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February 3, 2020

**VIA ELECTRONIC AND FIRST CLASS MAIL**

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Re: *Proposed Combination Transaction involving Frisbie Memorial Hospital and HCA Healthcare*

Dear Attorneys Razi and Sullivan:

The New Hampshire Department of Justice, through its Consumer Protection and Antitrust Bureau (the "Bureau") conducted a nonpublic pre-transaction review of the proposed acquisition of Frisbie Memorial Hospital and its related health care assets (collectively, "Frisbie") by Hospital Corporation of America through one or more of its affiliates (collectively, "HCA"), under the New Hampshire Consumer Protection Act and the Combinations and Monopolies Act as well as relevant federal law. See RSA chs. 356, 358-A (state law consumer protection and antitrust provisions).

Frisbie is an acute-care community hospital with 88 beds, located in Rochester, New Hampshire, and HCA owns Portsmouth Regional Hospital ("PRH"), a 220-licensed bed hospital with a Level II trauma center located in Portsmouth, New Hampshire. HCA also owns Parkland Medical Center in Derry, New Hampshire. Frisbie and PRH are less than 30 miles apart, Frisbie employs a relatively modest number of physicians in the Seacoast region of New Hampshire, and, comparatively, HCA employs a smaller number of physicians than Frisbie.

The Bureau's pre-transaction review consisted of evaluating materials submitted by the parties, along with information independently obtained by the Office. Based on the facts and circumstances of the proposed transaction known at this juncture, the Bureau is not taking any formal action to challenge the proposed transaction as violating consumer protection and antitrust laws. This is not a determination that the transaction has a competitively neutral impact,

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and a no-action decision does not foreclose future law enforcement action should good cause arise.

Robust competition in the delivery of health care services is essential to keeping costs low and quality of care high. State law has several provisions that help facilitate channels of competition in the health care market. In addition to consumer protection and antitrust laws, state law prohibits any contract or agreement that interferes with the ability of licensed physicians to practice medicine in any geography after the termination of a professional services relationship with an entity. See RSA 329:31-a. State law preserves patients' rights to all medical information contained in their respective medical records, enabling patients to choose to seek their care from competitors in the health care marketplace. See RSA 151:21; RSA 332-I:1 & 2. State law also mandates hospitals and their affiliates to have policies in place "requiring physicians employed by such hospital to notify their patients when they are referring a patient for professional services to be provided by a physician employed by the same hospital or affiliate [and] also expressly state that no physician employed by the hospital or any affiliate is required or in any way obligated to refer patients to physicians also employed or under contract with the hospital or any affiliate." See RSA 151:31; see also RSA 420-J:8, XIV. The Bureau expects that, post-closing, the combined system will comply with these and all other applicable state laws.

The Bureau's no-action determination set forth in this letter does not implicate the jurisdiction of any other section of the New Hampshire Department of Justice that may also have a role in reviewing this proposed transaction, including the Charitable Trusts Unit (the "CTU"). As you know, the transaction is reviewed by the CTU pursuant to RSA 7:19-b. This review involves determining whether the boards of directors for the hospital systems have complied with evaluating six minimum standards prior to approving the proposed transaction. RSA 7:19-b, II (a)-(g), RSA 7:19-b, IV. This includes considering health care costs, quality, and access, in the context of evaluating whether the boards of directors properly determined that the proposed "transaction is in the best interest of the health care charitable trust and the community which it serves." RSA 7:19-b, II(b). This transaction represents the first opportunity for the CTU to apply RSA 7:19-b in the context of a for-profit health care entity acquiring control over a not-for-profit health care entity. The Bureau's review is concurrent to the review of the CTU and distinct from the CTU in its evaluation of the proposed transaction.

The Attorney General's Office will vigorously use its authority to ensure that competition is protected in the health care marketplace to the benefit of consumers. While the Bureau intends to take no formal action at this time to challenge the proposed transaction under the consumer protection and antitrust laws, it reserves the right to take action authorized by law to address and remedy anticompetitive conduct and harm that may arise in the future.

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Thank you for your cooperation during the Bureau's review. Please feel free to reach out with any questions you may have.

Sincerely,



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