

BEFORE THE ATTORNEY GENERAL

STATE OF COLORADO

IN THE MATTER OF THE SISTERS OF CHARITY OF LEAVENWORTH HEALTH SYSTEM, INC.'S MERGER WITH INTERMOUNTAIN HEALTH CARE, INC.

JURISDICTION OF THE ATTORNEY GENERAL

1. On November 23, 2021, the Sisters of Charity of Leavenworth Health System, Inc. d/b/a SCL Health (“SCL Health”) submitted notice to the Colorado Attorney General of its intent to merge with Intermountain Health Care, Inc. (“Intermountain”). The notice was submitted in accordance with Colo. Rev. Stat. § 6-19-202 (2021).

2. SCL Health is a Kansas nonprofit corporation headquartered and doing business in Colorado and controlling and/or operating several hospitals and other facilities in Colorado, including Saint Joseph Hospital (Denver), Good Samaritan Medical Center (Lafayette), Lutheran Medical Center (Wheat Ridge), and St. Mary’s Hospital (Grand Junction) (collectively, the “Colorado Hospitals”). Intermountain is a Utah nonprofit corporation.

3. Per the terms of the proposed merger (the “Merger”), when the transaction is finalized, SCL Health and Intermountain will merge their two health systems into a unified health system (the “Consolidated System”).

4. The Attorney General¹ has reviewed the Merger under the Colorado Hospital Transfer Act (“the Act”), § 6-19-101, *et seq.*, and under the Attorney General’s common law authority over charitable assets, *see* §§ 24-31-101(2), 6-19-104(1).

5. Under the Act, the Attorney General is required to review “covered transactions,” which include “any transaction that would result in the sale, transfer, lease, exchange, or other disposition of fifty percent or more of the assets of a hospital” as well as the “sale, transfer, or other disposition of the control of a parent company, holding company, or other entity controlling a hospital.” § 6-19-102(1).

¹ Due to a potential conflict of interest, Attorney General Philip J. Weiser was recused from any and all involvement in the Colorado Department of Law’s review of the Merger. Chief Deputy Attorney General Natalie Hanlon Leh served as *Acting* Attorney General for purposes of the Department of Law’s review of the Merger and the issuance of this Opinion.

6. In reviewing a transaction involving a nonprofit hospital and another nonprofit entity, the Attorney General must consider two factors:

- a. Whether the transaction will result in a material change in the charitable purposes to which the assets of the hospital have been dedicated, and
- b. Whether the transaction will result in a termination of the Attorney General's jurisdiction over those assets caused by a transfer of a material amount of those assets outside of the state of Colorado.

§ 6-19-203(1).

7. And "[i]n considering whether a material change results from the transaction, the Attorney General must consider, among other factors, reductions in the availability and accessibility of health-care services in the communities served by the hospital." § 6-19-203(1).

8. If the Attorney General finds that a covered transaction will not cause a material change in the charitable purposes to which the assets of the hospital have been dedicated and will not result in a termination of the Attorney General's jurisdiction over the hospital assets, the transaction "shall proceed without further review." § 6-19-203(1).

9. If the Attorney General finds that a covered transaction will cause a material change in the charitable purposes to which the assets of the hospital have been dedicated or will terminate the Attorney General's jurisdiction over the hospital assets, "the attorney general may exercise his or her common law authority to assess and review or challenge the transaction." § 6-19-203(2). When a covered transaction will cause a material change to the charitable purpose or will terminate the Attorney General's jurisdiction, the Attorney General has authority to allow a transaction that satisfies certain criteria, however, the Attorney General "shall liberally construe those criteria...in favor of allowing the transaction to proceed." § 6-19-203(2)(c).

DECISION

10. Based on documents and other information produced by SCL Health and/or Intermountain, upon which the Attorney General relied, the Attorney General finds and determines that the Merger involves a transfer or other disposition of more than fifty percent of SCL Health's hospital assets and/or the transfer or disposition of the control of the entity controlling the Colorado Hospitals (*i.e.*, SCL Health), and therefore is a covered transaction under the Act.

11. Based on documents and other information produced by SCL Health and/or Intermountain, upon which the Attorney General relied, the Attorney General further finds and determines the following:

- a. The Merger will not result in a material change to the charitable purposes to which SCL Health's hospital assets have been dedicated.
- b. The Merger will not result in the termination of the Attorney General's jurisdiction over SCL Health's hospital assets.
- c. Accordingly, the Merger shall proceed without further review.

BACKGROUND

A. The Parties

i. Sisters of Charity of Leavenworth Health System, Inc. and its Colorado Hospitals

12. Sisters of Charity of Leavenworth Health System, Inc. is a Kansas nonprofit corporation doing business as SCL Health. SCL Health was founded by the Sisters of Charity of Leavenworth in 1864. SCL Health was first authorized to do business in Colorado in 1973 and Amended and Restated Articles of Incorporation were most recently filed in Kansas in 2011.

13. SCL Health is "the parent entity of a Catholic faith-based, nonprofit health care system that is dedicated to improving the health of the people and communities it serves, especially those who are poor and vulnerable." Merger Agreement, Recital B. SCL Health is headquartered in Broomfield, Colorado with "8 hospitals, approximately 180 physician clinics and ambulatory locations, and home health, hospice, behavioral health and safety-net services primarily in Colorado and Montana." *Id.*

14. As the parent of a Catholic health care system, SCL Health has reserved powers to Leaven Ministries, "an unincorporated entity authorized by the Catholic Church [] as a Public Juridic Person which acts as the Catholic Sponsor of SCL Health [], and, as an element of such Sponsorship, individuals who are members of Leaven Ministries are the civil corporate members of SCL Health, with the right to exercise certain reserved powers." Merger Agreement, Recital C.

