE, ventilators and even
20 qualified personnel. Although we were successful
21 in meeting these needs, being part of a larger
22 network will ensure more security and access to
23 supplies and staff.

24 As a merged entity, we can also
25 learn from each other, standardized best

1 practices to combat the virus should we face a
2 resurgence.

3 I want to thank you for giving me
4 the opportunity to share these thoughts with you
5 tonight and I am enthusiastically looking forward
6 to the approval of this merger and a very new era
7 for our health system and our communities'
8 health. Thank you.

9 MR. MISTRY: Thank you. Next up is
10 Dr. Stephen Brunnquell, President of Englewood
11 Health Physician Network.

12 MR. BRUNNQUELL: Thank you for your
13 patience and good evening and thank you for
14 allowing me to join my colleagues in speaking on
15 behalf of Englewood Health in support of this
16 merger proposal.

17 I am Dr. Stephen Brunnquell. I'm
18 President of the Englewood Health Division
19 Network as Warren noted. We have about a hundred
20 locations in Bergen, Passaic, Essex and Hudson
21 Counties.

22 I've been on the staff of Englewood
23 Hospital for almost three decades. I started a
24 primary care practice in the little town of
25 Harrington Park. That practice has now become a

1 multi-specialty group known as The Park Medical
2 Group with locations in five Bergen County towns.

3 This is my community. As an
4 internist, as a leader, my main mission over the
5 course of my career has been the health care
6 needs of my neighbors and my friends who make up
7 this community.

8 I'm here to expand on some of the
9 clinical benefits of the proposed transaction.

10 Let's look at a couple of specific
11 examples. First, telemedicine. When Covid 19
12 hit and we closed our offices, health care
13 systems across the country rapidly expanded their
14 telemedicine services, and we did too.

15 Within 48 hours we established
16 connections with our patients via telemedicine.
17 But harnessing the full potential of telemedicine
18 is difficult and costly as a stand alone
19 hospital.

20 Through the integration, both
21 Hackensack Meridian Health and Englewood will use
22 the same telemedicine platform making it possible
23 for patients to get immediate, convenient and
24 affordable health care 24/7 365 with no
25 appointment necessary.

1 Next, cancer care. Warren Geller
2 already highlighted the many services that will
3 be augmented through this merger. I would like
4 to add the benefits of the merger as it relates
5 to cancer care.

6 Cancer patients at Englewood will
7 gain increased access to clinical trials and the
8 many sub-specialists through the John Theurer
9 Cancer Center at Hackensack University Medical
10 Center which conducts more cancer clinical trial
11 than any other cancer center in the state.

12 Next, some examples of the benefits
13 related to prevention and wellness. Warren
14 mentioned the Englewood Live Well Project. The
15 investment from this merger will help the Live
16 Well Project which addresses the prevention and
17 early diagnosis of diabetes.

18 More than 30 million Americans live
19 with this chronic illness and 84 more million
20 Americans have pre-diabetes. The burden gets
21 worse every year. Health care costs for people
22 with diabetes are two-and-a-half times other
23 people. One in seven health care dollars goes to
24 treat diabetes and its complications.

25 Today, doctors and health care

1 providers need to do more. We need to intervene
2 much earlier to spare people illness and our
3 health system's exorbitant costs.

4 Another benefit of the closed
5 transaction will be the expanded access to
6 behavioral health care or mental health services
7 as already has been mentioned tonight including
8 more and coordinated and innovative care. This
9 is so important for our community. One in five
10 adults lives with mental illness.

11 In addition, for the third year in
12 a row, life expectancy in the US is declining
13 largely due to the opioid epidemic and a
14 significant increase in suicide.

15 Last year New Jersey alone lost
16 more than three thousand one hundred people to
17 overdoses.

18 As part of HMM, Englewood patients
19 will have access to the experts and HMM carrier
20 has been noted as a nationally known behavioral
21 health provider.

