

**BEFORE THE ATTORNEY GENERAL
STATE OF COLORADO**

IN THE MATTER OF THE COLORADO PLAINS MEDICAL CENTER

JURISDICTION OF THE ATTORNEY GENERAL

1. On February 25, 2022, CommonSpirit Health (“CommonSpirit”), Catholic Health Initiatives Colorado (“CHI-Colorado”), a subsidiary of Common Spirit, and Centura Health Corporation (“Centura”), an affiliate of CommonSpirit, submitted notice to the Attorney General of their intent to enter into a lease agreement with the Fort Morgan Community Hospital Association (the “Association”) and an asset purchase agreement with PHC-Fort Morgan, Inc. and Colorado Plains Physician Practices, LLC, both subsidiaries of LifePoint Health, Inc. The notice was submitted under Colo. Rev. Stat. §§ 6-19-103(1), -202 (2021).

2. CommonSpirit, CHI-Colorado, and Centura are all Colorado nonprofit corporations, and unless otherwise noted, will hereinafter be referred to collectively as “CHIC.” CHIC controls and/or operates several hospitals and other health-care facilities in Colorado. The Association is also a Colorado nonprofit corporation. PHC-Fort Morgan, Inc., Colorado Plains Physician Practices, LLC, and LifePoint Health, Inc. are all for-profit entities, and unless otherwise noted, will hereinafter be referred to collectively as “PHC.”

3. After the agreements take effect, CHI-Colorado will take over ownership and Centura will take over operation of the Colorado Plains Medical Center (the “Hospital”) located in Fort Morgan, Colorado from PHC. For reasons described in more detail below, the Attorney General’s review only concerns the asset purchase agreement between CHIC and PHC (the “Transaction”).¹

4. The Attorney General reviewed the Transaction under the Hospital Transfer Act (the “Act”), C.R.S. §§ 6-19-101, *et seq.*, and under the Attorney General’s common law authority over charitable assets. *See* C.R.S. §§ 24-31-101(5) and 6-19-104(1).

5. CHIC submitted notice to the Attorney General under Part 2 of the Act because of the lease agreement between the two nonprofit entities—CHIC and the Association. However, the lease agreement between the two nonprofits is not a “covered transaction” under the Act, and therefore was not reviewed as such by the Attorney General. Rather, the asset purchase agreement between PHC and CHIC qualifies as a “covered transaction” and was the Transaction reviewed by the

¹ The asset purchase agreement between PHC and CHI is part of a larger transaction that includes the sale of other hospital assets outside in Kansas. The Attorney General only reviewed the asset purchase agreement as it applies to hospital assets in the State of Colorado.

Attorney General, although not under Part 2 of the Act. Nevertheless, CHIC's notice under Part 2 was sufficient for purposes of satisfying § 6-19-103(1) of the Act.

6. 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.” C.R.S. § 6-19-102(1). The Act defines a “hospital” as a “licensed or certified hospital as described in section 25-1.5-103(1)(a)(I) and (1)(a)(II), C.R.S.” *Id.* at (3).

7. The Act explicitly directs the Attorney General's review of “covered transactions” between a nonprofit hospital and another nonprofit entity (*see* C.R.S. § 6-19-201); between for-profit entities (*see* C.R.S. § 6-19-301); and between a nonprofit hospital and a for-profit entity (*see* C.R.S. § 6-19-401).

8. The Act does not explicitly direct a framework for the Attorney General's review where, as here, a for-profit hospital (*i.e.* PHC) is selling its assets to a nonprofit entity (*i.e.* CHIC). However, the Act does explicitly preserve the Attorney General's common law powers, including his authority over charitable assets. *See* C.R.S. § 6-19-104(1).

9. For these reasons, the Attorney General's review of the Transaction was conducted under his common law authority, taking guidance from the underlying purpose of the Act and the relevant review factors or criteria included in Parts 2–4 of the Act.

10. The factors considered by the Attorney General in his review of the Transaction were as follows:

- a. Whether there is a material change to CHIC's charitable purpose caused by the Transaction (*see* § 6-19-203(1));
- b. Whether the Transaction will terminate the Attorney General's jurisdiction over the Hospital's assets (*see id.*);
- c. Whether the Transaction will serve the public interest (*see* §§ 6-19-101(3) and 6-19-403(1)(a)), taking into account the impacts of the Transaction on the community (*see* § 6-19-101(3)) and whether there will be any reduction in the availability and accessibility of health-care services in the communities served by the Hospital (*see* §§ 6-19-203(1) and 6-19-403(1)(b));
- d. Whether CHIC acted reasonably in entering the Transaction (*see* § 6-19-203(2)(b)(II)); and

- e. Whether there is evidence of any improper conduct on behalf of PHC or CHIC related to the Transaction (*see* §§ 6-19-203(2)(b)(IV) and 6-19-403(1)(c)).