15. SCL Health has tax-exempt status under section 501(c)(3) of the Internal Revenue Code. According to its 2020 IRS Form 990, SCL Health's stated mission is to "reveal and foster God's healing love by improving the health of the people and communities we serve, especially those who are poor and vulnerable."

16. According to its Articles of Incorporation, SCL Health's charitable purpose includes the following:

[to] manage, operate, maintain, develop and promote institutions, activities and programs supportive of the delivery of quality health services, education programs, research activities, and any other activities designed to promote the general health, rehabilitation and social needs of individuals in need which, in the opinion of the Directors of the Corporation and of the Members, are appropriate in carrying out, and consistent with, the charitable purposes of the Corporation and the health care mission of Leaven Ministries.

Amended and Restated Articles of Incorporation of Sisters of Charity of Leavenworth Health System, Inc., Art. III(3) (Feb. 14, 2011).

17. SCL Health controls several nonprofit entities in Colorado, including the Colorado Hospitals. *See* Merger Agreement, Art. III § 3.7 and Sch. 1.1(110).

18. SCL Health is also affiliated with Platte Valley Medical Center (Brighton). This Opinion does not apply to Platte Valley Medical Center. *See infra* ¶¶ 27–29.

19. SCL Health – Front Range, Inc. d/b/a Lutheran Medical Center (“Lutheran”) is the owner and operator of Lutheran Medical Center, a state licensed, and Medicare certified general hospital in Wheat Ridge, Colorado, and the sole member of Good Samaritan Medical Center, LLC (“Good Samaritan”), a state licensed and Medicare certified general hospital in Lafayette, Colorado.

20. Lutheran has tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. According to its 2020 IRS Form 990, Lutheran's charitable mission is the same as SCL Health's: “We reveal and foster God's healing love by improving the health of the people and communities we serve, especially those who are poor and vulnerable.”

21. According to its Articles of Incorporation, Lutheran's charitable purpose includes the following:

[Lutheran] shall carry out the charitable purposes of [SCL Health], a Kansas nonprofit corporation, or its successor [SCL Health] and the system of controlled charitable corporations which [SCL Health] has created or otherwise

affiliated with by providing a faith-based ideal of service, which demands a respect for the dignity of all persons, compassionate care and sensitivity to human suffering, and an abiding interest in care of the whole patient, including his/her higher spiritual and physical welfare. In carrying out its charitable purposes, [Lutheran] shall manage, operate, maintain, develop and promote institutions, activities and programs to promote the delivery of quality health services, educational programs, research activities, and any other activities designed to promote the general health, rehabilitation and social needs of individuals in need which, in the opinion of the Board of Directors of [Lutheran] and of [SCL Health], are appropriate in carrying out the charitable purposes of [Lutheran], [SCL Health], and its controlled charitable corporations.

Amended and Restated Articles of Incorporation of SCL Health – Front Range, Inc.
[Lutheran], Art. III(b) (Dec. 4, 2013).

22. According to its Operating Agreement, Good Samaritan Medical Center's charitable purpose includes the following:

[Good Samaritan] is organized and shall be operated exclusively for charitable, scientific, and educational purposes with the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 []. The primary, but not exclusive, objectives of [Good Samaritan] are (a) to manage and operate Good Samaritan Medical Center in Lafayette, Colorado, as a health care and service organization affiliated with [SCL Health] ... and (b) to otherwise support and carry out the charitable health care mission of SCL Health and the organizations controlled by or under common control with SCL Health. [Good Samaritan] will provide services to patients with Medicare and other governmental payor coverage on a non-discriminatory basis. [Good Samaritan] shall provide services to all persons on a non-discriminatory basis. [Good Samaritan] will adopt a charity care policy which will provide for reduced cost care to patients who meet certain financial guidelines. Any duty to maximize profits shall not override the charitable purposes of the [Good Samaritan]. In furtherance thereof, the [Good Samaritan] may engage in any and all lawful activities as are necessary, incidental to,

appropriate, proper, or advisable for the furtherance and accomplishment of the foregoing purposes, subject at all times, to the requirements of this Agreement and Colorado law.

Good Samaritan Medical Center, LLC Amended and Restated Operating Agreement, Section 3 (Apr. 14, 2015).

23. Saint Joseph Hospital, Inc. ("Saint Joseph") is a state licensed and Medicare certified general hospital in Denver, Colorado, and has tax exempt status under Section 501(c)(3) of the Internal Revenue Code. According to its 2020 IRS Form 990, Saint Joseph's charitable mission is the same as SCL Health's: "We reveal and foster God's healing love by improving the health of the people and communities we serve, especially those who are poor and vulnerable."

