



NJ APPLESEED TALKING POINTS

(CN/CHAPA Review of Bayonne Medical Center application to transfer ownership to IJKG, LLC)

I. Introduction

Good Evening. My name is Renée Steinhagen, and I am the Executive Director of New Jersey Appleseed Public Interest Law Center. Prior to and since the enactment of the Community Health Care Assets Protection Act, New Jersey Appleseed has sought to ensure that New Jersey regulators act to protect the public interest upon the sale or merger of a nonprofit hospital by ensuring that charitable health care assets remain in the community to which they were dedicated, and requiring the Commissioner to determine that there will be no adverse impact on the affected communities' access to quality, affordable health care.

As you know, since the passage of CHAPA this is only the third proposed sale of a nonprofit, community based hospital to a for-profit entity. I hasten to add, it is the first such sale emerging from the bankruptcy court, and the first such sale where there appears to have been no nonprofit purchaser on the horizon. However, unlike CHS, which purchased Salem Memorial Hospital (and at the time of the application operated 56 hospitals in 20 states) and Merit Health Systems, which recently purchased Mountainside Hospital (and operated three hospitals in two states), IJKG, and its two wholly owned subsidiaries, have NO track record of operating acute care facilities in any state. Accordingly, our own investigation, including our review of the documents provided to the public has yielded minimal concrete information on which to evaluate the likely impact on the community.

For this reason alone we urge the Department to act cautiously, and take all actions necessary to ensure that representations made in the CN application are kept by making commitments made by IJKG regarding services, charity care, employment levels and community benefits a condition of approval, and by appointing a health care monitor that ensures that this hospital, regardless of current personnel remains fiscally secure and properly managed.

For related reasons, we urge the Attorney General to ensure that all restricted gifts and endowment funds, if any, are transferred to the Bayonne Medical Center Foundation, are appropriately used after the transaction is complete, and that the Foundation is appropriately considered a conversion foundation under CHAPA (despite the absence of sale proceeds), with the right of first refusal in the event that IJKG intends to sell.

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II. IJG L LC

In the CN application, IJG represents that its subsidiary IJG Opco, LLC, will “enhance revenue, implement systems and programs to improve the operational efficiencies and improve resource utilization to reverse the recent operating losses of BMC.” It goes on to say that the performance improvement processes and programs have been presented under oath to the United States Bankruptcy Court, and the transfer of ownership of the Bayonne Medical Center to itself has been made with the “input and concurrence from the Foundation of Bayonne Medical Center, the Medical Staff of Bayonne Medical Center, the Employees, Patients served by BMC, the Mayor and the Municipal Council for the City of Bayonne and the community.”

A stronger endorsement cannot be given. However, the lack of track record of IJG and the thin hospital management experience reflected in the bios of its partnership structure, with the exception of Mr. James Lawler, give us great pause. The public wants this hospital to succeed and the Department must take all steps necessary to ensure that it does so. The Department must thus require, as a condition of maintaining its license that IJG retain at all times a certified hospital administrator or management firm in its employ.

III. Health Service Concerns

Because the assets of Bayonne Medical Center are being handed over to a for-profit limited liability company that has been created solely to acquire the assets of this hospital, we have concern as to whether IJG will be able to fulfill the health care commitments that it has made in its Letter of Adequate Assurance (attached as an Exhibit to the Asset Purchase Agreement) to the public, union and medical staff as well as represented to the Department of Health and Senior Services. We request that the Department take all steps necessary to ensure that these commitments are enforceable—steps similar to those that the Department took with respect to Merit Health Systems upon its purchase of Mountainside Hospital.

--- commitment to operate the facility as an acute care hospital for a period of seven years following the transfer. This commitment appears only in the CN application, perhaps because the seller is set to wind down and dissolve. However, this commitment should be incorporated as a condition imposed on the license transfer, extended to 10 ten years, and be imposed as a contractual condition of any sale or transfer by IJG within the 10 year period.

---commitment to “infuse the new OpCo with a “10mm working capital facility and an additional \$5mm of equity.” Although IJG, unlike CHS or Merit, is not committing to investing a substantial sum of money for capital improvement, it is proposing to invest \$15mm in OpCo to “fund operational shortfall until break-even occurs” which it anticipates will occur within “six-months of clos[ing].” Nonetheless, we believe that the Department should monitor this investment and any other transfers into and out of the Hospital. That is, the Department should require IJG to submit a report, on an annual basis for the initial five years following the transfer of ownership, detailing the investments it has made during the previous year at the hospital. Such report should also include an accounting of any long or short term debt or other liabilities

incurred on the hospital's behalf, as well as any transfer of funds from the hospital to any parent, subsidiary or affiliate and the reason for such transfer.