22 HMM has also opened New Jersey's
23 first Urgent Behavioral Health Care Center, a
24 model that I hope will be replicated throughout
25 the network, especially up here in the north so

1 behavioral health patients have options besides
2 the Emergency Department.

3 Our community will also benefit
4 from the retreat and recovery addiction center
5 which is due to open in Mahwah very soon.

6 In closing, the health and
7 well-being of this community is very near and
8 dear to my heart. It's been my life's work and
9 purpose.

10 Covid surge earlier this spring
11 taught us many things about how we provide care
12 to our patients.

13 I am very, very proud of the
14 response of my colleagues at Englewood and how we
15 cared for patients and cared for our community
16 during this time.

17 One of the greatest lessons,
18 though, is that we cannot effectively beat the
19 burdens of a pandemic or any public health
20 challenge for that matter alone.

21 On a very personal level, I
22 accepted the leadership to be in the physician
23 network because Englewood is a nonprofit totally
24 dedicated to the community. It's why we exist.

25 I love the sense of mission that we

1 have and so this merger has my full support and
2 my enthusiasm because it will help us to
3 accomplish that mission better than ever.

4 Thank you, lady and gentlemen for
5 the opportunity to speak tonight.

6 MR. MISTRY: Thank you. Next up is
7 Donna Ciufo, Vice President of Nursing Education
8 Professional Practice and Leadership Development,
9 the Network of Hackensack Meridian Health.

10 MS. CIUFO: Good evening. Thank
11 you for this opportunity to speak. My name is
12 Donna Ciufo and I'm the Vice President of Nursing
13 Education Professional Practice and Leadership
14 Development for the Network of Hackensack
15 Meridian Health.

16 Prior to my current position I was
17 the Vice President Chief Nursing Officer at
18 Jersey Shore University Medical Center which is
19 an academic medical center within Hackensack
20 Meridian Health in the south.

21 I am proud to say that my entire 40
22 year nursing career has been associated with
23 Hackensack Meridian Health in various positions
24 advancing from staff nurse to vice president.

25 One of the things that I admire

1 most about Hackensack Meridian is its commitment
2 and dedication to the nursing profession.

3 Hackensack Meridian clearly
4 believes that nurses are essential to achieving
5 the vision of consistently delivering high
6 quality cost efficient care.

7 I have also noticed the same
8 commitment and dedication from Englewood Health
9 nurses.

10 Hackensack Meridian is proud of our
11 nurses who consistently demonstrate their
12 outstanding commitment to excellence in patient
13 care each and every day.

14 Our nurses are known not only for
15 the finest quality of care they deliver to
16 patients, but also, the contribution they make to
17 the advancement of the nursing profession.

18 With my experience as a Chief
19 Nursing Officer, I can clearly say that
20 Hackensack Meridian values and respects the
21 relationship we have with our nurse's union.

22 As one of the most recognized
23 health care networks in the country for nursing
24 excellence with seven magnet designations from
25 the American Nurses Credentialing Center,

1 Hackensack Meridian has been hailed as a national
2 leader in the delivery of quality nursing care.

3 In addition, Englewood Health
4 earned its fourth consecutive magnet designation
5 in 2016, making the medical center part of a
6 small percentage of hospitals in the entire
7 nation to achieve this feat. What does this
8 mean?

9 It means that there are great
10 nursing synergies that exist between Hackensack
11 Meridian and Englewood Health and that our nurses
12 meet the nation's highest standards for nursing
13 excellence.

14 I'm happy to report that as a
15 health network, we have taken many actions to
16 further elevate the practice of nursing at
17 Hackensack Meridian.

18 This includes developing and
19 implementing a singular network wide nursing
20 vision mission, philosophy and professional
21 practice model.

22 Implementing a shared
23 decision-making model and monthly meeting
24 advancing for the first time a network wide
25 mechanism for communication and decision-making.

1 Implementing a vesting class
2 combination program strengthens our ability to
3 rate team and attract nurses. It offers
4 consistency and provides more opportunities for
5 meaningful and enhanced growth.