24. According to its Articles of Incorporation, Saint Joseph's charitable purpose includes the following:

[Saint Joseph] shall carry out the charitable purposes of [SCL Health], a Kansas not-for-profit corporation, or its successor [] and the system of controlled charitable corporations which SCL Health has created or otherwise affiliated with by providing a faith-based ideal of service, which demands a respect for the dignity of all persons, compassionate care and sensitivity to human suffering, and an abiding interest in care of the whole patient, including his/her higher spiritual and physical welfare. In carrying out its charitable purposes, [Saint Joseph] shall manage, operate, maintain, develop and promote institutions, activities and programs to promote the delivery of quality health services, educational programs, research activities, and any other activities designed to promote the general health, rehabilitation and social needs of individuals in need which are appropriate in carrying out the charitable purposes of [Saint Joseph], SCL Health, and its controlled charitable corporations.

Third Amended and Restated Articles of Incorporation of Saint Joseph Hospital, Inc., Art. III(b) (May 28, 2014).

25. St. Mary's Hospital & Medical Center, Inc. ("St. Mary's") is a state licensed and Medicare certified general hospital in Grand Junction, Colorado, and has tax exempt status under Section 501(c)(3) of the Internal Revenue Code. According to its 2020 IRS Form 990, St. Mary's charitable mission is the same as

SCL Health's: "We reveal and foster God's healing love by improving the health of the people and communities we serve, especially those who are poor and vulnerable."

26. According to its Articles of Incorporation, St. Mary's charitable purpose includes the following:

(a) Carry out the charitable purposes of [SCL Health], a Kansas nonprofit corporation, or its successor [] and the system of controlled charitable corporations which the Member has created or otherwise affiliated with in order to pursue its charitable purposes, and (b) further the apostolate of the Sisters of Charity of Leavenworth on behalf of and as an integral part of the Roman Catholic Church in the United States.

Amended and Restated Articles of Incorporation of St. Mary's Hospital and Medical Center, Inc., Art. III(1) (Apr. 30, 2014).

27. Brighton Community Hospital Association d/b/a Platte Valley Medical Center ("Platte Valley") is a state licensed and Medicare certified general hospital and has tax exempt status under Section 501(c)(3) of the Internal Revenue Code. Platte Valley's sole member is Integrity Health and in August 2015, Platte Valley and Integrity Health entered into an Affiliation Agreement with SCL Health.

28. Per the Merger Agreement and other information produced by SCL Health and Intermountain, SCL Health does not control Integrity and/or Platte Valley and therefore Intermountain and/or the Consolidated System will have no control over Integrity Health and/or Platte Valley as a result of the Merger.

29. Accordingly, this Opinion does not apply to Integrity Health or Platte Valley. To the extent the Consolidated System, any of the Parties, and/or any other entity seeks to take any control of Integrity Health and/or Platte Valley in the future, this Opinion shall not be interpreted to approve of such action and a separate review under the Act will be necessary.

ii. Intermountain Health Care, Inc.

30. Intermountain Health Care, Inc. is a Utah nonprofit corporation headquartered in Salt Lake City. "The Intermountain System includes 24 hospitals, approximately 225 clinics, a medical group with approximately 3,000 employed physicians and advanced-practice clinicians, and approximately 42,000 caregivers providing care primarily in Utah, Idaho, and Nevada...." Merger Agreement, Recital A.

31. Intermountain has tax-exempt status under section 501(c)(3) of the Internal Revenue Code. According to its 2020 IRS Form 990, Intermountain's stated mission is "helping people live the healthiest lives possible." *See also* Merger Agreement, Recital A.

32. According to its Articles of Incorporation, Intermountain's charitable purpose is as follows: "[Intermountain] is organized and shall be operated exclusively for charitable, education or scientific purposes by conducting or supporting activities for the benefit of or to carry out the charitable, educational or scientific purposes of qualified organizations." Amended and Restated Articles of Incorporation of Intermountain Health Care, Inc., Art. III (Apr. 25, 2012).

B. The Proposed Merger

33. Prior to providing the Attorney General with the statutory notice required under the Act, SCL Health initially produced documents related to the Merger on October 8, 2021, including a Letter of Intent and Term Sheet between SCL Health and Intermountain. On November 23, 2021, in addition to the statutory notice required by the Act, SCL Health produced an initial draft of the Merger Agreement between SCL Health and Intermountain.

34. On January 10, 2022, the Attorney General requested additional documents and other information and on February 1, 2022, SCL Health and Intermountain produced the requested documents and other information, including the "Execution Version" of the Merger Agreement, dated December 15, 2021 ("Merger Agreement").

35. On March 24, 2022, SCL Health produced additional documents and other information requested by the Attorney General.

36. Subject to all regulatory approvals, SCL Health and Intermountain intend to close the Merger on or before March 31, 2022, becoming effective at 12AM the following day. *See* Merger Agreement Art. VIII, § 8.1; Notice Letter, § IV (November 23, 2021). Upon closing, SCL Health and Intermountain will "combine their respective health systems, including existing and future hospital, medical and other activities, operations and initiatives, into a new, unified health system [] that addresses the quality, accessibility and affordability of health care in the Intermountain West...." Merger Agreement, Recital D.