11. Because the Act does not explicitly direct the Attorney General's review of "covered transactions" between for-profit hospitals and nonprofit entities, the factors considered by the Attorney General in reviewing such a transaction under his common law powers may vary depending on the circumstances.

DECISION

12. Based on a review of the Transaction documents and discussions with CHIC, upon which the Attorney General relied, the Attorney General finds and determines that the Transaction involves a transfer or other disposition of fifty percent or more of the assets of a hospital and is therefore a "covered transaction" requiring review by the Attorney General. *See* C.R.S. §§ 6-19-102(1) and 6-19-103.

13. After reviewing the Transaction under his common law authority over charitable assets, taking guidance from the underlying purpose of the Act and the review factors or criteria included in Parts 2–4 of the Act, the Attorney General further finds and determines the following:

- a. There will be no material change to CHIC's charitable purposes as a result of the Transaction;
 - b. The Transaction will not terminate the Attorney General's jurisdiction over the Hospital's assets;
 - c. The Transaction is in the public interest and will not have any material impacts on the communities served by the Hospital, including any reduction in the availability or accessibility of health-care services;
 - d. CHIC acted reasonably in entering the Transaction; and
 - e. There is no evidence of any improper conduct on behalf of PHC or CHIC related to the Transaction.
14. Accordingly, the Transaction may proceed without further review.

BACKGROUND

A. The Parties

i. CHIC Buyers

15. CommonSpirit is a Colorado nonprofit corporation. According to its most recent Amended and Restated Articles of Incorporation, adopted at meetings held in April 2017, November 2017, and December 2018, CommonSpirit's charitable purpose includes the following:

[To support] other charitable organizations, the purposes of which are to embody the mission of the healing ministry of Jesus in the [Catholic] Church through ownership, management, or governance of health ministries, or the offering of or supporting of charitable and religious programs or services consistent with such purposes, in keeping with the Gospel imperative.

CommonSpirit Health, *Amended and Restated Articles of Incorporation*, Art. III § 3.2 (Apr. 18, 2017, Nov. 7, 2017, & Dec. 5, 2018).

16. CHI-Colorado is a Colorado nonprofit corporation and subsidiary of CommonSpirit. According to its most recent Amended and Restated Articles of Incorporation, adopted March 2000, CHI-Colorado's charitable purpose includes the following:

To establish, maintain, support, and stimulate the development of a health care system, including, without limitation, hospitals, clinics, and other facilities that provide in-patient or out-patient care, accommodation, diagnosis, and treatment to persons suffering from injury, disease, or any other condition where medical, surgical, rehabilitative, nursing, and associated professional services may be required.

Catholic Health Initiatives Colorado, *Amended and Restated Articles of Incorporation*, Art. III § 3.2(a) (Mar. 31, 2000).

17. According to their 2019 IRS Form 990, CHI-Colorado "is a faith-based organization that invests in charity care, community programs, and sponsorships designed to nurture the health of the people of Colorado."

18. Centura is also a Colorado nonprofit corporation, and an affiliate of CommonSpirit. According to its most recent Amended and Restated Articles of Incorporation, adopted November 1, 2016, Centura's charitable purpose includes support for the charitable purpose of CHI-Colorado and the following:

To establish, maintain, support and stimulate the development of a health care network, including, without limitation, hospitals, clinics and other facilities that provide in-patient or out-patient care, accommodation, diagnosis and treatment to persons suffering from injury, disease or any other condition where medical, surgical, rehabilitative, nursing and associated professional services may be required.

Centura Health Corporation, *Amended and Restated Articles of Incorporation*, Art. § 3.1(b) (Nov. 1, 2016).

19. According to their 2019 IRS Form 990, "[Centura], a faith-based organization, invests in charity care, community programs and sponsorships designed to nurture the health of the people in the communities it serves."

ii. *PHC Sellers*

20. PHC-Fort Morgan, Inc. is a Colorado corporation and Colorado Plains Physician Practices, LLC is a Delaware limited liability company. Both entities are subsidiaries of LifePoint Health, Inc., a Delaware corporation. PHC-Fort Morgan and Colorado Plains Physician Practices currently own and operate the Hospital.

