

NJ APPLESEED TALKING POINTS
(CN Application of AHS to transfer ownership to Merit Mountainside, 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 second proposed sale of a nonprofit, community based hospital to a for-profit entity. And like the sale of Salem Memorial Hospital to Community Healthcare Systems, the proposed buyer, in this case Merit Health Care Systems is an out of state company. But unlike CHS, Merit has a slim track record; it operates only three hospitals in two states (in contrast to CHA who at the time of the application operated 56 hospitals in 20 states), and, accordingly, our own independent investigation, including our review of the documents provided to the public, has yielded little 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 Merit regarding services, charity care, employment levels and community benefits a condition of approval.

II. Merit Health Systems

Based on conversations with physicians and community residents, we welcome new management to Mountainside Hospital, and laud its goal of “keep[ing] Mountainside at the forefront of community health,” as stated in a public relations brochure recently

mailed to residents in its service area. Also, its stated intention to improve the financial performance of Mountainside by reducing corporate overhead by approximately \$5 million dollars annually is alone reason for cheer.

But, Merit is not just a new management team. It is a new ownership structure as well. Mountainside Hospital was an independent, community based hospital from 1891 to 1996 when it was consolidated into Atlantic Health System and its assets were permitted to be distributed and allocated among the several hospital entities constituting the system. Now, its assets are being handed over to a for-profit limited liability company that has been created by a private equity fund—and it is this ownership structure that raises several questions as to the ability and sincerity of Merit to fulfill the health care commitments it has contractually made to AHS and has similarly represented to the Department of Health and Senior Services. Indeed, the answers given to the Department's questions raise additional questions that we urge the Department to probe further before approving the transfer of ownership.

III. Questions and Concerns

Our concerns are many, including several significant concerns regarding valuation, allocation of purchase price, the limited right of first refusal, the status of the Mountainside Hospital Foundation that we will raise with the Attorney General. They include:

---commitment to operate the facility as general acute care hospital for a period of ten years following the transfer. What we do know from newspaper articles is the intention of Willis Stein & Partners, Merit's Chicago-based equity backer, to sell Merit either through a public offering or a sale to another company or to the management team by the year 2012, with an intent to put all efforts toward sale rather than the building of equity as early as 2010. This implies that the Mountainside community may be facing a new management transition as soon as three years from now, with no real security that the hospital will not be sold for its value as real estate, rather than an operating hospital unless this commitment is incorporated in the CN approval.

---commitment to \$20 million in capital improvements and physician recruiting expenditures over 10 years-approximately \$2 million a year. What we do know from the representations made in the application is that Merit is still projecting annual operating losses of approximately \$4 million after the acquisition, based on expenses that do not seem to include property tax assessments. We understand from the application that Merit contemplates achieving profitability in the year 2011, and that until that time losses will be funded through, among other things, approximately \$14 million to \$15 million expected to be part of the opening balance sheet. factors. We simply ask whether that \$14 million is a result of a \$10 million line of credit guaranteed by AHS and an expected payment of \$4 million from the Mountainside Foundation to be made prior to closing? We also bring attention to the fact that the public simply cannot know the true financial situation of Merit since it is a private equity company and financial disclosure is not required. Reading through the application, it seems that we are simply being asked to

assume that the \$3 billion sitting in Willis Stein & Partners may be available to the hospital or that the \$100 million given to Merit to invest in hospitals may be sufficient to keep Mountainside afloat. The Department must get behind this veil of secrecy and demand complete financial disclosure from Merit and must monitor its commitment to invest \$20 million.

---commitment to hire all Hospital employees (other than certain service workers) and to keep staffing levels generally the same. Based on information found in the media, on the web and in statements made by Merit officials, Merit states that it will double the number of employees it has when acquiring Mountainside. Although we do not know the regulatory environment in Illinois and Texas or the exact break down of the type of beds Merit is operating in its three other facilities, we question whether Merit really will keep the same number of employees to operate 251 beds at Mountainside (though licensed to operate 395) as it has to operate over 500 beds at its other three facilities-- 90 beds in its Lancaster facility, plus 190 beds at its Dallas campus (licensed to operate 294) and 225 beds at its Lincoln Park facility in Chicago (licensed to operate 390). We ask this question only to request the Department to look into this issue further. Also, Merit's statement in its application that there is "no change anticipated in physician referral patterns or market share upon transfer" is simply inconsistent with its numerous statements that it intends to increase admissions and undertake a major physician recruiting effort. Again, statements are made in the application and a coherent picture of the future does not emerge.

--- commitment to provide access to indigent care at the same levels provided by Mountainside prior to date of sale.—the application only provides percentage of charity care for out patient and in patient service for the year 2005, although it gives a history of actual dollar figures back to 2001. We strongly recommend that levels of prior charity care be considered a floor and not a ceiling, and Merit has to commit to providing indigent care based on need, not just on a percentage for one year that may or may not be a function of government policy for that one year. Moreover, the public has not been given access to Merit's track record received from Texas or Illinois, and our own phone calls have not yielded information as to you Merit's provision of indigent care in those states. We urge the Commissioner to get that information and, if Merit's history is uncertain, consider the appointment of a health care monitor.

--- commitment to appoint local community members to its Board of Trustees—that application promises to appoint at least three physicians to its Board of Trustees and some local community members. Although the Board is in essence an advisory Board regarding budget, operations and medical policy, we urge that there be at least three community members on the Board and that such members are given permission to speak publicly about operational matters that will have a direct impact on service to the community. 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 Mountainside 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--- Merit has stated its intention to continue in all material respects all core services currently offered. However, these promises come with no guarantees since it specifically reserves the right to discontinue services depending on factors such as the availability of physicians, changes in community needs, economic feasibility and governmental policy. The only check on its ability to change services is the Department's demand that either a new CN application be filed for certain core service, or Merit establish that closure of other services will not result in access problems for populations historically served. We urge that the Department make continuity of the health clinics and community health programs currently offered at Mountainside and detailed in the application mandatory and subject to closure only after rigorous scrutiny by the Department with notice to the public.

IV Conclusion

In summary, we urge the Department to take all actions within its 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 that 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.