



NJ APPLESEED TALKING POINTS
(CN Review of Liberty Health Systems application to transfer ownership of Meadowlands
Hospital Medical Center to MHA, 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. See N.J.S.A. 26:2H-7.11(b). Indeed, the Commissioner has taken the position in the past that her review, pursuant to the CN process (specifically, criteria set forth in N.J.A.C. 8:33-4.9-4.10) satisfies her obligations under CHAPA.

Tonight, I would like to incorporate our comments that were submitted to the Commissioner by NJ Appleseed, HPAAE and NJ Citizen Action, in a memo entitled Issues and Concerns, and dated August 16, 2010; and state for the record that NJ Appleseed cannot support this transfer unless and until the Commissioner imposes certain commitments on the buyer as a condition of her approval.

As you know, since the passage of CHAPA, approximately ten years ago, this is the fourth proposed sale of a nonprofit, community based hospital to a for-profit entity. It is the second such sale where there appears to have been no nonprofit purchaser on the horizon (the first being Bayonne Medical Center which entailed a sale emerging from the bankruptcy court), and the first such sale where neither the entity or a key investor in the entity has a track record of operating an acute care facility in any state. Unlike CHS, which purchased Salem Memorial Hospital (and at the time of the application operated 56 hospitals in 20 states), Merit Health Systems, which purchased Mountainside Hospital (and operated three hospitals in two states), and IJKG which purchased Bayonne Medical Center (and at the time of purchase included an experienced New Jersey hospital administrator in its partnership structure), MHA, and the two companies that own and manage it, have NO track record of operating acute care facilities in any state. In addition, the track record of the two individual owners and managers of the entities owning MHA with respect to several ambulatory care centers that they currently own and

New Jersey Appleseed
Public Interest Law Center of New Jersey
744 Broad Street, Suite 1600
Newark, New Jersey 07102

Phone: 973.735.0523 Fax: 973.735.0524
Email: rsteinhagen@lawsuites.net
Website: www.njappleseed.net

operate in New Jersey give us considerable concern. More notably, however, is our observation that this is the first conversion in New Jersey in which the nonprofit seller did not insist, as a condition and term of the asset purchase agreement, that the new owner retain the general hospital license for any specified period of time, that current services be continued, that employment levels and community benefits remain the same, that capital improvements be made and that community participation or oversight in the governance structure be retained--- all commitments necessary to protect the public's interests.

For these reasons --- no track record to determine “the capacity of [MHA] to operate a health care facility in a safe and effective manner,” N.J.A.C. 8:33-4.10(d)(3), and the failure of MHA to commit to a host of consumer protections, we urge the Department to act cautiously, and take all actions necessary to ensure that this hospital, despite its proposed for-profit status, remains (1) fiscally secure, (2) properly managed, (3) a provider of quality, safe health services, and (4) a responsible community institution.

II. MHA, LLC: It’s track record and financial security to maintain or enhance quality of care

Pursuant to the Department's CN regulations, prior to approving a transfer of ownership application, a prospective owner/operator must be “evaluated ... on the basis of character and competence and track record with regard to past and current compliance with state licensure, applicable Federal and certificate of needs requirements, as specified in N.J.A.C. 8:33-4.9 and 4.10,” N.J.A.C. 8:33-3(d). Such requirements specifically include a determination of “whether the [new owner] has demonstrated the ability to obtain the necessary capital funds” N.J.A.C. 8:33-4.10(b)(7), in order assure the Department that the transfer of license will “maintain or enhance quality of care, [and that the transfer of ownership] can be financially accomplished and maintained.” N.J.A.C. 8:33-4.10(b). A review of the documents provided to the public has yielded minimal concrete information on which the public can be assured that MHA can satisfy such criteria.

In the CN application, a very complicated and convoluted corporate structure is presented. MHA, the limited liability company to which the hospital assets are to be transferred, has been registered in New Jersey since August 2009. MHA is 100% owned by Complete Medical Project Management LLC (CMPM) . CMPM, in turn is owned by ATRP, LLC, registered to do business in Florida since December 2009, which in turn is the manager of both CMPM and MHA. The managers of ATRP are Richard Lipsky MD and Tamara Dunaev, who are the owners and operators of several ambulatory care centers in New Jersey.