B. The Proposed Transaction

21. On February 25, 2022, CHIC's notice to the Attorney General was accompanied by their proposed lease agreement with the Association and proposed asset purchase agreement with PHC. On April 11, the Attorney General requested additional documents and other information, and on April 14, CHIC responded.

22. Subject to all regulatory approvals, PHC and CHIC intend to close the Transaction on or around May 1, 2022. *See* Asset Purchase Agreement § 3.1. Upon closing, CHIC will purchase all PHC assets used for the operation of the Hospital, including PHC's leasehold interest in the real property owned by the Association used to operate the Hospital.² *See* Asset Purchase Agreement §§ 2.1 and 2.1(a).

² Certain limited PHC assets are excluded from the Transaction, including, for example, all of PHC's cash and cash equivalents, as well as PHC's bank or other accounts. *See* Asset Purchase Agreement § 2.3.

23. CHIC will purchase PHC's assets for \$135,000,000, subject to potential adjustments. *See* Asset Purchase Agreement § 2.6. This purchase price includes the non-Colorado assets referenced above. *See supra* ¶ 3, fn 1. The Transaction does not include an itemized purchase price or valuation for the Colorado-only assets.

24. CHIC was a willing buyer and PHC was a willing seller in the Transaction. *See* April 14, 2022 Letter from CHIC, Response III(a) ("April 14 Letter"). CHIC performed internal financial analyses and valuations of the Hospital (and the non-Colorado hospital assets) and consulted with external and independent financial advisors. *See id.* According to those analyses, the aggregate purchase price for all of PHC's hospital assets (Colorado and non-Colorado) fell within a range of fair market value. *See id.*

25. Upon closing, CHIC will own and operate the Hospital. CHI-Colorado will be the licensed owner of the Hospital and the Hospital will be managed and operated as part of Centura. *See* Master Transition Services Agreement § 1(a); *see also* April 14 Letter, Responses II(a)–(b).

26. According to CHIC, the Transaction will not result in any material changes to CommonSpirit, CHI-Colorado, or Centura's respective charitable purposes. *See* April 14 Letter, Response I(b). Additionally, CHIC has no intention to change any of their respective articles of incorporation as a result of the Transaction. *See id.*

27. Also according to CHIC, there will be no material changes to the operations of or services provided by the Hospital as a result of the Transaction; there will be no material layoffs or other changes to the employment of current Hospital staff as a result of the Transaction; and there will be no downsizing, elimination, consolidation, or other material changes to current departments or other operations of the Hospital as a result of the Transaction. *See* April 14 Letter, Responses II(c)-(f); *see also* Asset Purchase Agreement § 9.1(a) (excluding Senior Management Personnel, CHIC "shall offer employment [at the Hospital] to all [current PHC employees].").

28. None of the individuals who were involved in the development or negotiation of the Transaction on behalf of CHIC have any control over or receive any direct or indirect benefit from PHC. *See* April 14 Letter, Response IV(c).

29. One CHIC executive did have a potential conflict of interest related to the Transaction because they are a director of both CHI-Colorado and Centura, and also a director of LifePoint. Due to this potential conflict, the executive did not "participate in the negotiation of the terms of the [Transaction], the provisions of the [Transaction], or the amount of the purchase price." April 14 Letter, Response

IV(a). To address this potential conflict, CHIC and the executive also took several proactive steps, including:

- a. Disclosing all material facts related to the potential conflict to the Boards of Directors for CHI-Colorado, Centura, and LifePoint;
- b. Recusing the executive from portions of all Board meetings, discussions, and votes regarding the Transaction; and
- c. Withholding material information regarding the Transaction from the executive's Board packets.

See id.

30. According to CHIC, while the executive does serve on LifePoint's Board, they do not individually have any control over LifePoint. And while the executive does receive a director stipend from LifePoint, the amount and timing of that compensation "is not determined by, contingent upon, or otherwise related to, and is completely independent of, [the Transaction]. [The CHIC executive] received no benefit from either [CHIC] or [PHC] as a result of this Transaction." April 14 Letter, Response IV(b).

ANALYSIS

A. The Attorney General's Review

31. CHIC submitted the required notice under Part 2 of the Act based on its contention that the lease agreement between CHIC and the Association was a "covered transaction" between two nonprofit entities, thus triggering review by the Attorney General.