6 Introducing a new Clinical Ladder
7 Program which we designed to recognize nursing
8 excellence through a points based system that
9 aligns with our new three year nurses strategic
10 plan and professional practice model creating a
11 new magnet program and to promote shared
12 professional development and help all of our
13 campuses on the magnet journey, a key priority in
14 our strategic plan, establishing the Hackensack
15 Meridian Health Magnet pathway to Excellence
16 Award Program, the first network wide award
17 program dedicated to honoring nursing excellence
18 and implementing the National Daisy Award Program
19 across the network and implementing healthy work
20 environment councils at our acute care hospitals
21 to further engage our nurses and empower them to
22 make recommendations and decisions that help
23 drive policy at our health system and beyond.

24 Both Hackensack Meridian and
25 Englewood Health has excellent relationships with

1 nurses across the state and are committed to
2 delivering high quality care.

3 As a nurse, I'm very excited about
4 this proposed merger and the opportunities that
5 lie ahead for our nurses. Thank you.

6 MR. MISTRY: Thank you. Are there
7 any other persons attending here? I'll get to
8 that in a moment. Are there other persons
9 here in person who would like to speak? No.
10 Then let's go to our online participants. Ms.
11 Alice Barden. I think your microphone may be on
12 mute. Sorry. Ms. Barden, we can't hear you. Do
13 you want to mute your microphone? Do you want to
14 try this microphone? Before you ask your
15 question, can she hear me? All right. Before
16 you ask your question, could you just for the
17 record, state your name and address?

18 MS. BARDEN: As I said, my name is
19 Alice Barden. I live in Vauxhall, New Jersey.

20 MR. MISTRY: Thank you. Go ahead.

21 MS. BARDEN: As I said, my name is
22 Alice Barden and I'm the President of Health
23 Professionals & Allied Employees, Local 5314,
24 that represents the nurses at Englewood Hospital
25 & Medical Center.

1 I'm speaking to you today in my
2 capacity as a registered nurse, Union Leader on
3 behalf of my members.

4 Thank you for the opportunity to
5 address you today regarding the merger between
6 Englewood Health and Hackensack Meridian Health.

7 I have worked for Englewood
8 Hospital and Medical Center for 20 years and have
9 a vested interest in the patient care and
10 employee working conditions at my hospital in the
11 way that the hospital management affects these
12 matters.

13 The Hackensack Meridian Health
14 System is possibly the largest in the state and
15 adding Englewood Hospital to its staple makes it
16 more (inaudible). It is critically important
17 that for the Community Health Care Act &
18 Protection Act, the Attorney General's Office
19 does its due diligence living up to the title of
20 the Act that regulates non-profit hospital
21 mergers.

22 The Attorney General's Office must
23 make sure that the health care assets of the
24 community certify hospitals affected in this
25 manner are protected for the good of the citizens

1 and for the good of the employees providing the
2 services.

3 This is especially important now
4 that we are operating under a deadly pandemic.
5 Englewood Hospital has cared for hundreds of
6 Covid 19 patients in the past seven months with
7 nurses working under brutal conditions, risking
8 their lives on every shift. Many of our patients
9 became ill with the virus. Fortunately, none
10 have died.

11 After the traumatic experience of
12 the pandemic strain, we actually have to turn to
13 patient safety, our personal safety, and the
14 safety of our family members.

15 Exposure to Covid 19 has affected
16 our employment now, but our employees must be
17 willing to help us mitigate that exposure.

18 We are especially concerned with
19 the Chapter at Hackensack Meridian Health with
20 regard to OSHA complaints and violations in the
21 past seven months.

22 On OSHA'S Website, Hackensack
23 Meridian Health had 60 investigations between
24 April 10, 2020, and August 4th of 2020, occurring
25 at nine different facilities, several or multiple

1 investigations. Of those, eleven of the
2 investigations are in Passaic County,
3 catastrophic or "fat cat" category.