37. According to the Merger Agreement, "[t]he Merger will represent an integration of two strong, geographically diverse and complementary health systems whose unified mission, when integrated, will establish a model system that addresses the quality, accessibility and affordability of health care in the Intermountain West, with each of the SCL Health Catholic Entities remaining

Catholic, and all other elements of the newly combined system remaining secular, creating substantial benefits to all of the participating entities and operations, as well as the communities and patients they serve.” Merger Agreement, Recital E.

i. Post-Merger Structure of Intermountain and SCL Health

38. According to the Merger Agreement, Intermountain and SCL Health “are committed to helping people live the healthiest lives possible and exceed their expectations for health.” Merger Agreement, Art. II § 2.1. “[Intermountain and SCL Health] believe the Merger will empower them to bring value-based care to a greater number of communities, including rural, underserved and vulnerable populations.” *Id.*

39. When the Merger becomes effective, “Intermountain shall become the ultimate parent entity of the Consolidated System,” SCL Health, as well as all SCL Health affiliates, including all Colorado Hospitals, will be “included in the Consolidated System...under the ultimate control of [Intermountain];” and Intermountain “shall be added as a new member of SCL Health....” Merger Agreement, Art. III §§ 3.1–3.3. Intermountain “shall continue to be a Utah nonprofit corporation” and Intermountain, as well as SCL Health and its tax-exempt affiliates, shall each retain their tax-exempt status under the IRS code, “continuing to serve their existing communities and retaining their hospital assets in their current States of residence.” Merger Agreement, Art. III § 3.4.

40. After the effective date, “[Intermountain] shall be governed by a board of trustees...with broad governance authority and powers over the Consolidated System.” Merger Agreement, Art. III § 3.5. The initial system board of trustees will consist of 16 voting members. *See id.* at Art. IV § 4.2(b). Intermountain will appoint 75% (12) of the members to the initial board of trustees and SCL Health will appoint 25% (4) of the members. *See id.* at Art. IV § 4.2(a). Committee membership for the initial board of trustees will also reflect the same 75%/25% split between Intermountain and SCL Health. *See id.* at Art. IV § 4.2(h).

41. States served by the Consolidated System will be divided into Consolidated System Regions. SCL Health, including the Colorado Hospitals, will be included in the Colorado, Montana, Kansas Region (“CMK Region”) with the reconstituted Board of “SCL Health serving as the Consolidated System Region Board for the CMK Region.” Merger Agreement, Art. III § 3.6 and Art. IV § 4.1(d). The CMK Region Board, like the other Regional Boards, “shall, as between and among them, generally have similar authority, structures and processes, all to support future growth of the Consolidated System, ensure equitable treatment of all Consolidated System Regions and maintain connections to the local communities.” *Id.* at Art. IV § 4.3. The CMK Region Board will participate in the Consolidated System’s strategic planning and in the adoption of Region-specific and/or

Community-specific policies. *See* Merger Agreement, Ex. D. When vacancies occur on the CMK Region Board, “Leaven Ministries, acting through the Members of SCL Health appointed by Leaven Ministries...and [Intermountain] shall have joint appointment authority with respect to filling such vacancies [].” *Id.* at Art. IV § 4.4.

42. Hospital and Clinical Market-Level Boards (a/k/a Community Boards), including the Boards for all Colorado Hospitals, “shall retain primary oversight of the operations of the facilities and operations overseen by each such [Community Board]” and shall be able to participate in certain Consolidated System decision processes, including the establishment of the Consolidated System’s strategic and operating plans.” Merger Agreement, Art. IV § 4.6; Ex. D. Community Boards will also have the power to appoint or remove members of the Community Board, appoint or remove medical staff members, establish medical staff bylaws, and oversee community-level safety and quality assurance at their respective facilities. *See id.*

43. Post-closing, “(a) [Intermountain] shall retain strong reserved powers [], (b) strategy shall be established by [Intermountain] with Consolidated System Region input, (c) the Consolidated System strategy shall be executed by the Consolidated System Regions with [Intermountain] oversight, and (d) the Consolidated System shall adopt the ‘One Intermountain’ operating model.” Merger Agreement, Art. V § 5.1.

ii. SCL Health’s Post-Merger Operations

44. Post-Merger, SCL Health’s Articles of Incorporation will be amended and SCL Health’s charitable purpose will include the following:

[SCL Health] shall: 1. Manage, operate, maintain, develop and promote institutions, activities and programs supportive of the delivery of quality health services, educational programs, research activities, health related enterprises, and any other activities designed to promote the general health, rehabilitation and social needs of individuals in need that are appropriate for carrying out, and consistent with, the charitable purposes of [SCL Health] and the health care missions of its members.

Merger Agreement (Ex. G), Amended and Restated Articles of Incorporation of Sisters of Charity of Leavenworth Health System, Inc., Art. III(1).

45. Post-Merger, the Colorado Hospitals’ Articles of Incorporation will also be amended and their respective charitable purposes will be as follows:

a. Lutheran

[Lutheran] shall manage, operate, maintain, develop and promote institutions, activities and programs to promote the delivery of quality health services, educational programs, research activities, and any other activities designed to promote the general health, rehabilitation and social needs of individuals in need which, in the opinion of the Board of Trustees of [SCL Health], are appropriate in carrying out the charitable purposes of [Lutheran], SCL Health, and its controlled charitable corporations. Furthermore, as part of the health care system governed by Intermountain Health Care, Inc. (“Intermountain” or when referred to as a health system, the “Intermountain System”), [Lutheran] will carry out the Intermountain System and the Corporation’s tax-exempt purposes and charitable mission.

