

Complaint

IN THE MATTER OF

**COMMUNITY HEALTH SYSTEMS, INC.,
AND
HEALTH MANAGEMENT ASSOCIATES, INC.**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

*Docket No. C-4427; File No. 131 0202
Complaint, January 21, 2014 – Decision, April 11, 2014*

This consent order addresses the \$7.6 billion acquisition by Community Health Systems, Inc. (“CHS”) of certain assets of Health Management Associates, Inc. The complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by removing an actual, direct, and substantial competitor from two local markets in Alabama and South Carolina for general acute care inpatient services sold to commercial health plans. The consent order requires CHS to divest the Riverview Regional Medical Center and all associated operations and businesses in and around Gadsden, Alabama, and the Carolina Pines Regional Medical Center and all associated operations and businesses in and around Hartsville, South Carolina.

Participants

For the *Commission*: Katie Ambrogio, Maggie DiMoscato, Michelle Fetterman, Matthew McDonald, and Jennifer Schwab.

For the *Respondents*: Mark Kovner and Bilal Sayyed, Kirkland & Ellis; and Steven Bernstein and Vadim Brusser, Weil Gotshal.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Community Health Systems, Inc. (“CHS”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Respondent Health Management Associates, Inc. (“HMA”), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C.

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§ 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent CHS is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 4000 Meridian Boulevard, Franklin, Tennessee 37067-6325.

2. CHS owns or leases 135 hospitals, comprised of 131 general acute care hospitals and four stand-alone rehabilitation or psychiatric hospitals, located in 29 states. CHS is the second-largest U.S. hospital chain and one of the largest publicly-traded operators of hospitals in the United States. CHS generated approximately \$13 billion in revenue in 2012. CHS is, and at all times relevant herein has been, engaged in the sale and provision of general acute care inpatient services (“GAC services”).

3. Respondent HMA is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 5811 Pelican Bay Boulevard, Suite 500, Naples, Florida 34108-2710.

4. HMA operates 71 hospitals located in 15 states. In 2012, HMA generated \$5.9 billion in revenue. HMA is, and at all times relevant herein has been, engaged in the sale and provision of GAC services.

II. THE PROPOSED MERGER

5. Pursuant to an Agreement and Plan of Merger dated July 29, 2013, CHS proposes to purchase all of the issued and outstanding common stock of HMA (the “Merger”).

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III. JURISDICTION

6. Respondents, and each of their relevant operating subsidiaries and parent entities, are, and at all times relevant herein have been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, 15 U.S.C. § 44.

7. The Merger constitutes an acquisition under Section 7 of the Clayton Act, 15 U.S.C. § 18.

IV. THE RELEVANT PRODUCT MARKET

8. The relevant line of commerce in which to analyze the Merger is the sale and provision of GAC services to commercial health plans and commercially insured patients, respectively. GAC services consist of a broad cluster of routine inpatient services that require an overnight hospital stay.

9. GAC services do not include services related to psychiatric care, substance abuse, and rehabilitation services. Likewise, outpatient services are not included in the GAC services market because such services are characterized by different competitive conditions (e.g., different competitors, lower entry barriers) and because health plans and their members generally cannot and would not substitute those services for inpatient services in response to a small but significant and non-transitory increase in price.

V. THE RELEVANT GEOGRAPHIC MARKETS

10. One relevant geographic market in which to assess the competitive effects of the Merger is the area that approximates Etowah County and includes the City of Gadsden, Alabama, or, the “Gadsden Area.”

11. In general, patients prefer to obtain GAC services close to home or work. Accordingly, most residents of the Gadsden Area receive GAC services from two locally-situated providers—CHS’s Gadsden Regional Medical Center and HMA’s Riverview Regional Medical Center. Gadsden Area residents are unlikely to

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seek GAC services from more distant providers, even in response to a small but significant and non-transitory increase in price.

12. A second relevant geographic market in which to assess the competitive effects of the Merger is the area that approximates Darlington County and includes the City of Hartsville, South Carolina, or, the “Darlington County Area.”

13. As in the Gadsden Area, patients prefer to obtain GAC services close to home or work. Accordingly, most residents of the Darlington County Area receive GAC services from three locally-situated providers—CHS’s Carolinas Hospital-Florence, HMA’s Carolina Pines Regional Medical Center, and third-party McLeod Regional Medical Center (“McLeod Regional”). Darlington County Area residents are unlikely to seek GAC services from more distant providers, even in response to a small but significant and non-transitory increase in price.

VI. MARKET CONCENTRATION

14. The Gadsden Area market for the provision and sale of GAC services is highly concentrated, and the Merger will substantially increase concentration in this market. The Merger would combine the only two competitively meaningful providers of GAC services to commercially insured patients. Respondents CHS and HMA each own and operate a general acute care hospital that serves this area. Respondents compete on a number of price and non-price factors, including a range of available services, quality of service, name recognition, reputation, location, and associated product offerings. Post-merger, patients in the Gadsden Area would have only CHS’s hospitals as meaningful options to obtain GAC services.

15. The Darlington County Area market for the provision and sale of GAC services is highly concentrated, and the Merger will substantially increase concentration in this market. The Merger would combine two of the three competitively meaningful providers of GAC services to commercially insured patients. Respondents CHS and HMA each own and operate a general acute care hospital that serves this area. Respondents compete on a number of price and non-price factors, including a range of

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available services, quality of service, name recognition, reputation, location, and associated product offerings. Post-merger, patients in the Darlington County Area would have only two meaningful options for GAC services—either a Respondent-owned hospital or third-party McLeod Regional.

VII. ENTRY CONDITIONS

16. Entry into the relevant geographic markets would not be timely, likely, or sufficient to prevent or deter the likely anticompetitive effects of the Merger. Significant entry barriers include the time and costs associated with constructing or expanding a general acute care hospital, as well as the need to satisfy regulatory and licensing requirements that govern the provision of GAC services, including Certificate of Need requirements.

VIII. EFFECTS OF THE ACQUISITION

17. The Merger, if consummated, may substantially lessen competition for the sale and provision of GAC services to commercial health plans and commercially insured patients in the relevant geographic markets, identified in Paragraphs 10 and 12, in the following ways, among others:

- a. by eliminating direct and substantial competition between Respondents CHS and HMA; and
- b. by increasing the likelihood that Respondent CHS will unilaterally exercise market power.

18. The ultimate effect of the Merger would be to increase the likelihood that prices of GAC services provided to commercially insured patients would rise above competitive levels, and/or that there would be a decrease in the quality or availability of GAC services, in the relevant geographic markets.

IX. VIOLATIONS CHARGED

19. The agreement described in Paragraph 5 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. §

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45, and the Merger, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-first day of January, 2014, issues its Complaint against said Respondents.

By the Commission.

**ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS
[Public Record Version]**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition of Respondent Health Management Associates, Inc. (“HMA”), by Respondent Community Health Systems, Inc. (“CHS”), (hereinafter referred to as Respondents), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

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The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement containing the Decision and Order on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Order to Hold Separate and Maintain Assets (“Hold Separate Order”):

1. Respondent CHS is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 4000 Meridian Boulevard, Franklin, TN 37067.
2. Respondent HMA is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 5811 Pelican Bay Boulevard, Naples, FL 34108.
3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this Hold Separate Order, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, shall apply:

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- A. “Date of the Merger Agreement” means the date the parties entered into the Agreement and Plan of Merger by and among CHS and HMA.
- B. “Decision and Order” means the:
 - 1. Proposed Decision and Order contained in the Consent Agreement in this matter until issuance and service of a final Decision and Order by the Commission; and
 - 2. Final Decision and Order issued by the Commission following issuance and service of a final Decision and Order by the Commission.
- C. “Hold Separate Business” means the Hospital Services and Outpatient Business of the Divestiture Assets. “Hold Separate Employees” means all full-time employees, part-time employees, contract employees, and independent contractors, whose duties, at any time during the ninety (90) days preceding the date the Acquisition is completed or any time after the date the Acquisition is completed, related or relates to the Divestiture Assets, a complete list of whom has been submitted to and approved by the Hold Separate Monitor, in consultation with the Commission staff, no later than three (3) days after the date the Acquisition is completed.
- D. “Hold Separate Monitor” means the Person appointed pursuant to Paragraph III. of this Hold Separate Order.
- E. “Hold Separate Order” means this Order to Hold Separate and Maintain Assets.
- F. “Hold Separate Period” means the period during which the Hold Separate Order is in effect, which shall begin on the date the Acquisition is completed and terminate pursuant to Paragraph XI. of this Hold Separate Order.

