

**BEFORE THE ATTORNEY GENERAL**

**STATE OF COLORADO**

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**IN THE MATTER OF THE INTEGRATION AND AFFILIATION AGREEMENT BETWEEN UNIVERSITY OF COLORADO HEALTH, YAMPA VALLEY MEDICAL CENTER, AND YAMPA VALLEY MEDICAL CENTER FOUNDATION.**

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**Jurisdiction of the Attorney General**

1. On June 12, 2017, University of Colorado Health (“UCHealth”), the Yampa Valley Medical Center (“YVMC”), and the Yampa Valley Medical Center Foundation (“YVMC Foundation”) jointly presented an Integration and Affiliation Agreement (the “Agreement”) between them to the Attorney General for review. The draft agreement was marked “Execution Version” and was dated June 7, 2017. Under the Agreement, UCHealth will become the sole corporate member of YVMC and YVMC in turn will become part of UCHealth’s system of healthcare facilities and will receive significant capital infusions as well as technology and other operational improvements in order for it to continue providing services to patients in northwest Colorado. UCHealth will also make a financial contribution to the YVMC Foundation to be used for supporting YVMC programs, services, and capital projects. This opinion refers to the subject matter of the Integration and Affiliation Agreement as the “Transaction.”

2. The Attorney General has reviewed the Transaction under the Hospital Transfer Act (the “Act”), C.R.S. §§ 6-19-101, *et seq.* (2016), and under the Attorney General’s common law authority over charitable trusts. *See*, C.R.S. §§ 24-31-101(5), 6-19-104(1).

3. 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 control of a parent company, holding company, or other entity controlling a hospital.” C.R.S. § 6-19-102(1).

4. In reviewing a transaction involving a nonprofit hospital and another nonprofit entity, the Attorney General must initially 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.

C.R.S. § 6-19-203(1).

5. If the Attorney General finds that the 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 jurisdiction over the hospital assets, the Transaction "shall proceed without further review." C.R.S. § 6-19-203(1).

### **Decision**

6. Based on a discussion of the Transaction between the Parties and staff from the Office of the Attorney General, and based on a review of documentation, the Attorney General finds and determines that the Transaction involves a transfer or other disposition of the control of a nonprofit hospital to a nonprofit entity and is therefore a covered transaction.

7. The Attorney General further finds and determines the following:

- a. The Transaction will not result in a material change to the charitable purposes to which the assets of YVMC have been dedicated.
- b. The Transaction will not 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.
- c. Accordingly, the Transaction shall proceed without further review.

### **Background**

#### **A. The Parties.**

*i. Yampa Valley Medical Center*

8. YVMC is a Colorado nonprofit corporation located in Steamboat Springs, Colorado. YVMC was formed on October 7, 1946 as Steamboat Springs Hospital Association and amended its Articles of Incorporation and changed its name to

Yampa Valley Medical Center on December 2, 2005. YVMC is recognized by the Internal Revenue Service as an organization described in section 501(c)(3) of the Internal Revenue Code and is exempt from federal income tax.

9. YMCV was incorporated to “purchase, own, operate and maintain a hospital or hospitals” in Steamboat Springs. Arts. of Incorporation, Art. II. The current stated purpose of YVMC is to operate “exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.” Am. & Restated Arts. of Incorporation of Yampa Valley Medical Center, Art. II, § 2.1. YVMC’s specific purposes and objectives “include, but are not limited to, providing quality health care and related services in a professional and caring manner to the residents and visitors of Northwest Colorado.” *Id.*

10. In furtherance of its stated purpose, YVMC owns and operates a regional medical center, which includes a licensed full-service 39-bed acute care hospital that serves the residents of northwest Colorado and south central Wyoming. YVMC’s campus also includes an outpatient pavilion and a medical office building. YVMC provides medical services to more than 51,000 outpatients annually.

*ii. Yampa Valley Medical Center Foundation*

11. The YVMC Foundation is a Colorado nonprofit corporation under the control of YVMC. The YVMC Foundation was formed on June 28, 2001 as the Health Care Foundation for the Yampa Valley and on July 6, 2015 changed its name to Yampa Valley Medical Center Foundation, effective October 1 of that year. *See* Arts. of Amendment. On September 17, 2015, the YVMC Foundation amended its Articles of Incorporation to reflect the name change. The YVMC Foundation is recognized by the Internal Revenue Service as an organization described in section 501(c)(3) of the Internal Revenue Code and is exempt from federal income tax.