---commitment to hire “substantially all BMC employees, with an expected reduction in force of not to exceed 150 employees. At the same time, that IJKG is committing to operate the hospital in its “current form” and potentially add new services in the future, it is stating its intention to reduce the number of employees by a maximum of 150 persons. In order to assure the safety, welfare and health of all patients, we ask that the Department to require IJKG to hire substantially all BMC employees who are employed at the time of sale, and each and every reduction in force be monitored and approved by the Department.

---commitment to provide access to indigent care at the same levels provided by BMC prior to date of sale As part of the Asset Purchase Agreement, IJKG commits to continue to provide indigent care at the levels presently provided by BMC. However, in the CN in response to question 7 dealing with indigent care, the applicant cites to the continued existence of the Bayonne Medical Center Foundation, as if the Foundation was available to support service to the uninsured in lieu of the hospital. The Department should impose on IJKG the same requirement that it imposed on Merit, which is that “the value of indigent care provided by the hospital shall be determined by the dollar value of documented charity care, calculated at the prevailing Medicaid rate, and shall not be limited to the amount of charity care provided historically by BMC.”

--commitment to appoint local community members to its Board of Trustees and to appoint a Community Advisor Board In its Letter of Assurance, attached as Exhibit A to the Asset Purchase Agreement, IJKG commits to creating a Community Advisory Board that within 90 days of closing would commence a community needs assessment funded by OpCo. The Chairman of this advisory board would be given a seat, ex-officio, on the OpCo Board as would the President of HPAE and the Mayor of Bayonne. These commitments should be incorporated as a condition of operation, and the relationship between the CAB and the OpCo Board and the Department, as well as reporting requirements, should be further detailed. Furthermore, local community members, hospital management, and physicians who are not employed by IJKG should be appointed to the Board to ensure accountability to the health mission of the purchaser. Nonprofit hospitals are accountable through their public mission to the community and consumers they serve; for-profit hospitals are accountable to their investors. The Department must forge some way to ensure that management remains accountable to the community and BMC continues to satisfy the health care needs of the community it serves.

--- commitment to maintain the same level of services and improve quality of care. IJKG has stated its intention to continue in all material respects the core services currently offered in the hospital. Notwithstanding this representation, we urge that the Department make continuity of the clinical services and community health programs currently provided and detailed in the application mandatory and subject to closure only after rigorous scrutiny by the Department with notice to the public.

IV. Charitable Asset Concerns

NJ Appleseed is aware that due to the insolvency of BMC there are will be no proceeds to be placed in a “conversion foundation” pursuant to CHAPA. However, the Bayonne Medical Center Foundation does exist, it is an excluded asset pursuant o Section 2.2 of the Asset Purchase Agreement, and it should be the recipient of any ongoing restricted gifts or endowment funds that the hospital currently holds. Moreover, if the Foundation’s mission is inextricably tied to the operation of the hospital, its mission must be refocused and in this way, the Attorney General should subject the Foundation to governance rules similar to that of a conversion foundation. E.g., N.J.S.A. 26:2H-7.11 (c)(6); N.J.S.A. 26:2H-7.11(h). Even if the Attorney General believes that CHAPA does not apply to the Bayonne Medical Center Foundation, under the common law it should be broadly based, remain independent of the purchaser, report annually to the Attorney General, and its funds remain in the community previously served by the hospital. Moreover, we request that the Attorney General, on behalf of the public, negotiate a right of first refusal on behalf of the Foundation in the event that IJKG seeks to sell the hospital.

V. Conclusion

In summary, we urge the Department and Attorney General to take all actions within their respective authority to make the above commitments real and not just representations nominally made to facilitate approval of transfer. Specifically, we request that the Commissioner consider the appointment of a health care monitor pursuant to its authority under CHAPA to ensure the quality, affordability and accessibility of health care is not diminished after conversion, and that each of the above commitments is made a condition of approval subject to change only after public notice, hearings and the Commissioner’s approval.