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- G. “Manager” means the Person or Persons appointed pursuant to Paragraph IV. of this Hold Separate Order.
- H. “Orders” means the Decision and Order and this Hold Separate Order.
- I. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other entity or governmental body.
- J. “Support Service Employees” means the persons listed on Confidential Appendix A of this Hold Separate Order; at any time during the Hold Separate Period, Respondents may, in consultation with the Hold Separate Monitor, modify the list of Support Service Employees on Confidential Appendix A.
- K. “Support Services” means assistance with respect to the operation of the Hold Separate Business, including, but not limited to, (i) human resources and administrative services such as payroll processing and employee benefits; (ii) financial accounting services; (iii) reimbursement department support (i.e., Medicare cost reports); (iv) tax-related support; (v) treasury support; (vi) insurance support; (vii) clinical information systems support; (viii) information technology software and support services; (ix) participation in group purchasing arrangements; (x) online training programs; (xi) legal services; and (xii) federal and state regulatory compliance support.

II.

IT IS FURTHER ORDERED that during the Hold Separate Period:

- A. Respondents shall:
 - 1. Hold the Hold Separate Business separate, apart, and independent of Respondents’ other businesses and assets as required by this Hold Separate Order

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and shall vest the Hold Separate Business with all rights, powers, and authority necessary to conduct its business;

2. Not exercise direction or control over, or influence directly or indirectly, the Hold Separate Business or any of its operations, the Managers, or the Hold Separate Monitor, except to the extent that Respondents must exercise direction and control over the Hold Separate Business as is necessary to assure compliance with this Hold Separate Order, the Consent Agreement, the Decision and Order, and all applicable laws; and
 3. Take all actions necessary to maintain and assure the continued viability, marketability, and competitiveness of the Hold Separate Business, and prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divestiture Assets, except for ordinary wear and tear, and shall not sell, transfer, encumber, or otherwise impair any of the Divestiture Assets or the Hold Separate Business (except as required by the Decision and Order).
- B. The purpose of this Hold Separate Order is to (1) maintain and preserve the Hold Separate Business as a viable, competitive, and ongoing business independent of Respondents until the divestitures required by the Decision and Order are achieved; (2) assure that no Confidential Business Information is exchanged between Respondents and the Hold Separate Business, except in accordance with the provisions of this Hold Separate Order; and (3) prevent interim harm to competition pending the divestiture and other relief.

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III.

IT IS FURTHER ORDERED that:

- A. The Commission appoints Curtis Lane as Hold Separate Monitor to monitor and supervise the management of the Hold Separate Business and ensure that Respondents comply with their obligations under this Hold Separate Order and the Decision and Order.
- B. Respondents shall enter into an agreement with the Hold Separate Monitor that shall become effective no later than one (1) day after the date the Acquisition is completed, and that, subject to the approval of the Commission, transfers to and confers upon the Hold Separate Monitor all rights, powers, and authority necessary to permit the Hold Separate Monitor to perform his or her duties and responsibilities pursuant to this Hold Separate Order in a manner consistent with the purposes of this Hold Separate Order and the Decision and Order and in consultation with Commission staff; and shall require that the Hold Separate Monitor act in a fiduciary capacity for the benefit of the Commission:
 - 1. The Hold Separate Monitor shall have the responsibility for monitoring the organization of the Hold Separate Business; supervising the management of the Hold Separate Business by the Managers; maintaining the independence of the Hold Separate Business; and monitoring Respondents' compliance with their obligations pursuant to this Hold Separate Order and the Decision and Order.
 - 2. The Hold Separate Monitor shall act in a fiduciary capacity for the benefit of the Commission. Subject to all applicable laws and regulations, the Hold Separate Monitor shall have full and complete access to all personnel, books, records, documents, and facilities of the Hold Separate

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Business, and to any other relevant information as the Hold Separate Monitor may reasonably request including, but not limited to, all documents and records kept by Respondents in the ordinary course of business that relate to the Hold Separate Business. Respondents shall develop such financial or other information as the Hold Separate Monitor may reasonably request.

3. The Hold Separate Monitor shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Monitor's duties and responsibilities.
4. The Commission may require the Hold Separate Monitor and each of the Hold Separate Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information received from the Commission in connection with performance of the Hold Separate Monitor's duties.
5. Respondents may require the Hold Separate Monitor and each of the Hold Separate Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement; *provided, however*, that such agreement shall not restrict the Hold Separate Monitor from providing any information to the Commission.
6. The Hold Separate Monitor shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities.

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7. Respondents shall indemnify the Hold Separate Monitor and hold him/her harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Hold Separate Monitor's malfeasance, gross negligence, willful or wanton acts, or bad faith.
 8. Thirty (30) days after the date the Acquisition is completed, and every thirty (30) days thereafter until the Hold Separate Order terminates, the Hold Separate Monitor shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate Order and Respondents' compliance with their obligations under the Hold Separate Order and the Decision and Order.
- C. If the Hold Separate Monitor ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Commission may appoint a substitute Hold Separate Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld, as follows:
1. If Respondents have not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Hold Separate Monitor within five (5) business days after notice by the staff of the Commission to Respondents of the identity of the proposed substitute Hold Separate Monitor, then Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor.

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2. Respondents shall, no later than five (5) days after the Commission appoints a substitute Hold Separate Monitor, enter into an agreement with the substitute Hold Separate Monitor that, subject to the approval of the Commission, confers on the substitute Hold Separate Monitor all the rights, powers, and authority necessary to permit the substitute Hold Separate Monitor to perform his or her duties and responsibilities on the same terms and conditions as provided in Paragraph III. of this Hold Separate Order.
- D. The Hold Separate Monitor shall serve through the Hold Separate Period; *provided, however*, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.
- E. The Commission may on its own initiative or at the request of the Hold Separate Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Hold Separate Order.

IV.**IT IS FURTHER ORDERED** that:

- A. No later than three (3) days after the date the Acquisition is completed, Respondents shall appoint Jim Edmondson as the Manager of Riverview Regional Medical Center and Tim Browne as the Manager of Carolina Pines Regional Medical Center, to manage and maintain the operations of the Hold Separate Business in the regular and ordinary course of business and in accordance with past practice.
- B. Respondents shall enter into a management agreement with each of the Managers that shall become effective no later than three (3) days after the date the Acquisition is completed, and that, subject to the

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approval of the Hold Separate Monitor, in consultation with the Commission staff, transfers all rights, powers, and authority necessary to permit each Manager to perform his or her duties and responsibilities pursuant to this Hold Separate Order:

1. The Managers shall be responsible for managing the operations of the Hold Separate Business and shall report directly and exclusively to the Hold Separate Monitor and shall manage the Hold Separate Business independently of the management of Respondents and Respondents' other businesses.
2. The Managers shall make no material changes in the ongoing operations of the Hold Separate Business except with the approval of the Hold Separate Monitor, in consultation with the Commission staff.
3. The Managers, in consultation with the Hold Separate Monitor, shall have the authority to employ such Persons as are reasonably necessary to assist the Managers in managing the Hold Separate Business, including consultants, accountants, attorneys, and other representatives and assistants. Nothing contained herein shall preclude the Managers from contacting or communicating directly with the staff of the Commission either at the request of the staff of the Commission or in the discretion of the Manager.
4. Respondents shall provide the Managers with reasonable financial incentives to undertake this position. Such incentives shall include a continuation of all employee benefits, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation, and prevent any diminution, of the Hold Separate Business's viability,

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marketability, and competitiveness, and as may otherwise be necessary to achieve the purposes of this Hold Separate Order.