MHA, LLC, itself has 59 affiliated individuals and limited liability companies; and of the 26 LLCs, 16 were formed and registered in Florida since August 2009 and 8 were formed and registered in New Jersey. All but one of those 8 has been registered since November 2009. In addition, MHA has identified 14 potential investors in CMPM, as of April 14, 2010, and some of those investors are MHA affiliates. It is our understanding, that recent submissions identify several new potential investors, including the company that brokered the deal between LHS and MHA, and a lawyer facilitating this application. Pursuant to a report prepared by Navigant Capital Advisors for the Attorney General, dated August 13, 2010 (attached hereto), we also understand that MHA is still actively soliciting equity capital to finance this acquisition.

Subscription for equity investments in MHA, LLC are due September 15, 2010, and MHA has received signed subscription agreements for \$7.5 million of the \$12.4 million additional equity capital it seeks to raise. Navigant Report at page 8. Based on Navigant's assessment, MHA needs to secure at least \$17 million in third party financing in order to complete the purchase of Meadowlands Hospital, and \$23 million if it intends to repay the \$5 million Purchase Money Note to Liberty Healthcare when it is due at the end of 6 months. Id. at 9.

Furthermore, Navigant forecasts that the hospital is not projected to be cash flow positive during the first year of its operation. Id. at 6-7. This assessment is different from that presented by the applicant in the CN application, and underscores the riskiness of this proposed transaction. Therefore, Applesseed asserts that:

Approval of this transaction must await 100% of the required financing, and this complicated corporate structure requires strict oversight by the department of money leaving the hospital and distributed to corporate parents and affiliates. Such oversight was required by DHSS in both the Salem and Mountainside sales. In each, DHSS conditioned its approval of the license transfer by requiring the for-profit hospital to present an annual report to DHSS for 10-years regarding transfers of funds from the hospital to an out-of-state parent, subsidiary or corporate affiliate.

Upon review of the documents presented, it also appears that neither Dr. Lipsky, Ms. Dunaev or any other person considered part of the ownership structure of MHA has operated a general hospital in any state, let alone New Jersey. Dr. Lipsky and/or Ms Dunaev, however, have been involved in the ownership and management of several ambulatory care centers in New Jersey. As we noted in our previous memorandum, licensure problems have occurred at the Xanadu Adult Medical Day Care Center. Indeed, on March 12, 2010, DHSS curtailed admissions to Xanadu for being "not in compliance with all of the standards" for licensure of an Adult Medical Day care facility. More recently, it has come to our attention that following an inspection of Roseland Ambulatory Surgery Center, whose CEO is Dr. Lipsky, by DHSS in March of this year, serious state and federal deficiencies were found that implicated patient safety, deficient supervision, inadequate record keeping and failure to maintain properly and safely certain equipment.

In addition to these serious blots on the track record of the two managing members of MHA, the thin hospital management experience reflected in the bios of the proposed management structure presented in the CN application, with the exception of the individual responsible for effecting major reform of the information technology systems at the hospital, gives 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 MHA retain at all times a certified hospital administrator or management firm in its employ that has a credible track record in New Jersey. In addition, due to the track record of Dr. Lipsky and Ms Dunaev at their ambulatory care centers, DHSS must require, as a condition of maintaining its license that MHA retain on its staff a quality control officer to which all physicians and nurses can appeal in the event they believe that a patient's safety is being put at risk by management's policies, and such officer must in turn report such complaints to the Department.

III. Health Service Concerns

Because the assets of Meadowlands Hospital 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, and information provided in the CN hospital implies a shift of the hospital's operation toward surgery generally, and same-day surgery, in particular, we have concern as to whether MHA has the intention to continue all services currently provided at the hospital. Moreover, MHA's refusal to negotiate with the employees and commit to retaining substantially all of the current employees undermines their representations that there will be "no reduction in the scope of services," and that they will be able to maintain the quality and safety of those services. We therefore request that the Department take all steps necessary to ensure that the proposed transaction "is not likely to result in the deterioration of the quality, availability or accessibility of health care in the affected communities," N.J.S.A. 26: 2H-7.11(b), by imposing the same conditions on MHA that it imposed on the for-profit purchasers of Salem Memorial Hospital, Mountainside Hospital and Bayonne Medical Center. Such conditions include:

--- commitment to operate the facility as an acute care facility for a period of ten (10) years following the transfer. This commitment does not appear in the CN application or the APA. We believe such a commitment is necessary to ensure that all decisions are made with the long-term health of the hospital in mind and are not made merely to increase the short-term profit of the entity. Such condition should also be imposed as a contractual condition of any sale or transfer by MHA within the 10-year period.

--- commitment to maintain the same level of services and improve quality of care. Throughout the CN application, LHS/MHA state that this proposal entails no reduction in the scope of services to be offered. Notwithstanding this representation, we urge that the Department make continuity of the clinical services and community health programs currently provided by the hospital mandatory and subject to closure only after rigorous scrutiny by the Department with notice to the public.

--- commitment to hire substantially all of Meadowlands employees. At the same time that MHA states that the sale of Meadowlands will not result in a reduction in the scope of services offered, it has been unwilling to commit to hiring substantially all of the hospital's employees. Given Dr. Lipsky's and Ms. Duaev's track record, such a commitment is not an option. The current employees are the public's only shield against deterioration in the quality and safety of the services provided at the hospital. Therefore, in order to ensure the safety, welfare and health of all patients, we ask that the Department require MHA to hire substantially all MHMC employees who are employed at the time of sale, and that each and every reduction in force is monitored and approved by DHSS. A similar condition was imposed on the three previous hospital conversions and most recently, on Catholic Health Care East when it purchased St. Michael's Medical Center.

---- commitment to provide access to indigent care at the same levels provided by Meadowlands prior to date of sale and commitment not to develop a business strategy based on out-of-

network payments. In the CN application, LHS/MHA state that the transfer of ownership will have no impact on consumer access, including access by the medically indigent and underserved. Little information is given about past practices, and no charity care numbers are projected for the year following the sale. DHSS must impose on MHA the same requirement that it has imposed on CHS, Merit and IJKG, 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 MHMC.”

Furthermore, the information provided in the CN implies that MHA intends to rely on out-of-network payments; the level of such reliance, however, is unclear. In any event, such strategy impairs the ability of local consumers to use the hospital and, as a long-term strategy is unsustainable. The Department must squash this practice.

--- commitment to infuse MHA with at minimum of \$11-12 million in working capital, and a commitment to provide DHSS information about money being invested in the facility and debt incurred on the hospital’s behalf. Unlike CHS or Merit that committed to invest substantial sums of money for capital improvements over set periods of time, and IJKG, that committed to infusing the hospital with \$15 million in working and equity capital to fund operational shortfalls until break-even occurs, MHA makes no similar representation or commitment. In accordance with the Navigant Report, DHSS must require, as a condition of transfer, that MHA make available \$11.650 million to fund operations and working capital needs and for repayment of short-term debt. Again, as previously required of other for-profit purchasers, DHSS should require MHA 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 and any long or short term debt or other liabilities it has incurred on the hospital’s behalf.

--- commitment to appoint local community members to its Board of Trustees and to appoint a Community Advisory Board. In the CN application, MHA states that it will create and fund a 501(c)(3) foundation that will provide advice to its governing board. Notwithstanding the doubtful legitimacy of such a foundation, this is not a solution to the accountability problem posed by for-profit hospitals. Nonprofit hospitals are accountable through their public mission to the community and consumers they serve; for-profit hospitals are accountable to their investors. DHSS must forge some way to ensure that management remains accountable to the community and Meadowlands Hospital continues to satisfy the health care needs of the community it serves.

In the case of Salem, DHSS conditioned its approval on the requirement that the hospital board consist of Salem County residents with ongoing representation from members of the low-income community. With respect to the purchase of Mountainside Hospital by Merit, DHSS required that a hospital board (of 9-15 members) consist of local community members, hospital management and not less than three physicians who are not employees of Merit. The for-profit was also required to develop and participate in a Community Advisor Group (CAG) to provide ongoing community input to the CEO and Merit’s Board. In the case of Bayonne Hospital, the co-chair of the CAG, similarly ordered by DHSS, was required to be on the for-profit hospital board as was the local Mayor, President of the Medical Staff and the President of HPAE. We

believe in this case a mixture of all three models is appropriate, with the Mountainside model dominating. That is, MHA's board must consist of local community members (including the Mayor if he so desires), hospital management and not less than three physicians who are not employees of the hospital. A CAG must be established and the community co-chair of the CAG should be on the hospital board.

IV Conclusion

In summary, we urge the Department to take all actions within its authority to make the above requirements a condition of its approval, and any representations made by the prospective owner in the CN application real, not just representations made to facilitate transfer of the license. Specifically, we also request that the Commissioner appoint a health care monitor, pursuant to her authority under CHAPA, to ensure that the quality, affordability and accessibility of health care is not diminished after conversion, and that each of the above requirements is made a condition of approval subject to change only after public notice, hearings and the Commissioner's approval.