12. The stated purpose of the YVMC Foundation is to operate “exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.” Am. & Restated Arts. of Incorporation of Yampa Valley Medical Center Foundation, Art. II, § 2.1. Specifically, the purpose of the YVMC Foundation is to operate “exclusively for the benefit of, to perform the functions of and to carry out the purposes of [YVMC] ... including, but not limited to, enhancing the health care and related services available to residents and visitors of Northwest Colorado by making funds available to support the programs of YVMC.” *Id.*

13. The YVMC Foundation’s mission is to raise funds in support of YVMC programs, services, and capital projects. Because YVMC will receive a financial contribution from UHealth as a result of the Transaction, the YVMC Foundation will sign the Agreement in a limited capacity related to its right to receive that

contribution. After the closing date, the YVMC Foundation's mission will also include directly undertaking health care programs and activities in the communities served by YVMC.

*iii. University of Colorado Health*

14. UCHealth is a Colorado nonprofit that was formed on January 31, 2012 by the Poudre Valley Health System and the University of Colorado Hospital Authority. UCHealth has been granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

15. The purpose of UCHealth is to operate “exclusively for public, charitable, scientific and/or education purposes ... including, without limitation: to provide high quality, responsive, compassionate, comprehensive and technically state-of-the-art health care on a cost-effective basis to patients in the State of Colorado and the western United States[, and t]o operate for the benefit of, to perform the functions of and to carry out the tax exempt purposes of ... any other tax-exempt entity that enters into, or becomes subject to, the Joint Operating Agreement [of UCHealth].” Arts. of Incorporation of University of Colorado Health, Art. III, § 3.1.

16. UCHealth owns and operates seven acute care hospitals in Colorado and over 100 clinics located in Colorado, southern Wyoming, and western Nebraska. UCHealth focuses on making care more accessible to residents of Colorado and the surrounding states. In the fiscal year ending June 30, 2016, UCHealth spent \$564 million on financial assistance, subsidized care, and other areas to directly benefit patients and communities, including \$223 million of uncompensated care for individuals who are uninsured and underinsured. UCHealth also advances, supports, and helps expand the mission and programs of the University of Colorado Anschutz Medical campus and, in particular, the University of Colorado School of Medicine.

**B. Transaction Documents**

17. The proposed Agreement will be entered into by and between YVMC, UCHealth, and the YVMC Foundation (together the “Parties”). The Transaction will close “following the date on which all condition precedent required [by the Agreement] are satisfied or waived.” Agreement § 2. The parties anticipate closing the Transaction as soon as practicable after the issuance of this Opinion. *Id.*

18. On the Closing Date, UCHealth will become the sole member of YVMC. *Id.* § 3.1. YVMC will thereby “become a fully functioning part of [the UCHealth system] as a direct subsidiary of [the UCHealth System] ....” *Id.* YVMC will then amend its Articles of Incorporation and Bylaws to reflect UCHealth's sole corporate membership. *Id.* § 3.2.

19. YVMC will “continue to operate as an acute care hospital and ... the current and future facilities of YVMC and the YVMC Affiliates shall be maintained and improved (i) so that they are at all times at least consistent with the level of comparable hospitals in comparable communities in Colorado (ii) in compliance with applicable Joint Commission or equivalent accreditation standards and (iii) with high professional quality standards generally applied to comparable [UCHealth] facilities.” *Id.* § 14.1(a). Further, UCHealth “will continue YVMC’s charitable and health care service mission within the meaning of Section 501(c)(3) of the [Internal Revenue Code] in the communities served by YVMC.” *Id.* § 14.10.

20. For the first five years after Closing, UCHealth commits to “offer, or arrange to offer the core services of YVMC ... at a level substantially equal to those existing at YVMC immediately prior to [Closing].” *Id.* § 14.11(a). After the initial five years, “[UCHealth] may change the scope and/or level of the Cores Services of YVMC, provided that YVMC shall offer all services that are required to be provided pursuant to licensure by the Colorado Department of Public Health and Environment ...” *Id.*

21. The YVMC Foundation will continue to operate “solely in connection with and for the benefit of programs, services and capital projects within or related to, YVMC operations and activities and ... for other support for the advancement of health in the communities served by YVMC ...” *Id.* § 14.3(a).

22. Effective as of the Closing, the Board of Directors of YVMC shall consist of fourteen voting trustees, two of which will be appointed by UCHealth and the remaining trustees shall be those members of the YVMC Board that served on the Board as of the date immediately preceding the Closing. *Id.* § 10.(2)(a). After the terms of the initial YVMC Board members expire, the YVMC Board shall consist of eleven trustees. *Id.* Five of the initial YVMC Board members’ terms expire in September 2017, four of the initial YVMC Board members’ terms expire in September 2018, and the two remaining initial YVMC Board members’ terms expire in September 2019. *Id.*, Sched. 10.2(a). Replacements for YVMC’s Board shall be nominated by YVMC and appointed by UCHealth in accordance with the nomination process outlined in the Agreement. *Id.* § 10.2(a)–(c).