5. The Managers shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities.
 6. Respondents shall indemnify the Managers and hold them harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Managers' duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense, of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from either Manager's malfeasance, gross negligence, willful or wanton acts, or bad faith.
- C. The Managers shall have the authority, in consultation with the Hold Separate Monitor, to staff the Hold Separate Business with sufficient employees to maintain the viability and competitiveness of the Hold Separate Business, including:
1. Replacing any departing or departed employee with a person who has similar experience and expertise or determine not to replace such departing or departed employees;
 2. Removing any Hold Separate Employee who ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, and replacing such employee with another person of similar experience or skills;
 3. Ensuring that no Hold Separate Employee shall (i) be involved in any way in the operations of

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Respondents' other businesses, (ii) receive or have access to, or use or continue to use, any Confidential Business Information pertaining to Respondents' other businesses, and (iii) provide or permit access to Confidential Business Information pertaining to the Hold Separate Business to Respondents' employees, except as provided in Paragraph VI. below;

4. Providing each Hold Separate Employee with reasonable financial incentives, including continuation of all employee benefits and regularly scheduled raises and bonuses, to continue in his or her position pending divestiture of the Divestiture Assets.
- D. Either or both Managers may be removed for cause by the Hold Separate Monitor, in consultation with the Commission staff. If a Manager is removed, resigns, or otherwise ceases to act as Manager, Respondents shall, within three (3) days of such action, subject to the approval of the Hold Separate Monitor and in consultation with Commission staff, on the same terms and conditions as provided in this Hold Separate Order, (i) appoint a substitute Manager, and (ii) enter into an agreement with the substitute Manager.

V.**IT IS FURTHER ORDERED** that:

- A. Respondents shall cooperate with, and take no action to interfere with or impede the ability of: (i) the Hold Separate Monitor, (ii) the Managers, (iii) any Hold Separate Employee, or (iv) any Support Services Employee, to perform his or her duties and responsibilities consistent with the terms of this Hold Separate Order and the Decision and Order.
- B. Respondents shall continue to provide, or offer to provide, Support Services and goods to the Hold

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Separate Business as were being provided to the Hold Separate Business by Respondents as of the Date of the Merger Agreement;

1. For Support Services and goods that Respondents provided to the Hold Separate Business as of the Date of the Merger Agreement, Respondents may charge no more than the same price, if any, charged by Respondents for such Support Services and goods as of the Date of the Merger Agreement;
2. For any other Support Services and goods that Respondents may provide to the Hold Separate Business, Respondents may charge no more than Respondents' Direct Cost for the same or similar Support Services; and
3. Notwithstanding the above, the Hold Separate Business shall have, at the option of the Managers and in consultation with the Hold Separate Monitor, the ability to acquire Support Services from Third Parties.

C. Respondents shall not permit:

1. Any of its employees, officers, agents, or directors, other than (i) the Managers, (ii) any Hold Separate Employees, and (iii) any Support Services Employees, to be involved in the operations of the Hold Separate Business, except to the extent otherwise provided in this Hold Separate Order.
2. The Managers or any Hold Separate Employee to be involved, in any way, in the operations of Respondents' businesses other than the Hold Separate Business.

D. Respondents shall provide the Hold Separate Business with sufficient financial and other resources as are appropriate in the judgment of the Hold Separate

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Monitor, consistent with his obligations and responsibilities in this Hold Separate Order, to:

1. Operate the Hold Separate Business as it was operated as of the Date of the Merger Agreement (including efforts to generate new business) consistent with the practices of the Hold Separate Business in place prior to the Date of the Merger Agreement;
2. Perform all maintenance to, and replacements or remodeling of, the assets of the Hold Separate Business in the ordinary course of business and in accordance with past practice and with current plans;
3. Carry on such capital projects, physical plant improvements, and business plans as are already under way or planned for which all necessary regulatory and legal approvals have been obtained, including, but not limited to, existing or planned renovation, remodeling, and expansion projects; and
4. Maintain the viability, competitiveness, and marketability of the Hold Separate Business.

Such financial resources to be provided to the Hold Separate Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; *provided, however*, that, consistent with the purposes of the Decision and Order and in consultation with the Hold Separate Monitor, the Managers may reduce in scale or pace any capital or research and development project of the Hold Separate Business, or substitute any capital or research and development project of the Hold Separate Business for another of the same cost.

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- E. Respondents shall provide each Hold Separate Employee with reasonable financial incentives to continue in his or her position consistent with past practices and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Divestiture Assets pending divestiture. Such incentives shall include a continuation of all employee benefits, including funding of regularly scheduled raises and bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation, and prevent any diminution, of the viability, marketability, and competitiveness of the Hold Separate Business until the Closing Date, and as may otherwise be necessary to achieve the purposes of this Hold Separate Order.
- F. No later than ten (10) days after the date the Acquisition is completed, Respondents shall establish and implement procedures, subject to the approval of the Hold Separate Monitor, covering the management, maintenance, and independence of the Hold Separate Business consistent with the provisions of this Hold Separate Order.
- G. No later than ten (10) days after the date the Acquisition is completed, Respondents shall circulate to Hold Separate Employees and to persons who are employed in Respondents' businesses that compete with the Hold Separate Business in the Relevant Areas, a notice of the requirements of this Hold Separate Order, the Decision and Order, and the Consent Agreement, in a form approved by the Hold Separate Monitor in consultation with Commission staff, including copies of the Hold Separate Order and the Decision and Order.

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VI.

IT IS FURTHER ORDERED that:

- A. After the date the Acquisition is completed, Respondents' employees, other than employees of the Hold Separate Business and Support Services Employees, shall not receive, or have access to, or use or continue to use any Confidential Business Information of the Hold Separate Business except in the course of:
1. Performing their obligations or as permitted under this Hold Separate Order or the Decision and Order;
 2. Performing their obligations under the Divestiture Agreements;
 3. Negotiating agreements to divest assets pursuant to the Decision and Order and engaging in related due diligence; and
 4. Complying with financial reporting requirements, obtaining legal advice, defending legal claims, conducting investigations, or enforcing actions threatened or brought against the Hold Separate Business, or as required by law. Notwithstanding the above, Respondents may receive aggregate financial and operational information relating to the Hold Separate Business only to the extent necessary to allow Respondents to comply with the requirements and obligations of the laws and regulations of the United States and other countries, to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports, and to comply with this Hold Separate Order or in complying with or as permitted by the Decision and Order. Any such information that is obtained pursuant to this

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subparagraph shall be used only for the purposes set forth in this Hold Separate Order.

For purposes of this Paragraph VI.A., Respondents' employees that provide Support Services or that staff the Hold Separate Business shall be deemed to be performing obligations under this Hold Separate Order.

- B. If access to or disclosure of Confidential Business Information of the Hold Separate Business to Respondents' employees is necessary and permitted under Paragraph VI.A. of this Hold Separate Order, Respondents shall:
1. Implement and maintain a process and procedures, as approved by the Hold Separate Monitor, such approval not to be unreasonably withheld, pursuant to which Confidential Business Information of the Hold Separate Business may be disclosed or used only:
 - a. to or by those employees who require such information;
 - b. to the extent such Confidential Business Information is required; and
 - c. after such employees have signed an appropriate agreement in writing to maintain the confidentiality of such information.
 2. Enforce the terms of this Paragraph VI. as to any of Respondents' employees and take such action as is necessary to cause each such employee to comply with the terms of this Paragraph VI., including training of Respondents' employees and taking all other actions that Respondents would take to protect their own trade secrets and proprietary information.