Post-Merger Second Amended and Restated Articles of Incorporation of SCL Health
– Front Range, Inc. [Lutheran], Art. III.

b. Good Samaritan

[Good Samaritan] shall own and operate Good Samaritan Medical Center. [Good Samaritan] shall also manage, operate, maintain, develop and promote institutions, activities and programs to promote the delivery of quality health services, educational programs, research activities, and any other activities designed to promote the general health, rehabilitation and social needs of individuals in need which, in the opinion of the sole member and of [SCL Health], are appropriate in carrying out the charitable purposes of [Good Samaritan], SCL Health, and its controlled charitable corporations. Furthermore, as part of the health care system governed by Intermountain Health Care, Inc. (“Intermountain” or when referred to as a health system, the “Intermountain System”), [Good Samaritan] will carry out the Intermountain System and the Company’s tax-exempt purposes and charitable mission.

Post-Merger Amended and Restated Articles of Organization of Good Samaritan Medical Center, LLC, Art. III.

c. Saint Joseph

[Saint Joseph] shall own and operate Saint Joseph Hospital. [Saint Joseph] shall also manage, operate, maintain, develop and promote institutions, activities and programs to promote the delivery of quality health services, educational programs, research activities, and any other activities designed to promote the general health, rehabilitation and social needs of individuals in need which, in the opinion of the Board of Trustees of [Saint Joseph] and of [SCL Health], are appropriate in carrying out the charitable purposes of [Saint Joseph], SCL Health, and its controlled charitable corporations. Furthermore, as part of the health care system governed by Intermountain Health Care, Inc. ("Intermountain" or when referred to as a health system, the "Intermountain System"), [Saint Joseph] will carry out the Intermountain System and the Corporation's tax-exempt purposes and charitable mission.

Post-Merger Fourth Amended and Restated Articles of Incorporation of Saint Joseph Hospital, Inc., Art. III.

d. St. Mary's

[St. Mary's] shall own and operate St. Mary's Hospital & Medical Center. [St. Mary's] shall also manage, operate, maintain, develop and promote institutions, activities and programs to promote the delivery of quality health services, educational programs, research activities, and any other activities designed to promote the general health, rehabilitation and social needs of individuals in need which, in the opinion of the Board of Trustees of [St. Mary's] and of [SCL Health], are appropriate in carrying out the charitable purposes of [St. Mary's], SCL Health,

and its controlled charitable corporations. Furthermore, as part of the health care system governed by Intermountain Health Care, Inc. (“Intermountain” or when referred to as a health system, the “Intermountain System”), [St. Mary’s] will carry out the Intermountain System and [St. Mary’s] tax-exempt purposes and charitable mission.

Post-Merger Second Amended and Restated Articles of Incorporation of St. Mary’s Hospital & Medical Center, Inc., Art. III.

46. As noted above, SCL Health’s Board will serve as the Consolidated System’s CMK Region Board. *See supra* ¶ 41. SCL Health’s Community Boards shall retain primary oversight of their respective facilities and operations, with ultimate oversight by the CMK Region Board and Intermountain. *See supra* ¶¶ 42–43.

47. Intermountain’s President and Chief Executive Officer will serve as the President and Chief Executive Officer for the Consolidated System. *See* Merger Agreement, Art. V § 5.3(a). For two years post-Closing, SCL Health’s President and Chief Executive Officer will continue to serve in that role, overseeing the transition to the Consolidated System, counseling on the Consolidated System’s governance structure, and developing the Consolidated System’s new leadership. *See id.* at Art. V § 5.3(c), Exs. R & S.

48. Six members of the Consolidated System’s executive leadership will come from SCL Health, including the Chief Physician Executive, the Chief Information Officer, and the Chief Financial Officer. *See* Merger Agreement, Art. V § 5.3(c); Ex. S. And while the Consolidated System’s headquarters will be in Salt Lake City, those executives will not be required to work from there in person. *See id.*

49. With respect to SCL Health employees, Intermountain and SCL Health “agree [] that there shall not be a material layoff or downsizing by reason of the Merger.” Merger Agreement, Art. V § 5.2.

50. Intermountain and SCL Health further agree to the following:

[E]ach of the legacy Intermountain System and the legacy SCL Health System hospital’s and affiliated facility’s medical staffs shall remain in place in its then current form as of the Closing...[t]he composition of each such medical staff and its officers as it exists as of the Closing shall remain in place after the Closing, subject to any changes

as may be made in the Ordinary Course of Business...[t]he Closing shall not trigger a need for any reapplication by current members of any medical staff...the medical staff bylaws, rules, regulations, policies and procedures as they exist as of the Closing shall remain in place after the Closing, subject to any changes as may be made in the Ordinary Course of Business....

Merger Agreement, Art. V § 5.7(b).

51. “[T]he Consolidated System, including the legacy SCL Health System, shall utilize the Intermountain brand...[however] the names of each of the SCL Health Catholic Hospitals...shall remain post-Closing without alteration, provided that it is [Intermountain and SCL Health’s] intent that the Intermountain brand be added to the names of SCL Health’s Catholic Hospitals in place of SCL Health. The names of SCL Health’s Catholic Hospitals may only be changed in the future with the approval of Leaven Ministries....” Merger Agreement, Art. V § 5.6.

52. Despite the branding changes noted above, Intermountain and SCL Health agree “that the Consolidated System shall have an unwavering commitment to clinical excellence, provide value-based care that improves lives, consistently advance the capabilities that enable such care and endeavor to become a national leader in supporting and improving the health in all communities, including rural and underserved ones, through value-based care, effective clinical integration and innovative approaches.” Merger Agreement, Art. V § 5.7.

53. Further, “[t]he clinical services of the Intermountain System and the SCL Health System, as such clinical services exist as of the Closing, shall be preserved...continuing to serve the health care needs of the communities they serve. It is the intention of [Intermountain and SCL Health] that such services will grow and improve thereafter as a result of the Merger. [Intermountain and SCL Health] agree[] that there is no intention to move, close or consolidate any existing clinical facilities as a result of the Merger.” Merger Agreement, Art. V § 5.7(a).

54. “All SCL Health System clinical-based agreements or other agreements with a physician or physician group (whether or not employed within the SCL Health System) ... shall not change or be terminated as a direct result of, or in conjunction with, the Closing. [Intermountain] shall not terminate any such agreements based solely on a change in control provision in any such agreement that is triggered by the Merger.” Merger Agreement, Art. V § 5.7(c).

55. “The agreements and arrangements in place with the SCL Health Secular Hospitals and Affiliates ... shall not change or be terminated as a direct result of, or in conjunction with, the Closing.” Merger Agreement, Art. V. § 5.8.

iii. Catholic Protections

56. As discussed above, SCL Health's affiliation with the Catholic Church is integral to its and the Colorado Hospitals' charitable purposes. *See supra* ¶¶ 12–26.

57. “It is the mutual intention of [Intermountain and SCL Health] that ... each of the SCL Health Catholic Entities will remain Catholic, and all other elements of the Consolidated System, including all elements of the legacy Intermountain System and all elements of the legacy SCL Health System that were not Catholic as of the Closing, including the SCL Health Secular Hospitals and Affiliates, will remain secular. Accordingly, [Intermountain and SCL Health] agree that ... each of the SCL Health Catholic Entities shall join the Merger to become part of the Consolidated System, but they each shall retain their Catholic identity, maintain their Catholic mission, not be [a]lienated from the Catholic Church and continue to be Sponsored by Leaven Ministries.” Merger Agreement, Art. VI § 6.1.

58. SCL Health's Catholic hospitals in Colorado that are protected by these Catholic Protections are Saint Joseph and St. Mary's. *See* Merger Agreement, Ex. A.

59. The Merger includes certain “Catholic Protections” to ensure the continuation of the SCL Health Catholic Entities' Catholic affiliation and mission. *See* Merger Agreement, Art. VI § 6.2. Those protections include the following:

- a. “[Each SCL Health Catholic Entity shall] [r]emain a ministry of the Catholic Church, subject to and operated in accord with the healing mission, teachings and laws of the Catholic Church.” *Id.* at § 6.2(a)(i).
- b. “Each of the SCL Health Catholic Entities shall retain, and express, a Catholic Mission statement that identifies and describes its Catholic mission and any change thereof shall be in the exclusive control of Leaven Ministries....” *Id.* at § 6.2(c)(ii).
- c. “Each SCL Health Catholic Entity shall maintain policies...regarding the care, treatment and respect for the poor and vulnerable, including those persons who are uninsured, underinsured, children and the unborn, single parents, the elderly, those with incurable diseases and chemical dependencies, racial minorities, immigrants, refugees, persons with mental and physical disabilities and victims of abuse and trafficking....” *Id.* at § 6.2(c)(iv).

- d. “The names of each of the SCL Health Catholic Hospitals shall retain their Catholic references...provided, however, that such entities may (A) employ a common branding symbol and style and (B) have Intermountain attached to the names in place of SCL Health...” *Id.* at § 6.2(c)(vii).

60. Leaven Ministries “shall continue to serve as the Sponsor of the SCL Health Catholic Entities.” Merger Agreement, Art. VI § 6.2(e)(i). Under the terms of the Merger, Leaven Ministries maintains certain Reserved Powers, including the power to enforce the Catholic Protections, which “shall not be revoked, suspended, terminated, altered or amended for the period of time in which any of the SCL Health Catholic Entities is sponsored by Leaven Ministries.” *See id.* at Art. IV § 4.7; *see also* Art. VI § 6.2(b).

61. In addition to enforcement of the Catholic Protections, Leaven Ministries’ reserved powers include the power to adopt, amend, or repeal the Articles of Incorporation or Bylaws for SCL Health or any of its subsidiaries, and the power to appoint or remove any member of SCL Health’s Board of Trustees. *See* Merger Agreement, Art. IV § 4.7, Ex. P.

62. While the Catholic Protections do not apply to SCL Health’s secular entities, all SCL Health tax-exempt entities, Catholic and secular, will maintain their tax-exempt status in the Consolidated System, and SCL Health and Intermountain intend for all of SCL Health’s secular entities to “continu[e] serv[ing] their existing communities and retaining their hospital assets in their current States of residence.” Merger Agreement, Art. III § 3.4.

iv. Financial Commitments

63. As part of the Merger, “Intermountain affirms the construction of, and expenditure of funds for, the capital projects identified for the CMK Region...in an amount of not less than \$1,942,300,000...” Merger Agreement, Art. VII § 7.1. The capital projects include those SCL Health had planned prior to entering into the Merger and the Consolidated System has committed to continue post-Merger. *See* Merger Agreement, Ex T.