23. In consideration for the Transaction, UCHealth will provide the following Capital Commitments:

- a. \$50 million in Strategic Capital to be expended by UCHealth within five years after Closing “to fund specific strategic capital needs for the benefit of YVMC.” *Id.* § 4.1(a).

- b. No less than \$35 million in Routine Capital during the initial ten-year period after closing to fund YVMC's routine capital requirements. *Id.* § 4.1(b).
- c. \$3.3 million to fund YVMC's capital projects carried over from prior to Closing. *Id.* § 4.1(c).
- d. \$20 million to the YVMC Foundation to further its mission of supporting YVMC's programs, services, and capital projects.

24. In addition to the monetary benefits listed above, UCHealth will provide the following non-monetary benefits in consideration for the Transaction:

- a. Without charge or setoff against the Capital Commitments, UCHealth will implement its Epic Platform and other information technology systems at YVMC. *Id.* § 4.4.
- b. YVMC will have access to UCHealth's Clinically Integrated Network without any associated initial capital costs. *Id.* § 4.5

### **Analysis**

#### **A. The Transaction will not result in a material change in the charitable purposes of YVMC.**

25. The Attorney General finds and determines that the Transaction will not result in a material change in the charitable purposes to which the assets of YVMC have been dedicated.

26. The stated charitable purposes of the Parties, as described in their governing documents and explained above, are consistent with one another.

27. The Parties have entered into the Transaction "to expand [UCHealth's] clinically integrated network, enhance high quality healthcare in a growing region, provide [UCHealth] with an expanded service area in the region served by YVMC, provide YVMC the benefit of being part of a larger system and an important element of [UCHealth's] mountain strategy, and provide the clinical care foundation for the development of innovative healthcare options for consumers in the areas served by YVMC." *Id.* at 1.

28. After Closing, YVMC will continue to operate as an acute care hospital as a "fully functioning part" of the UCHealth system. *Id.* at §§ 3.2, 14.1(a). UCHealth will "support and nurture the development of YVMC, its purpose and mission,

including with any academic programs appropriate for YVMC ... [and will] use commercially reasonable efforts to provide required medical services, including to those of limited means or who are unable to pay for such services, in the community in which YVMC operates.” *Id.* §§ 14.1(b), (d).

29. The Transaction will also allow the YVMC Foundation to continue its operations supporting YVMC’s programs, services, and capital projects, and for the advancement of health in and around northwest Colorado. *Id.* § 14.3(a).

30. The Attorney General finds that the Transaction should allow YVMC to continue operating in its current capacity, and may enable it to improve upon the services it provides to the citizens of northwest Colorado by, among other things, integrating YVMC into UCHHealth’s Clinically Integrated Network and implementing UCHHealth’s Epic Platform and other valuable technology improvements. *Id.* §§ 4.4, 4.5.

31. Based upon the foregoing information provided to the Attorney General, the Transaction will not result in a decrease in the overall availability or accessibility of health care services to the communities currently served by YVMC.

**B. The Transaction will not result in a termination of the Attorney General’s jurisdiction over YVMC’s assets.**

32. The Attorney General finds and determines that the Transaction will not result in a termination of the Attorney General’s jurisdiction over YVMC’s assets caused by a transfer of a material amount of those assets outside of the State of Colorado.

33. The terms of the Transaction provide for changes in the overall control of YVMC. However, YVMC will continue its operations as a Colorado nonprofit hospital, and nothing in the terms of the Transaction suggests that a material amount, if any, of YVMC’s assets will be transferred outside of Colorado.

34. Accordingly, the Hospital assets will remain in the State of Colorado and will remain subject to the Attorney General’s continuing jurisdiction.

35. These facts satisfy the Attorney General that the Transaction will not result in the termination of jurisdiction over YVMC’s assets involved in the Transaction. The Attorney General retains the right to exercise her common law and statutory authority over YVMC’s assets in the future should doing so become necessary due to a change in circumstances.

## Conclusion

36. In reaching this decision, the Attorney General considered the specific charitable purposes of YVMC, UCHealth, and the YVMC Foundation as set forth in articles of incorporation and other organic documents, as well as the Parties' Integration and Affiliation Agreement and all related exhibits and schedules.

37. 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, the Attorney General determines that the Transaction shall proceed without further review.

Issued this 21 day of August, 2017.



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CYNTHIA H. COFFMAN  
Colorado Attorney General

## Certificate of Delivery

This is to certify that I have duly served the within IN THE MATTER OF THE INTEGRATION AND AFFILIATION AGREEMENT BETWEEN UNIVERSITY OF COLORADO HEALTH, YAMPA VALLEY MEDICAL CENTER, AND YAMPA VALLEY MEDICAL CENTER FOUNDATION upon all parties herein by email and mailing copies of same to their office this 21st day of August, 2017 addressed as follows:

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