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- C. Respondents shall implement, and maintain in operation, a system, as approved by the Hold Separate Monitor, of access and data controls to prevent unauthorized access to or dissemination of Confidential Business Information of the Hold Separate Business, including, but not limited to, the opportunity by the Hold Separate Monitor, on terms and conditions agreed to with Respondents, to audit Respondents' networks and systems to verify compliance with this Hold Separate Order.
- D. Neither the Managers nor any Hold Separate Employee shall receive or have access to, or use or continue to use, any Confidential Business Information relating to Respondents' businesses (not subject to the Hold Separate Order), except such information as is necessary to maintain and operate the Hold Separate Business.

VII.

IT IS FURTHER ORDERED that Respondents shall:

- A. No later than ten (10) days after a request from a Prospective Acquirer, provide the Prospective Acquirer with the following information for each Relevant Employee, as and to the extent permitted by law:
 - 1. Name, job title or position, date of hire, and effective service date;
 - 2. A specific description of the employee's responsibilities;
 - 3. The base salary or current wages;
 - 4. The most recent bonus paid, aggregate annual compensation for Respondents' last fiscal year, and current target or guaranteed bonus, if any;

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5. Employment status (i.e., active or on leave or disability; full-time or part-time);
 6. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 7. At the Prospective Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the Relevant Employee.
- B. Within a reasonable time after a request from a Prospective Acquirer, provide to the Prospective Acquirer an opportunity to meet personally and outside the presence or hearing of any employee or agent of any Respondent, with any one or more of the Relevant Employees, and to make offers of employment to any one or more of the Relevant Employees;
- C. Not interfere, directly or indirectly, with the hiring or employing by the Prospective Acquirer of any Relevant Employees, not offer any incentive to such employees to decline employment with the Prospective Acquirer, and not otherwise interfere with the recruitment of any Relevant Employee by the Prospective Acquirer; *provided, however,* that Respondents may:
1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at Relevant Employees; or
 2. Hire Relevant Employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph; *provided further,* however, that this Paragraph shall not prohibit

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Respondents from making offers of employment to or employing any Relevant Employee if the Prospective Acquirer has notified Respondents in writing that the Prospective Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the employee's employment has been terminated by the Acquirer;

- D. Remove any impediments within the control of Respondents that may deter Relevant Employees from accepting employment with the Prospective Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Prospective Acquirer, and shall not make any counteroffer to a Relevant Employee who receives a written offer of employment from the Prospective Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;
- E. Not, for a period of one (1) year following the Closing Date, directly or indirectly, solicit or otherwise attempt to induce any of the Relevant Employees who have accepted offers of employment with the Acquirer to terminate his or her employment with the Acquirer; *provided, however*, that Respondents may:
 - 1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at Relevant Employees; or
 - 2. Hire Relevant Employees who apply for employment with Respondents, as long as such

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employees were not solicited by Respondents in violation of this Paragraph; *provided further, however*, that this Paragraph shall not prohibit Respondents from making offers of employment to or employing any Relevant Employee if the Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the employee's employment has been terminated by the Acquirer.

VIII.

IT IS FURTHER ORDERED that, within thirty (30) days after this Hold Separate Order becomes final, and every thirty (30) days thereafter until this Hold Separate Order terminates, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with all provisions of this Hold Separate Order. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Hold Separate Order.

IX.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of such Respondent;
- B. Any proposed acquisition, merger, or consolidation of such Respondent; and
- C. Any other change in such Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Hold Separate Order.

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X.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Hold Separate Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to the applicable Respondent made to its principal United States offices, registered office of its United States subsidiary, or headquarters address, such Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of such Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of such Respondent related to compliance with this Hold Separate Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of such Respondent; and
- B. The opportunity to interview officers, directors, or employees of such Respondent, who may have counsel present, related to compliance with this Hold Separate Order.

XI.

IT IS FURTHER ORDERED that this Hold Separate Order shall terminate at the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after the last of the divestitures required by the Decision and Order is completed; *provided, however,* that when the Divestiture Assets that are

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included within the Hold Separate Business are divested pursuant to the applicable paragraphs in the Decision and Order, those Divestiture Assets shall cease to be covered by this Hold Separate Order.

By the Commission.

Confidential Appendix A**List of Respondents' Support Service Employees**

**[Redacted From the Public Record Version, But Incorporated
By Reference]**

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition of Respondent Health Management Associates, Inc. ("HMA"), by Respondent Community Health Systems, Inc. ("CHS"), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by

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Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and Order to Hold Separate and Maintain Assets and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comment filed by an interested person, pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure described in Commission Rule 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent CHS is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 4000 Meridian Boulevard, Franklin, TN 37067.
2. Respondent HMA is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 5811 Pelican Bay Boulevard, Naples, FL 34108.
3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

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ORDER**I.**

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “CHS” means Community Health Systems, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by CHS, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the date the Acquisition is completed, “CHS” includes HMA.
- B. “HMA” means Health Management Associates, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by HMA, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Acquirer” means each Person approved by the Commission to acquire the Divestiture Assets pursuant to this Order.
- D. “Acquisition” means the acquisition described in and contemplated by the Agreement and Plan of Merger by and among CHS and HMA, dated July 29, 2013.
- E. “Acute Care Hospital” means a health-care facility licensed as a hospital, other than a federally-owned facility, having a duly organized governing body with overall administrative and professional responsibility and an organized professional staff that provides 24-hour inpatient care, and that provides General Acute Care Inpatient Hospital Services.

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- F. “Business Records” means all information, books and records, documents, files, correspondence, manuals, computer printouts, databases, and other documents, including all hard copies and electronic records wherever stored, including without limitation, client and customer lists, patient and payor information, referral sources, research and development reports, production reports, service and warranty records, maintenance logs, equipment logs, operating guides and manuals, documents relating to policies and procedures, financial and accounting records and documents, creative materials, advertising materials, promotional materials, studies, reports, correspondence, financial statements, financial plans and forecasts, operating plans, price lists, cost information, supplier and vendor contracts, marketing analyses, customer lists, customer contracts, employee lists and contracts, salaries and benefits information, physician lists and contracts, supplier lists and contracts, and, subject to legal requirements, copies of all personnel files.
- G. “Carolina Pines Assets” means all of Respondents’ rights, title, and interest in all property and assets, tangible or intangible, of whatever nature and wherever located, relating to or used in connection with the Hospital Services and Outpatient Business of the Carolina Pines Regional Medical Center and all Carolina Pines Outpatient Facilities, including, without limitation, all:
1. Real property interests (including fee simple interests and real property leasehold interests, whether as lessor or lessee), wherever located, including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
 2. Tangible Personal Property, including, without limitation, any Tangible Personal Property

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removed from and not replaced at the Carolina Pines Regional Medical Center and all Carolina Pines Outpatient Facilities, if such property was used by or in connection with the Hospital Services and Outpatient Business of the Carolina Pines Regional Medical Center or any Carolina Pines Outpatient Facilities on or after July 29, 2013;

3. Rights under any and all contracts and agreements (e.g., leases, service agreements such as dietary and housekeeping services, supply agreements, procurement contracts), including, but not limited to, contracts and agreements with physicians, other health care providers, unions, third-party payors, health maintenance organizations (“HMOs”), customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, cosigners, and consignees;
4. Rights and title in and to use the name of the Carolina Pines Regional Medical Center and all Carolina Pines Outpatient Facilities on a permanent and exclusive basis (even as to Respondents);
5. Medicare and Medicaid provider numbers for the Carolina Pines Regional Medical Center and all Carolina Pines Outpatient Facilities, to the extent transferable;
6. Intellectual Property;
7. Intangible rights and property other than Intellectual Property, including, going concern value, goodwill, internet, telecopy and telephone numbers, domain names, listings, and web sites;
8. Approvals, consents, licenses, certificates, registrations, permits, waivers, or other authorizations issued, granted, given, or otherwise

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made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefore or renewals thereof, to the extent assignable;

9. All consumable or disposable inventory, including, but not limited to, janitorial, office, and medical supplies, and at least thirty (30) treatment days of pharmaceuticals;
10. Accounts receivable;
11. Items of prepaid expense;
12. Rights under warranties and guarantees, express or implied; and
13. Business Records;

provided, however, that Respondents may retain a copy of Business Records to the extent necessary to comply with applicable law, regulations, and other legal requirements.