64. For purposes of funding enforcement of the Catholic Protections and/or Leaven Ministries’ reserved powers under the Merger, *see supra* ¶¶ 56-62, “the Consolidated System will establish a \$2,000,000 reserve using SCL Health legacy funds. *See* Merger Agreement, Art. VI § 6.2(f)(v) and Art. VII § 7.2. And for purposes of funding enforcement of the CMK Region Board’s rights, the Consolidated System will establish a \$1,000,000 reserve using SCL Health legacy funds. *See id.* at Art. VII § 7.4 and Art. XIV § 14.16.

ANALYSIS

A. The Merger will not result in a material change to the charitable purposes for which SCL Health's hospital assets have been dedicated.

65. Based on documents and other information produced by SCL Health and Intermountain, upon which the Attorney General relied, the Attorney General finds and determines that the Merger will not result in a material change to the charitable purposes to which SCL Health's hospital assets have been dedicated.

66. As described by their organic documents and IRS Form 990s, the core elements of SCL Health's charitable purpose and/or mission are (1) the organization's affiliation with the Catholic Church and (2) their commitment to "improving the health of the people and communities [SCL Health] serve[s], *especially* those who are poor and vulnerable." *See supra* ¶¶ 12-26 (emphasis added).

67. According to the Colorado Hospitals' organic documents and IRS Form 990s, their charitable purposes are to support SCL Health and their missions are identical to SCL Health's. *See supra* ¶¶ 19-26.

68. The Attorney General's review under the Act and common law authority is focused on ensuring these core elements of SCL Health's and the Colorado Hospitals' charitable purposes are maintained post-Merger.

69. By comparison, Intermountain's charitable purpose is more generic, *see supra* ¶ 32, and its mission is more vague: "helping people live the healthiest lives possible." *See supra* ¶ 31.

70. However, based on information produced by SCL Health and Intermountain, and after a detailed review of the Merger Agreement, the Attorney General believes sufficient safeguards have been put in place to ensure that SCL Health and its subsidiaries, including all of the Colorado Hospitals, will effectively operate post-Merger as they have pre-Merger. These safeguards will preserve the core elements of SCL Health's and the Colorado Hospitals' charitable purposes within the Consolidated System and ensure that there will be no reduction in the availability or accessibility of health care services as a result of the Merger.

71. According to their respective Articles of Incorporation (to be effective post-Merger), the charitable purposes of SCL and the Colorado Hospitals will not materially change. *Compare supra* ¶¶ 12-26 *with* ¶¶ 44-45.

72. SCL Health's Catholic Entities, including Saint Joseph and St. Mary's, will maintain their affiliation with the Catholic Church, including their Catholic

names and branding; they will continue to be sponsored by Leaven Ministries; and they are provided certain rights and protections to ensure that their Catholic identities and missions are preserved within the Consolidated System post-Merger. *See supra* ¶¶ 56-62.

73. SCL Health will also be able to maintain the same level of availability and accessibility of its health care services in Colorado, including their commitment to serving poor and vulnerable communities post-Merger as they have pre-Merger.

74. SCL Health's Board will serve as the CMK Region Board post-Merger, overseeing operations and community relations for SCL Health's facilities in Colorado, including the continued provision of services to Colorado's poor and vulnerable populations. *See supra* ¶ 41. And while Intermountain's post-Merger Consolidated System Board will have ultimate oversight of the CMK Region, SCL Health will appoint 25% of the initial members to that Consolidated System Board. *See supra* ¶ 40.

75. SCL Health's Community Boards for the Colorado Hospitals, both Catholic and secular, will retain primary oversight of their respective facilities and operations, allowing them to maintain their individual charitable purposes, including their individual commitments to serving the poor and vulnerable. *See supra* ¶¶ 42, 45, 62. The Catholic Protections provided for in the Merger explicitly protect the charitable missions of Saint Joseph and St. Mary's, specifically their mission(s) to serve Colorado's poor and vulnerable. *See supra* ¶ 59(c).

76. While the CMK Region Board and Intermountain have ultimate oversight of those Community Boards, both SCL Health and Intermountain have agreed "that the Consolidated System shall have an unwavering commitment to clinical excellence, provide value-based care that improves lives, consistently advance the capabilities that enable such care and endeavor to become a national leader in supporting and improving the health in all communities, *including rural and underserved ones*, through value-based care, effective clinical integration and innovative approaches." *See supra* ¶ 52 (emphasis added).

77. SCL Health and Intermountain have agreed there will be no material layoff or downsizing as a result of the Merger and there is no intention to move, close, or consolidate clinical facilities as a result of the Merger. *See supra* ¶¶ 49, 53. Additionally, SCL Health and Intermountain have agreed to maintain SCL Health's clinical-based agreements or other agreements with physicians and/or physician groups, and all agreements and arrangements with SCL Health's secular hospitals and affiliates, shall also not change or be terminated. *See supra* ¶¶ 54-55.

78. Prior to the proposed Merger, SCL Health intended to expend approximately \$1.9 billion for capital projects to improve services in its

communities. SCL Health and Intermountain agreed that the Consolidated System would maintain this capital commitment, thereby allowing SCL Health to continue to improve upon its services in pursuit of its charitable purposes in Colorado. *See supra* ¶ 63.

79. While SCL Health should be able to operate post-Merger as it has pre-Merger, maintaining its charitable purpose within the Consolidated System, the scale of the proposed Merger (combining two multistate health systems) necessitates continued monitoring by the Attorney General to ensure that the Colorado Hospitals maintain their charitable purposes.