4 Many of the completed
5 investigations show numerous, serious violations.
6 Of all the New Jersey health systems under OSHA
7 investigation over Covid 19 safety concerns,
8 Hackensack Meridian had the most investigations
9 with fines totally more than \$77,000 so far.

10 Many of the violations relate to
11 lack of proper PPE, lack of PPE and pandemic
12 reports of numerous injuries and fatalities to
13 OSHA. Based on this data, Englewood nurses are
14 concerned.

15 We would like to request that the
16 Attorney General's Office place a condition in
17 its recommendations to the Superior Court that
18 oversight, Hackensack Meridian will assure
19 preparation and planning so that Englewood nurses
20 and the whole staff have the proper PPE,
21 and un-expired PPE and proper training in PPE.

22 The workers who care for the
23 patients are at risk and we are sure that HMM
24 will not want to invite any more OSHA
25 investigations.

1 Englewood nurses are also concerned
2 about the fact that Hackensack Meridian is so
3 large that the sheer size of the company will
4 cause an infringement on the ability of workers
5 to earn a living.

6 This concern is two fold: The
7 first being limiting potential due to overtime
8 costs arising from dual employment situations at
9 multiple HMH facilities.

10 We understand the business of
11 economics for not wanting to pay overtime for an
12 employee who works at each of the facilities.
13 But for an Englewood nurse who works at HMH
14 Palisade, or Palisades Medical Centers, he or she
15 will now have to give up their per diem hours at
16 Palisades or any other HMH facility. This means
17 a hole in his or her income as well as a hole in
18 the staff at one of HMH's own hospitals.

19 The second issue relates to workers
20 who get fired and then are no longer employable
21 at any HMH facility. Even the size and
22 geographics, scope of HMH, this could be career
23 ending for any employee, not just nurses.

24 While we understand that some
25 firings are justified, there are also many

1 instances where firing of an employee is purely
2 subjective or perhaps based on misunderstanding
3 or income and are forced out of their home.

4 In those latter instances, an
5 employee should not look to his or her livelihood
6 just because the only hospital within a ten mile
7 radius are all HMH hospitals.

8 We request that the Attorney
9 General's Office place another condition in its
10 recommendation, that given the state and nature
11 of our experience in a health care worker
12 shortage, HMH must make changes to its HR
13 practices that enable the worker's ability to
14 make a living.

15 Because it is so large and has an
16 employee density in several areas of the state,
17 Hackensack Meridian should not be allowed to
18 blackball a person for employment based on
19 personality conflicts of that particular unit.
20 Firing is a life-altering experience but should
21 not cause catastrophic damage to a person's life.

22 We are aware that this testimony is
23 perhaps more personal in nature than we would
24 normally give, but the circumstances we all find
25 ourselves in these days, demand it. People are

1 often sick, dying, losing their jobs and their
2 homes all because of the Covid 19 pandemic.

3 HMH is not to blame for all of
4 that. It is in a unique position to do what it
5 can to not exacerbate these conditions for their
6 employees.

7 If the Attorney General's Office
8 can help with that by making recommendations on
9 our terms, then we will be grateful.

10 Thank you for your time and I urge
11 you to talk over these recommendations as part of
12 the approval of this transaction. Thank you.

13 MR. MISTRY: Thank you. Thank you
14 for your comments. Are there any other persons
15 online who would like to make a comment? I'm
16 being told no. Any other persons in the audience
17 who would like to make a comment? Yes. Please
18 come up.

19 If you can, can you just state your
20 name and address for the record? The reason why
21 I'm asking is that you will become an interested
22 party in the proceeding before the Chancery
23 Court.

24 MS. CERETTO: My name is Sara
25 Ceretto. I live at 318 Travers Place in

1 Lyndhurst, New Jersey. Thank you for your time
2 and attention.

3 As I said, my name is Sara Ceretto.
4 I'm a certified registered nurse with Solid Organ
5 Transplant and Neurology with Hackensack Meridian
6 Health at Hackensack University Medical Center.

7 In the beginning of March we as
8 staff nurses had begun to get word that the Covid
9 19 pandemic was coming towards us. We had known
10 that we had to increase our awareness and started
11 to prepare as staff nurses at Hackensack
12 University Medical Center.

13 During that time, I witnessed team
14 members from every discipline and in every role
15 from nursing assistants to directors come
16 together and put their job description aside and
17 work towards one common goal. That goal was to
18 prepare as best as possible for what we are about
19 to face and that included readying supplies such
20 as PPE.

21 PPE was stocked on the units with
22 clinical education available for offering
23 education.

24 A plan was laid out on how to
25 educate team members, on how to best protect

1 themselves and manage patient care at the same
2 time.

3 Physician and nurse staffing was
4 coordinated, and as the numbers of Covid patients
5 increased and the acuity increased, the hospital
6 responded appropriately and ready with
7 ICU's.

8 Team members worked side by side
9 with nurse managers, director, the chief nursing
10 officer and other leaders to prepare units with
11 supplies even on off-shift hours.

12 PPE was stocked appropriately on
13 the units and a command center was created to
14 assist in the management and distribution of
15 supplies.

16 There was not one shift that I was
17 concerned about having the appropriate PPE to
18 take care of my patients. I never drove to work
19 with the worry that there was not going to be a
20 mask available for me when I got there. The
21 reason for this was the management and
22 distribution of supplies and the support from
23 redeployed team members and leadership.

24 When concerned about the number of
25 supplies that were available started to arrive

1 and replenishment became more difficult, the
2 organization created guidelines and they
3 responded to the potential supply chain issue.

4 Team members from integrative
5 health departments and departments that had not
6 worked with in-patients departments prior, they
7 came together and they created face shields to
8 support frontline staff.

9 When it was identified that staff
10 nurses needed a buddy simply to grab a supply
11 that was outside a patient's room, we deployed
12 team members who stepped up to the challenge and
13 supported staff nursing in any way that they
14 could.

15 Leadership was available at all
16 hours and they were working with frontline staff
17 to encourage and ensure that we had the supplies
18 we needed to care for our patients with each
19 shift.

20 The organization updated team
21 members daily with each practice change and
22 updates as a response to the rapidly changing
23 external environment.

24 As a charge nurse on a unit that
25 was converted to a Covid Unit, I had multiple

1 resources available each day to assist in
2 obtaining extra supplies, including PPE, if that
3 was necessary.

4 I am grateful and honored to have
5 worked at HMH during the height of the Covid
6 Pandemic and I appreciate each and every team
7 member who showed up to fight for our patients.
8 Thank you.

9 MR. MISTRY: Thank you. Any other
10 persons attending here that would like to speak
11 tonight? No.

12 All right. Before I close the
13 hearing, I would just like to thank our host
14 tonight for putting on this in person and virtual
15 hearings, a first for us, and I would like to say
16 it went fairly smoothly overall.

17 I would like to thank all the
18 speakers tonight. We do value the comments that
19 we receive tonight, particularly in respect to
20 this transaction, and you know, we have heard how
21 quickly you would like the Attorney General's
22 Office to move on this. We take that seriously
23 also.

24 So I will now close the hearing.
25 We will continue to accept written comments from

1 the public concerning the proposed transaction
 2 until October 14, 2020. Thank you for attending.
 3 Good night.

4 (Whereupon hearing adjourned at
 5 7:20 pm.)

6 * * * * *

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C E R T I F I C A T E

I, JANE E. CLANCY, a Certified Court Reporter and Notary Public of the State of New Jersey, certify that the foregoing is a true and accurate transcript of the stenographic notes of the hearing on the date and place hereinbefore set forth.

I FURTHER CERTIFY that I am neither attorney, nor counsel for, nor related to or employed by, any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel in this case, nor am I financially interested in this case.

Jane E Clancy



JANE E. CLANCY, C.C.R.

LICENSE NO. 693

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