H. “Carolina Pines Outpatient Facilities” means:

1. Carolina Pines Regional Medical Center Sleep Center;
2. All facilities or entities providing Outpatient Services that are owned or controlled by Hartsville HMS Physician Management, LLC, including, but not limited to, The Medical Group, Pee Dee Hospitalists, Pee Dee Weight Loss Clinic, The Children’s Group, and Children’s Care Clinic;
3. All facilities or entities providing Outpatient Services that are owned or controlled by Hartsville Medical Group, LLC, including, but not limited to, Hartsville Cardiology Associates, Hartsville Nephrology, Hartsville Nephrology and

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Endocrinology, Hartsville Orthopedics & Sports Medicine, The Children's Group, The Medical Group, The Medical Group Darlington, The Medical Group Swift Creek, and Women's Care of Hartsville; and

4. All other entities or facilities providing Outpatient Services relating to Carolina Pines Regional Medical Center.
- I. "Carolina Pines Regional Medical Center" means the Acute Care Hospital located at 1304 West Bobo Newsom Highway, Hartsville, SC 29550.
- J. "Closing Date" means the applicable date on which each divestiture required by this Order is completed.
- K. "Commission" means the Federal Trade Commission.
- L. "Confidential Business Information" means information not in the public domain that is related to or used in connection with the Hospital Services and Outpatient Business, except for any information that was or becomes generally available to the public other than as a result of disclosure by Respondents, and includes, but is not limited to, pricing information, marketing methods, market intelligence, competitor information, commercial information, management system information, business processes and practices, payor and provider communications and information, bidding practices and information, procurement practices and information, supplier qualification and approval practices and information, and training practices.
- M. "Direct Cost" means cost not to exceed the cost of labor, material, travel, and other expenditures to the extent the costs are directly incurred to provide Transitional Services. "Direct Cost" to an Acquirer for its use of any of Respondents' employees' labor

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shall not exceed the then-current average wage rate for such employee, including benefits.

- N. “Divestiture Agreement” means each agreement between Respondents and each Acquirer (or between a Divestiture Trustee and the Acquirer, if applicable), and all amendments, exhibits, attachments, agreements, and schedules thereto, approved by the Commission, and pursuant to which the Divestiture Assets are divested as required by this Order.
- O. “Divestiture Assets” means:
1. Carolina Pines Assets, and
 2. Riverview Assets.
- P. “General Acute Care Inpatient Hospital Services” means a broad cluster of basic medical and surgical diagnostic and treatment services, provided on a 24-hour in-patient basis, for the medical diagnosis, treatment, and care of physically injured or sick persons with short term or episodic health problems or infirmities, that include an overnight stay in the hospital by the patient. “General Acute Care Inpatient Hospital Services” excludes: (i) services at hospitals that serve solely military personnel and veterans; (ii) services at outpatient facilities that provide same-day service only; and (iii) psychiatric, substance abuse, and rehabilitation services.
- Q. “Hospital Services and Outpatient Business” means the operation of, and all activities relating to, the:
1. Business of an Acute Care Hospital, which includes the provision of General Acute Care Inpatient Hospital Services; and
 2. Business of providing Outpatient Services, whether provided or performed at the Acute Care Hospital or in a different location.

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- R. “Hold Separate Order” means the Order to Hold Separate and Maintain Assets issued by the Commission in this matter.
- S. “Intellectual Property” means, without limitation, all:
1. Patents, patent applications, and inventions and discoveries that may be patentable;
 2. Know-how, trade secrets, software, technical information, data, registrations, applications for governmental approvals, inventions, processes, best practices (including clinical pathways), formulae, protocols, standards, methods, techniques, designs, quality control practices and information, research and test procedures and information, and safety, environmental and health practices and information;
 3. Confidential or proprietary information, commercial information, management systems, business processes and practices, customer lists, customer information, customer records and files, customer communications, procurement practices and information, supplier qualification and approval practices and information, training materials, sales and marketing materials, customer support materials, advertising and promotional materials; and
 4. Rights in any jurisdiction to limit the use or disclosure of any of the foregoing, and rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation, or breach of any of the foregoing.
- T. “Outpatient Services” means a broad cluster of basic medical and surgical diagnostic and treatment services for the medical diagnosis, treatment, and care of physically injured or sick persons with short term or episodic health problems or infirmities, that does not

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include an overnight stay and/or admission as an inpatient in the hospital by the patient.

- U. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other entity or governmental body.
- V. “Prospective Acquirer” means a Person with whom Respondents (or the Divestiture Trustee, if applicable) have signed a Divestiture Agreement pursuant to Paragraphs II. or III. of this Order (or Paragraph VII. of this Order, if applicable).
- W. “Relevant Area” means, as defined by the U.S. Office of Management and Budget, the:
 - 1. Gadsden, Alabama, Metropolitan Statistical Area; or
 - 2. Florence, South Carolina, Metropolitan Statistical Area.
- X. “Relevant Employees” means any and all full-time employees, part-time employees, contract employees, or independent contractors whose duties, at any time during the ninety (90) days preceding the date the Acquisition is completed or at any time after the date the Acquisition is completed, related or relate to the Divestiture Assets.
- Y. “Respondents” means CHS and HMA, collectively or individually.
- Z. “Riverview Assets” means all of Respondents’ rights, title, and interest in all property and assets, tangible or intangible, of whatever nature and wherever located, relating to or used in connection with Hospital Services and Outpatient Business of Riverview Regional Medical Center and all Riverview Outpatient Facilities, including, without limitation, all:

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1. Real property interests (including fee simple interests and real property leasehold interests, whether as lessor or lessee) wherever located, including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
2. Tangible Personal Property, including, without limitation, any Tangible Personal Property removed from and not replaced at the Riverview Regional Medical Center and all Riverview Outpatient Facilities, if such property was used by or in connection with the Hospital Services and Outpatient Business of the Riverview Regional Medical Center or any Riverview Outpatient Facilities on or after July 29, 2013;
3. Rights under any and all contracts and agreements (e.g., leases, service agreements such as dietary and housekeeping services, supply agreements, procurement contracts), including, but not limited to, contracts and agreements with physicians, other health care providers, unions, third-party payors, HMOs, customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, cosigners, and consignees;
4. Rights and title in and to use the name of the Riverview Regional Medical Center and all Riverview Outpatient Facilities on a permanent and exclusive basis (even as to Respondents);
5. Medicare and Medicaid provider numbers for Riverview Regional Medical Center and all Riverview Outpatient Facilities, to the extent transferable;
6. Intellectual Property;

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7. Intangible rights and property other than Intellectual Property, including, going concern value, goodwill, internet, telecopy and telephone numbers, domain names, listings, and web sites;
8. Approvals, consents, licenses, certificates, registrations, permits, waivers, or other authorizations issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefore or renewals thereof, to the extent assignable;
9. Consumable or disposable inventory, including, but not limited to, janitorial, office, and medical supplies, and at least thirty (30) treatment days of pharmaceuticals;
10. Accounts receivable;
11. Items of prepaid expense;
12. Rights under warranties and guarantees, express or implied; and
13. Business Records;

provided, however, that Respondents may retain a copy of Business Records to the extent necessary to comply with applicable law, regulations, and other legal requirements.

AA. “Riverview Outpatient Facilities” means:

1. Gadsden Endoscopy Center;
2. Riverview Imaging & Laboratory Center;
3. Riverview Laboratory Bay Street;
4. Riverview Medical Center Laboratory;

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5. Wound Care and Hyperbaric Center;
 6. All facilities or entities providing Outpatient Services that are owned or controlled by Gadsden HMA Physician Management LLC, including, but not limited to, Primary Care Associates and Specialty Care Associates; and
 7. All other entities or facilities providing Outpatient Services relating to Riverview Regional Medical Center.
- BB. “Riverview Regional Medical Center” means the Acute Care Hospital located at 600 South 3rd Street, Gadsden, Alabama 35901.
- CC. “Tangible Personal Property” means all machinery, equipment, spare parts, tools and tooling, fixtures, vehicles, furniture, inventories, office equipment, computer hardware, supplies and materials, and all other items of tangible personal property of every kind owned or leased by Respondents, wherever located, together with any express or implied warranty by the manufacturers, sellers, or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.
- DD. “Third Parties” means Persons other than Respondents or the Acquirer(s).
- EE. “Transitional Administrative Services” means administrative assistance with respect to the Hospital Services and Outpatient Business, including, but not limited to, assistance relating to billing, accounting, governmental regulation, human resources management, information systems, managed care contracting, and purchasing, as well as providing assistance in acquiring, obtaining access, and customizing all software used in the provision of such services.

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- FF. “Transitional Clinical Services” means clinical assistance and support services with respect to the Hospital Services and Outpatient Business.
- GG. “Transitional Services” means Transitional Administrative Services and Transitional Clinical Services.

II.**IT IS FURTHER ORDERED** that:

- A. No later than six (6) months after the date this Order is issued, Respondents shall divest the Carolina Pines Assets, absolutely and in good faith and at no minimum price, as an on-going business, only to an acquirer that receives the prior approval of the Commission, and only in a manner (including a Divestiture Agreement) that receives the prior approval of the Commission.
- B. Respondents shall cooperate with the Acquirer to ensure that the Carolina Pines Assets are transferred to the Acquirer as a financially and competitively viable Hospital Services and Outpatient Business, operating as an ongoing Hospital Services and Outpatient Business, including, but not limited to, providing assistance necessary to transfer to the Acquirer all governmental approvals needed to operate the Carolina Pines Assets.
- C. Prior to the Closing Date, Respondents shall:
1. Secure all consents and waivers from all Third Parties that are necessary for Respondents to divest the Carolina Pines Assets and/or to grant any license(s) to the Acquirer to permit the Acquirer to operate the Carolina Pines Assets; *provided, however*, that Respondents may satisfy this requirement by certifying that such Acquirer has

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executed all such agreements directly with each of the relevant Third Parties; and

2. Take all actions necessary to ensure that the Carolina Pines Assets meet federal, state, local, and municipal requirements necessary to allow the transfer of the Carolina Pines Assets to the Acquirer.
- D. The purpose of the divestiture is to ensure the continuation of the Carolina Pines Regional Medical Center as an ongoing, viable Acute Care Hospital providing General Acute Care Inpatient Hospital Services and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.**IT IS FURTHER ORDERED** that:

- A. No later than six (6) months after the date this Order is issued, Respondents shall divest the Riverview Assets, absolutely and in good faith and at no minimum price, as an on-going business, only to an acquirer that receives the prior approval of the Commission, and only in a manner (including a Divestiture Agreement) that receives the prior approval of the Commission.
- B. Respondents shall cooperate with the Acquirer to ensure that the Riverview Assets are transferred to the Acquirer as a financially and competitively viable Hospital Services and Outpatient Business, operating as an ongoing Hospital Services and Outpatient Business, including, but not limited to, providing assistance necessary to transfer to the Acquirer all governmental approvals needed to operate the Riverview Assets.

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- C. Prior to the Closing Date, Respondents shall:
1. Secure all consents and waivers from all Third Parties that are necessary for Respondents to divest the Riverview Assets and/or to grant any license(s) to the Acquirer to permit the Acquirer to operate the Riverview Assets; *provided, however*, that Respondents may satisfy this requirement by certifying that such Acquirer has executed all such agreements directly with each of the relevant Third Parties; and
 2. Take all actions necessary to ensure that the Riverview Assets meet federal, state, local, and municipal requirements necessary to allow the transfer of the Riverview Assets to the Acquirer.
- D. The purpose of the divestiture is to ensure the continuation of the Riverview Regional Medical Center as an ongoing, viable Acute Care Hospital providing General Acute Care Inpatient Hospital Services and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

IV.**IT IS FURTHER ORDERED** that:

- A. After the date the Acquisition is completed, Respondents shall not use, solicit, or access, directly or indirectly, any Confidential Business Information of the Divestiture Assets, and shall not disclose, provide, discuss, exchange, circulate, convey, or otherwise furnish such Confidential Business Information, directly or indirectly, to or with any Person other than:
1. As necessary to comply with the requirements of this Order or the Hold Separate Order;
 2. Pursuant to a Divestiture Agreement;

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3. To enforce the terms of a Divestiture Agreement or prosecute or defend against any dispute or legal proceeding; or
 4. To comply with applicable law, regulations and other legal requirements.
- B. No later than five (5) days after the date the Acquisition is completed, Respondents shall provide written notification of the restrictions, prohibitions, and requirements of this Paragraph IV. to all of Respondents' employees, agents, and representatives employed at, or with responsibilities relating to, the Divestiture Assets, or who had or have access to or possession, custody, or control of any Confidential Business Information of the Divestiture Assets:
1. Such notification shall include a plain language explanation of the requirements of this Order and a description of the consequences of failing to comply with the requirements.
 2. Respondents shall provide such notification by US mail or by e-mail, with return receipt requested acknowledging receipt of the notification or similar transmission.
 3. Respondents shall maintain complete records of all such notifications at Respondents' corporate headquarters and keep a file of all receipts and acknowledgments for one (1) year after the Closing Date.
 4. Respondents shall provide the Acquirer (and the Hold Separate Trustee, if one is appointed) with a copy of such notification and with copies of all other certifications, notifications, and reminders sent to Respondents' personnel.
- C. Not later than thirty (30) days after the date the Acquisition is completed, Respondents shall:

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1. Obtain, as a condition of continued employment post-divestiture, from each of Respondents' employees, agents, and representatives employed at or with responsibilities relating to the Divestiture Assets or who had or have access to or possession, custody, or control of any Confidential Business Information of the Divestiture Assets an executed confidentiality agreement that complies with the restrictions, prohibitions and requirements of this Order and the Hold Separate Order; and
2. Institute procedures and requirements and take such actions as are necessary to ensure that Respondents' personnel comply with the restrictions, prohibitions and requirements of this Paragraph IV., including all actions that Respondents would take to protect their own trade secrets and confidential information.

V.

IT IS FURTHER ORDERED that Respondents shall:

- A. No later than ten (10) days after a request from a Prospective Acquirer, provide the Prospective Acquirer with the following information for each Relevant Employee, as and to the extent permitted by law:
 1. Name, job title or position, date of hire, and effective service date;
 2. Specific description of the employee's responsibilities;
 3. The base salary or current wages;
 4. Most recent bonus paid, aggregate annual compensation for Respondents' last fiscal year, and current target or guaranteed bonus, if any;

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5. Employment status (i.e., active or on leave or disability; full-time or part-time);
 6. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 7. At the Prospective Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the Relevant Employee.
- B. Within a reasonable time after a request from a Prospective Acquirer, provide to the Prospective Acquirer an opportunity to meet personally and outside the presence or hearing of any employee or agent of any Respondent, with any one or more of the Relevant Employees, and to make offers of employment to any one or more of the Relevant Employees.
- C. Not interfere, directly or indirectly, with the hiring or employing by the Prospective Acquirer of any Relevant Employees, not offer any incentive to such employees to decline employment with the Prospective Acquirer, and not otherwise interfere with the recruitment of any Relevant Employee by the Prospective Acquirer; *provided, however*, that Respondents may:
1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at Relevant Employees; or
 2. Hire Relevant Employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph; *provided further*,

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however, that this Paragraph shall not prohibit Respondents from making offers of employment to or employing any Relevant Employee if the Prospective Acquirer has notified Respondents in writing that the Prospective Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the employee's employment has been terminated by the Acquirer.

- D. Remove any impediments within the control of Respondents that may deter Relevant Employees from accepting employment with the Prospective Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Prospective Acquirer, and shall not make any counteroffer to a Relevant Employee who receives a written offer of employment from the Prospective Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee.
- E. Provide all Relevant Employees with reasonable financial incentives to continue in their positions until the Closing Date. Such incentives shall include, but are not limited to, a continuation, until the Closing Date, of all employee benefits, including the funding of regularly scheduled raises and bonuses, and the vesting of pension benefits (as permitted by law and for those Relevant Employees covered by a pension plan), offered by Respondents.
- F. Not, for a period of one (1) year following the Closing Date, directly or indirectly, solicit or otherwise attempt to induce any of the Relevant Employees who have accepted offers of employment with the Acquirer to

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terminate his or her employment with the Acquirer; *provided, however*, that Respondents may:

1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at Relevant Employees; or
2. Hire Relevant Employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph V.; *provided further, however*, that this Paragraph shall not prohibit Respondents from making offers of employment to or employing any Relevant Employee if the Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the employee's employment has been terminated by the Acquirer.

VI.

IT IS FURTHER ORDERED that, at the request of an Acquirer, for a period not to exceed twelve (12) months, or as otherwise approved by the Commission, and in a manner (including pursuant to an agreement) that receives the prior approval of the Commission:

- A. Respondents shall provide Transitional Services to the Acquirer sufficient to enable the Acquirer to operate the Divestiture Assets, as applicable, and to provide General Acute Care Inpatient Hospital Services and Outpatient Services in substantially the same manner that Respondents have operated such facility and provided such services at the Divestiture Assets, as applicable; and

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- B. Respondents shall provide the Transitional Services required by this Paragraph at substantially the same level and quality as such services are provided by Respondents in connection with the General Acute Care Inpatient Hospital Services and Outpatient Services provided at the Divestiture Assets, as applicable.

Provided, however, that Respondents shall not (i) require the Acquirer to pay compensation for Transitional Services that exceeds the Direct Cost of providing such goods and services, or (ii) terminate its obligation to provide Transitional Services because of a material breach by the Acquirer of any agreement to provide such assistance unless Respondents are unable to provide such services due to such material breach.

VII.**IT IS FURTHER ORDERED** that:

- A. If Respondents have not fully complied with the obligations imposed by Paragraphs II. or III. of this Order, the Commission may appoint a Divestiture Trustee to divest any remaining Divestiture Assets and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the required assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph VII.A. shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute

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enforced by the Commission, for any failure by Respondents to comply with this Order.

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, and stated in writing their reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effectuate the divestitures required by, and satisfy the additional obligations imposed by, this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effectuate the divestitures required by, and satisfy the additional obligations imposed by, this Order.
 - 2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to effectuate the required divestitures, which shall be subject to the

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prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan to divest, or believes the divestitures can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however*, the Commission may extend the divestiture period only two (2) times.

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays caused by Respondents shall extend the time for divestiture under this Paragraph VII. for a time period equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. Each divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such

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acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such Person within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.
6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether

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or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, malfeasance, willful or wanton acts, or bad faith by the Divestiture Trustee.

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
 10. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, representatives, and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties and responsibilities.
- E. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph VII.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee

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issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.

- G. The Divestiture Trustee appointed pursuant to this Paragraph VII. may be the same person appointed as Hold Separate Trustee pursuant to the relevant provisions of the Hold Separate Order.

VIII.**IT IS FURTHER ORDERED** that:

- A. No Divestiture Agreement shall limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of any Acquirer or to reduce any obligations of Respondents under such agreements.
- B. Each Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof.
- C. Respondents shall comply with all terms of each Divestiture Agreement, and any breach by Respondents of any term of any Divestiture Agreement shall constitute a failure to comply with this Order. If any term of any Divestiture Agreement varies from the terms of this Order (“Order Term”), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents’ obligations under this Order.

IX.**IT IS FURTHER ORDERED** that:

- A. For a period of ten (10) years from the date this Order is issued, Respondents shall not, without providing advance written notification to the Commission in the manner described in this Paragraph:

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1. Acquire, directly or indirectly, any stock, share capital, equity, or other interest in any Person that, at any time during the twelve (12) months immediately preceding such acquisition, was engaged in or is engaged in providing General Acute Care Inpatient Hospital Services in a Relevant Area; or
 2. Enter, directly or indirectly, into any agreement or other arrangement to manage or otherwise control an Acute Care Hospital, or be managed or otherwise controlled by an Acute Care Hospital, which, during the twelve (12) months immediately preceding such agreement or arrangement, was engaged or is engaged in providing General Acute Care Inpatient Hospital Services in a Relevant Area.
- B. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (herein referred to as “the Notification”), 16 C.F.R. § 803 App., and shall be prepared and transmitted in accordance with the requirements of that Part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested

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and, where appropriate, granted by letter from the Bureau of Competition. *Provided, however*, that prior notification shall not be required by this Paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

X.**IT IS FURTHER ORDERED** that:

- A. Within thirty (30) days after this Order is issued, and every thirty (30) days thereafter until Respondents have complied with their obligations in Paragraphs II. and III. of this Order (or Paragraph VII. of this Order, if applicable), Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II. and III. of this Order (or Paragraph VII. of this Order, if applicable). Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II. and III. of this Order (or Paragraph VII. of this Order, if applicable), including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communication to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture.
- B. One (1) year after this Order is issued, annually for the next nine (9) years on the anniversary of that date, and at other times as the Commission may require, Respondents shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

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XI.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of such Respondent;
- B. Any proposed acquisition, merger, or consolidation of such Respondent; and
- C. Any other change in such Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

XII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to the applicable Respondent made to their principal United States offices, registered office of their United States subsidiaries, or headquarters addresses, such Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of such Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of such Respondent related to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of such Respondent; and
- B. The opportunity to interview officers, directors, or employees of such Respondent, who may have counsel present, related to compliance with this Order.

Analysis to Aid Public Comment

XIII.

IT IS FURTHER ORDERED that this Order shall terminate on April 11, 2024.

By the Commission.

**ANALYSIS OF CONSENT ORDERS TO AID PUBLIC
COMMENT****I. INTRODUCTION AND BACKGROUND**

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Community Health Systems, Inc. (“CHS”) and Health Management Associates, Inc. (“HMA”). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that otherwise would result from CHS’s acquisition of HMA. The proposed Consent Agreement requires CHS to divest the Riverview Regional Medical Center (“Riverview”) and all associated operations and businesses in and around Gadsden, Alabama, and the Carolina Pines Regional Medical Center (“Carolina Pines”) and all associated operations and businesses in and around Hartsville, South Carolina, to a Commission-approved acquirer, and in a manner approved by the Commission, within six months after the Decision and Order is issued. Under the proposed Consent Agreement, CHS also is required to hold separate the to-be-divested assets and maintain the economic viability, marketability, and competitiveness of the divestiture assets, until the potential acquirer is approved by the Commission and the divestiture is complete. Finally, CHS is required to provide the Commission prior notice of any acquisition of a GAC services provider in the Gadsden Metropolitan Statistical Area and the Florence Metropolitan Statistical Area for ten years.

Analysis to Aid Public Comment

The proposed Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission again will review the proposed Consent Agreement and comments received, and decide whether it should withdraw the Consent Agreement, modify the Consent Agreement, or make it final.

On July 29, 2013, CHS and HMA signed a merger agreement pursuant to which CHS agreed to acquire HMA for \$7.6 billion. The Commission's complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by removing an actual, direct, and substantial competitor from two local markets in Alabama and South Carolina for general acute care inpatient services sold to commercial health plans. The proposed Consent Agreement would remedy the alleged violations by requiring complete divestitures in the affected markets. The divestitures will replace the competition that otherwise would be lost in the Alabama and South Carolina markets because of the proposed acquisition.

II. THE PARTIES

Headquartered in Franklin, Tennessee, CHS is a for-profit health system that owns 135 hospitals with approximately 20,000 licensed beds in 29 states. CHS is the second-largest U.S. hospital chain and one of the largest publicly-traded operators of hospitals in the United States. CHS generated approximately \$13 billion in revenue in 2012.

HMA is a for-profit health system headquartered in Naples, Florida that owns 71 hospitals in 15 states, primarily in the southeastern United States. In 2012, HMA generated \$5.9 billion in revenue.

III. GENERAL ACUTE CARE INPATIENT SERVICES

CHS's proposed acquisition of HMA poses substantial antitrust concerns in the relevant product market of general acute

Analysis to Aid Public Comment

care inpatient services (“GAC services”) provided to commercially insured patients. GAC services consist of a broad cluster of routine inpatient services that require an overnight hospital stay. They are sold to commercial health plans, which sell benefit plans to commercially insured patients. GAC services do not include services related to psychiatric care, substance abuse, and rehabilitation services. Likewise, outpatient services are not included in GAC services because such services are characterized by different competitive conditions (*e.g.*, different competitors, lower entry barriers) and because health plans and their members generally cannot substitute those services for inpatient services in response to a small but significant and non-transitory increase in price.

GAC services markets are local in nature. Evidence gathered from market participants shows that patients strongly prefer to receive care as close to home as possible and to stay within the area where they live or work. Accordingly, the proposed acquisition raises serious antitrust concerns in two local markets for patients seeking GAC services: (1) the area that approximates Etowah County and includes the City of Gadsden, Alabama (the “Gadsden Area”); and (2) the area that approximates Darlington County, South Carolina (the “Darlington County Area”).

The proposed acquisition would combine the only two competitively meaningful hospitals providing GAC services to Gadsden Area patients—HMA’s Riverview and CHS’s Gadsden Regional Medical Center (“Gadsden Regional”). The Gadsden Area market already is highly concentrated, and the proposed merger would substantially increase concentration in that market absent relief. Post-merger, commercially insured patients in the Gadsden Area would have only CHS’s hospitals as meaningful options to obtain GAC services. The presumption of anticompetitive harm created by such high levels of market concentration is supported by evidence of the close competition between Riverview and Gadsden Regional that would be eliminated by the proposed merger. Consumers in the Gadsden Area have benefited from this head-to-head competition in the form of lower health care costs and higher quality of care. Absent relief, CHS would gain additional leverage and be able to demand higher reimbursement rates from commercial health plans, and

Analysis to Aid Public Comment

would have reduced incentives to maintain and improve its quality of care. Ultimately, these effects are felt by local patients in the form of higher premiums, co-pays, and out-of-pocket costs, as well as reduced access to high-quality care.

In South Carolina, the proposed acquisition would combine two of only three competitively meaningful hospitals providing GAC services to Darlington County Area commercially insured patients—HMA’s Carolina Pines and CHS’s Carolinas Hospital-Florence (“Carolinas Hospital”). Third-party McLeod Regional Medical Center (“McLeod Regional”) also serves the Darlington County Area. The Darlington County Area market is highly concentrated, and the proposed merger would substantially increase concentration in that market absent relief. Post-merger, commercially insured patients in the Darlington County Area would have only two meaningful options for GAC services—either a CHS-owned hospital or third-party McLeod Regional. The presumption of anticompetitive harm is supported by evidence of the close competition between Carolina Pines and Carolinas Hospital that would be eliminated by the proposed merger. Consumers in the Darlington County Area have benefited from this head-to-head competition in the form of lower health care costs and higher quality of care. Absent relief, CHS would gain additional leverage and be able to demand higher reimbursement rates from commercial health plans, and would have reduced incentives to maintain and improve its quality of care. Ultimately, these effects are felt by local patients in the form of higher premiums, co-pays, and out-of-pocket costs, as well as reduced access to high-quality care.

New entry or expansion is unlikely to deter or counteract the anticompetitive effects of the proposed acquisition in either market. Alabama’s Certificate of Need (“CON”) statute poses a regulatory hurdle that must be overcome before constructing new healthcare facilities, expanding or modifying existing facilities, or altering inpatient services. South Carolina has a similar CON statute. Significant entry barriers also include the time and costs associated with constructing or expanding a general acute care hospital. There is no evidence of planned entry into either market or any evidence that there is unmet demand for GAC services in either market that might spur entry or expansion. Thus, it is

Analysis to Aid Public Comment

unlikely that new entry or expansion sufficient to achieve a significant market impact will occur in a timely manner in either market.

IV. THE PROPOSED CONSENT AGREEMENT

The proposed Consent Agreement remedies the anticompetitive concerns in both local markets. The proposed Consent Agreement would maintain competition in the Gadsden Area by requiring CHS to divest Riverview and its associated operations and businesses. Similarly, the proposed Consent Agreement would fully maintain competition in the Darlington County Area by requiring CHS to divest Carolina Pines and its associated operations and businesses. Any potential buyer for either hospital is subject to the prior approval of the Commission.

The proposed Consent Agreement also requires CHS to provide transitional services to the approved acquirers for one year, as needed, to assist the acquirers with operating the divested assets as viable and ongoing businesses. Until the divestitures are completed, CHS is required to hold Riverview and Carolina Pines separate, subject to the standard terms of the Order to Hold Separate and Maintain Assets. The proposed order also appoints Curtis Lane, the senior managing director of MTS Health Partners, LP, as Hold Separate Monitor to oversee CHS's compliance with the Order to Hold Separate and Maintain Assets. Finally, the proposed order contains a ten-year prior notice requirement for acquisitions of GAC services providers in the Gadsden, Alabama Metropolitan Statistical Area or in the Florence, South Carolina Metropolitan Statistical Area, as well as compliance reporting requirements.

The hospitals to be divested are each stand-alone businesses and include all of the assets and real property necessary for a Commission-approved buyer to compete immediately and effectively in each relevant market. In addition to divestiture of the actual facilities at issue, CHS has agreed to divest the rights to all intellectual property, including the facility names, and all provider and health plan contracts associated with the facilities. Although the competitive concerns relate to GAC services to commercially insured patients only, the proposed order

Analysis to Aid Public Comment

contemplates divestiture of all services and operations that are affiliated with the facility or facilities to be divested that are necessary to be a viable business. Specifically, CHS will divest all outpatient operations and businesses, including outpatient physician practices, associated with each hospital. This requirement is consistent with similar divestitures in prior Commission actions.

The sole purpose of this analysis is to facilitate public comment on the Consent Agreement. This analysis does not constitute an official interpretation of the Consent Agreement or modify its terms in any way.

Complaint

IN THE MATTER OF

**BILL ROBERTSON & SONS, INC.
D/B/A
HONDA OF HOLLYWOOD**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT, THE
CONSUMER LEASING ACT, AND REGULATION M*Docket No. C-4451; File No. 132 3142
Complaint, April 11, 2014 – Decision, April 11, 2014*

This consent order addresses Bill Robertson & Sons, Inc. d/b/a Honda of Hollywood's advertised leasing offers and failure to clearly and conspicuously disclose the costs and terms of certain leases offered, despite the respondent's use of certain triggering terms in the advertisements. The complaint alleges that the respondent has advertised that consumers can pay "\$0 down" with "0 first payment" and "0 due at signing" to lease a car, and has depicted several cars in its advertisements to which this offer applies, listing a specific monthly lease payment for each such car, however in fact, for a \$0 up-front payment, consumers cannot lease the cars shown in the advertisements for the advertised monthly payment amounts, and that instead, consumers must also pay between \$1,995 and \$2,499 at lease signing. The consent order requires that the respondent clearly and conspicuously make all of the disclosures required by the Consumer Leasing Act and Regulation M if it states relevant triggering terms, including the monthly lease payment; and prohibits the respondent from misrepresenting any material fact about the price, sale, financing, or leasing of any vehicle.

*Participants*For the *Commission*: Mark Glassman.For the *Respondent*: Aaron Jacoby and Melanie Joo, Arent Fox LLP.**COMPLAINT**

The Federal Trade Commission, having reason to believe that Bill Robertson & Sons, Inc. d/b/a Honda of Hollywood, a corporation ("respondent"), has violated provisions of the Federal Trade Commission Act ("FTC Act"), the Consumer Leasing Act ("CLA"), and its implementing Regulation M, and it appearing to