80. In order for the Attorney General to ensure that the Colorado Hospitals maintain their charitable purposes, *see supra* ¶¶ 12–26 and 44–45, post-Merger, the Attorney General, SCL Health, and Intermountain have agreed to continued monitoring by the Attorney General for five (5) years after the Effective Date (“Reporting Period”) as follows:

- a. On or before April 1st of every year during the Reporting Period, the President of the CMK Region shall provide to the Attorney General a certification that no material change has been made to the Colorado Hospitals’ charitable purposes;
- b. On or before April 1st of every year during the Reporting Period, the Attorney General may request documents and other information from Intermountain related to the charitable purposes of the Colorado Hospitals. The requested documents and/or other information may include, but not be limited to, the following areas of inquiry:
 - i. Information from Intermountain’s community benefit reports for the Colorado Hospitals submitted in accordance with federal and state requirements;
 - ii. The number of Medicaid, Child’s Health Plan Plus, and Colorado Indigent Care program patients served by the Colorado Hospitals;
 - iii. The number of uninsured and underinsured patients served by the Colorado Hospitals;
 - iv. The amount of uncompensated care and charity care provided by the Colorado Hospitals each year;

- v. Information about any educational programs hosted or sponsored by the Colorado Hospitals related to programs and services targeting the poor and vulnerable;
 - vi. Information about the Colorado Hospital's efforts or programs undertaken to increase quality of care or improve care outcomes, especially for the poor and vulnerable; and
 - vii. Updates, if any, related to the Catholic Protections detailed in the Merger Agreement.
- c. All information requested as part of this ¶ 80(b) shall be provided within forty-five (45) days of the Attorney General's request and the Attorney General will have ninety (90) days upon receipt of a complete response to make any follow-up requests and/or questions, including any questions as contemplated by ¶ 80(e) below.
 - d. During the Reporting Period, each of the Colorado Hospitals shall publish its most recently filed IRS Form 990s on its individual website; and
 - e. During the Reporting Period, the individual providing the certification required in ¶ 80(a) above or his or her designee, as approved by the Attorney General, shall be made available during the time frame identified in ¶ 80(c) above for reasonable questions by the Attorney General about the Colorado Hospitals' charitable purposes post-Merger, if the Attorney General believes such questioning is necessary.

B. The Merger will not result in a termination of the Attorney General's jurisdiction over SCL Health's hospital assets caused by a transfer of a material amount of those assets outside of the State of Colorado.

81. Based on documents and other information produced by SCL Health and Intermountain, upon which the Attorney General relied, the Attorney General finds and determines that the Merger will not result in a termination of the Attorney General's jurisdiction over SCL Health's hospital assets caused by a transfer of a material amount of those assets outside of the State of Colorado.

82. The Merger will cause material changes to the overall control of SCL Health; however, those changes will not result in any termination of the Attorney General's jurisdiction over SCL Health's hospital assets as they will continue to exist in the Consolidated System.

83. SCL Health is a Kansas nonprofit and will continue to be so post-Merger. While SCL Health and Intermountain are merging into a single Consolidated System, SCL Health and its Colorado subsidiaries will continue to be located in and operate from Colorado. *See supra* ¶¶ 39, 62. And the \$1.9 billion capital investment planned by SCL Health pre-Merger will continue as planned post-Merger, including for capital projects in Colorado. *See supra* ¶ 63.

84. Accordingly, SCL Health's hospital assets will remain in the State of Colorado and will remain subject to the Attorney General's jurisdiction.

85. These facts satisfy the Attorney General that the Merger will not result in the termination of jurisdiction over SCL Health's hospital assets. The Attorney General retains the right to exercise his common law and statutory authority over SCL Health's hospital assets in the future should doing so become necessary.

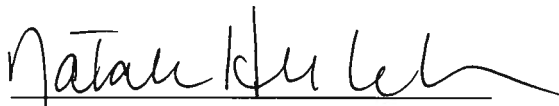
CONCLUSION

86. The findings and determinations of the Attorney General in this Opinion are based upon the Attorney General's review of all factual and legal representations made in the documents or other information produced or communicated by SCL Health and/or Intermountain regarding the Merger.

87. In reaching this decision, the Attorney General considered SCL Health's, the Colorado Hospitals', and Intermountain's respective charitable purposes. The Attorney General also considered whether any evidence suggests that, as a result of the Merger, the availability or accessibility of health care services in Colorado communities served by SCL Health will be reduced.

88. Based on the foregoing, and pursuant to the discretion granted to the Attorney General under the Act for review of transactions involving a nonprofit hospital and another nonprofit entity, as well as the Attorney General's common law authority over charitable trusts, the Attorney General determines that the Merger shall proceed without further review, subject to the continued monitoring described above in ¶¶ 79-80.

Issued this 31st day of March, 2022.


NATALIE HANLON LEH
Acting Colorado Attorney General

CERTIFICATE OF DELIVERY

This is to certify that I have duly served the within **IN THE MATTER OF THE SISTERS OF CHARITY OF LEAVENWORTH HEALTH SYSTEM, INC.'S MERGER WITH INTERMOUNTAIN HEALTH CARE, INC.** upon all parties herein by mailing copies of same to their office this 31st day of March, 2022 addressed as follows:

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