32. However, the definition of a "covered transaction" relates to the "sale, lease, exchange, or other disposition...of the assets of a *hospital*" and the definition of "hospital" under the Act points to the licensure/certification scheme for hospitals under Colorado law. C.R.S. §§ 6-19-102(1) (emphasis added); *and see* C.R.S. § 6-19-102(3). Neither of the nonprofit entities (the Association or CHIC) currently meet the definition of a "hospital" under the Act because PHC is the only party currently licensed and certified to operate the Hospital.

33. Therefore, the real property owned by the Association cannot be an "asset[] of a hospital" and the lease agreement cannot be a "covered transaction."

34. Instead, the asset purchase agreement between CHIC and PHC (*i.e.* the Transaction), does relate to the "assets of a hospital." And because PHC is selling nearly all of its assets used to operate the Hospital, including its leasehold

interest in the Association's real property, the asset purchase agreement is a "covered transaction" under the Act requiring review by the Attorney General. See *supra* ¶ 22.

35. The Act explicitly provides a framework for the Attorney General's review of certain covered transactions based on the legal status of the parties. Part 2 of the Act "applies to covered transactions involving a nonprofit *hospital* and another nonprofit entity." C.R.S. § 6-19-201 (emphasis added). Part 3 of the Act "applies to covered transactions where the parties involved in the transaction are *all* for-profit entities." C.R.S. § 6-19-301 (emphasis added). And Part 4 of the Act "applies to covered transactions involving a nonprofit *hospital* and a for-profit entity." C.R.S. § 6-19-401 (emphasis added).

36. None of the review schemes directed by the Act apply to the circumstances of the Transaction here. Part 2 cannot apply because, as described above, none of the nonprofit entities here are currently "hospitals" as defined by the Act. Part 3 cannot apply because not *all* of the parties to the Transaction are for-profit entities. And while the Transaction does involve the sale of hospital assets between a nonprofit and for-profit entity, Part 4 cannot apply because here a for-profit hospital (*i.e.* PHC) is selling its hospital assets to a nonprofit entity (*i.e.* CHIC), not the inverse.

37. This does not mean that the Attorney General has no role in reviewing covered transactions like this one, nor does it mean Parts 2–4 of the Act are wholly irrelevant to covered transactions like this one. As the General Assembly declared, "*all* licensed and certified hospitals provide a service to the public" and "*all* transfers of hospital assets or control have the potential to impact the communities they serve" regardless of the hospital's for-profit or nonprofit status. C.R.S. §§ 6-19-101(1) and (3). The General Assembly also explicitly preserved the Attorney General's common law powers in the Act, including his common law authority over charitable assets. See C.R.S. §§ 6-19-104(1) and 24-31-101(5).

38. Thus, where the Act fails to explicitly direct the Attorney General's review of a covered transaction, the Attorney General may rely on his common law powers to conduct the review, if and where applicable, and may be guided by the relevant review factors or criteria set forth in Parts 2–4 of the Act. This is consistent with the General Assembly's declared purpose for the Act.

39. The Attorney General reviewed the Transaction under his common law authority over charitable assets, taking guidance from the relevant review factors or criteria set forth in Parts 2–4 of the Act.

B. The Transaction

- i. *The Transaction will not result in a material change to CHIC's charitable purpose and will not terminate the Attorney General's jurisdiction over the Hospital's assets.*

40. Based on documents and other information produced by CHIC, upon which the Attorney General relied, the Attorney General finds and determines that the Transaction will not result in any material change to the charitable purposes of CommonSpirit, CHI-Colorado, or Centura, nor will it terminate the Attorney General's jurisdiction over the Hospital's assets.

41. As described in their respective Articles of Incorporation and IRS Form 990s, core to each of CHIC's respective charitable purposes is the organizations' affiliation with the Catholic Church and their commitment to developing a health care system that includes hospitals, clinics, and other facilities. *See supra* ¶¶ 15–19. Nothing in the Transaction will cause CHIC to change any elements of their respective charitable purposes, and indeed will allow them to expand on those charitable purposes by adding the Hospital to their network of health care facilities. *See supra* ¶ 26.

42. CHIC intends to use PHC's hospital assets to continue operating the Hospital without any material changes to the Hospital's operations, departments, services, or employees. *See supra* ¶¶ 25, 27. Further, CHIC is entering into a new lease with the Association for the real property used to operate the Hospital, *see supra* ¶ 22, ensuring that the Transaction will not result in CHIC relocating the Hospital or its assets to a location outside of the community it has served and/or outside of Colorado in a manner that terminates the Attorney General's jurisdiction over the Hospital's assets.

- ii. *The Transaction serves the public interest.*

43. Based on documents and other information produced by CHIC, upon which the Attorney General relied, the Attorney General finds and determines that the Transaction will at a minimum maintain the status quo for the communities currently served by the Hospital and will not result in any reduction in the availability and accessibility of health-care services in those communities. The Attorney General further finds that the Transaction will enable CHIC to continue providing health-care services in the community historically served by the Hospital, as contemplated by C.R.S. § 6-19-101(1). Therefore, the Transaction is in the public interest.

44. Core to CHIC's charitable purpose is the provision of health care services in Colorado through a network of hospitals, clinics, and other facilities. *See*

supra ¶¶ 15–19. Nothing in the Transaction will cause any material change to those purposes, which will benefit the communities currently served by the Hospital.

45. CHIC intends to continue operating the Hospital effectively as it has operated under PHC: there will be no material changes to the Hospital’s operations or services; there will be no downsizing, consolidations, or other material changes to the Hospital’s departments; and there will be no material layoffs or other changes to the Hospital’s current employees. *See supra* ¶¶ 22, 25–27. As such, the Hospital will continue to operate under CHIC much as it has under PHC, and therefore is in the public interest.

iii. *CHIC acted reasonably in entering the Transaction and there is no evidence of improper conduct on behalf of PHC or CHIC.*

46. Based on documents and other information provided by CHIC, upon which the Attorney General relied, the Attorney General finds and determines that CHIC acted reasonably in entering the Transaction and there is no evidence of improper conduct on behalf of PHC or CHIC.

47. Because CHIC is a Colorado nonprofit entity, the Attorney General has common law authority over its charitable assets to ensure those assets are used for the nonprofits’ respective charitable purposes and to ensure that there is no improper conduct involved in the handling of those assets.

48. While CHIC did not produce an itemized valuation of the Colorado-only assets in the Transaction, the Attorney General is satisfied that the \$135 million purchase price is reasonable for the combined Colorado and non-Colorado assets.

49. CHIC is a sophisticated entity and one of the largest health systems in the country, with years of experience buying and selling hospitals and hospital assets in transactions like this one. The Transaction was an arms-length deal and CHIC was a willing buyer with the resources and expertise to negotiate a reasonable agreement that protects its assets and is consistent with its charitable purpose.

50. CHIC’s reputation though is not wholly sufficient to satisfy this factor. CHIC employed its resources and expertise in consulting with internal and external financial experts to conduct a valuation of the Colorado and non-Colorado. CHIC’s external independent financial advisor found that the \$135 million purchase price fell within the lower portion of a range for fair market value. *See supra* ¶¶ 23-24. This demonstrates to the Attorney General that CHIC protected its charitable assets and acted reasonably in entering the Transaction for the \$135 million purchase price.

51. CHIC also protected its charitable assets by ensuring that its representatives responsible for developing and negotiating the Transaction had no control over, or received any direct or indirect benefit from, PHC. *See supra* ¶ 28.

52. While one CHIC executive did raise a potential conflict of interest related to the Transaction, all evidence suggests that CHIC took appropriate action to remedy or cure that conflict such that it had no improper influence over the Transaction. *See supra* ¶ 29.

53. The documents and other information produced by CHIC, including the terms of the asset purchase agreement, suggest that CHIC acted reasonably in entering the Transaction and that there was no improper conduct on behalf of CHIC or PHC related to the Transaction.

CONCLUSION

54. 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 CHIC regarding the Transaction.

55. In reaching this decision, the Attorney General considered several factors, including CHIC's respective charitable purposes, the impact the Transaction will have on the community served by the Hospital, and whether CHIC acted reasonably in entering the Transaction.

56. Based on the foregoing, and pursuant to the discretion granted to the Attorney General under the Act for review of covered transactions, as well as the Attorney General's common law powers, the Attorney General determines that the Transaction may proceed.

Issued this 28th day of April, 2022


PHILIP J. WEISER
Attorney General

CERTIFICATE OF DELIVERY

This is to certify that I have duly served the within **IN THE MATTER OF THE COLORADO PLAINS MEDICAL CENTER** upon all parties herein by mailing copies of same to their office this ___ day of April, 2022 addressed as follows: