



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

August 29, 2008

Kelley Taylor Hearne
DrinkerBiddle&Reath, LLP
1500 K Street, NW
Washington DC 20005-1209

RE: HC 08-01 Empire/CHS Conversion Applications

Dear Ms. Hearne:

The department is in receipt of your letter dated August 28, 2008, on behalf of Empire Health Systems (EHS) and Empire Health Foundation-New Foundation (EHF) agreeing to the conditions as outlined in the Department of Health's letter dated August 20, 2008 that are applicable to EHS and EHF. (See Below) The department has reviewed your acceptance letter including your expressed understandings of the intent and attachments.

As a result of the agreement to the applicable conditions as outlined in EHS' and EHF's August 28, 2008, letter and with the acceptance of the conditions by Community Health Systems of its respective conditions the department approves the acquisition of Deaconess Medical Center located in Spokane, and Valley Hospital and Medical Center located in Spokane Valley under the provisions of RCW 70.45.

**DEACONESS MEDICAL CENTER AND VALLEY HOSPITAL & MEDICAL CENTER
CONVERSION CONDITIONS**

1. These approvals are based on the department's record and the representations made to the department and AGO throughout the review of these Conversion and Certificate of Need applications. **[EHS AND EHF ACCEPTED]**
2. Prior to the closing of the transaction no material changes are made to the Application, the Asset Purchase Agreement, or the new foundation's Articles of Incorporation and Bylaws except as may be necessary to comply with conditions identified. **[EHS AND EHF ACCEPTED]**
3. Prior to the closing of the transaction there occur no changes in operations at the Hospitals, or other events, which result in Empire Health Services not receiving fair market value for the Hospitals. **[EHS AND EHF ACCEPTED]**

4. CHS, Empire, and the new foundation each shall provide to DOH, initially within 120 days after the closing of the acquisition and annually thereafter, such reports as DOH deems necessary to assure compliance with the provisions of RCW 70.45 and any conditions imposed pursuant to RCW 70.45.060(2). This should include but not be limited to, financial reports and accountings of the new foundation's operations, income, expenses and grants. These reports shall be available to the public. **[EHS AND EHF ACCEPTED]**
5. The new foundation's Articles and Bylaws shall be filed with the Secretary of State's office no later than 120 days following approval of the acquisition **[EHS AND EHF ACCEPTED-EHF ARTICLES OF INCORPORATION HAVE BEEN FILED WITH THE SECRETARY OF STATE'S OFFICE. EHF BYLAWS HAVE BEEN ADOPTED.]**
6. The net proceeds from the sale of Deaconess Medical Center and Valley Hospital and Medical Center shall be dedicated to the permissible health care-related purposes for the benefit of the communities within the region served by both hospitals. The new foundation shall provide to DOH annually, such financial reports, either discretely or as a part of any other reports that demonstrate compliance with this condition. **[EHS AND EHF ACCEPTED]**
7. Upon closing the net proceeds of the sale shall be immediately transferred and held in an interest bearing trust account for the benefit of the new foundation until such time as the initial members of the new foundation's board of directors have been appointed. The financial institution in which such account is established shall be subject to DOH's approval. The principal and interest in such trust account shall be transferred to the new foundation immediately following the appointment of the initial members of the new foundation's board of directors. **[EHF HAS BEEN FORMED AND THE BOARD APPOINTED. THE PROCEEDS RELATED TO THIS CONDITION WILL BE TRANSFERRED TO EHF'S BANK ACCOUNT INSTEAD OF TRUST ACCOUNT. THIS MEETS THE INTENT OF THIS CONDITION]**
8. The post-transaction Empire bylaws must be amended to include the requirement, set forth elsewhere in the application, that one of the Empire directors be selected from among three nominees of the new Foundation (*see* page 11, AG Opinion). **[EHS AND EHF ACCEPTED]**
9. The draft bylaws for the new Foundation must be amended to strike the requirement that when the initial board members select "a full roster of directors" within 90 days after the closing of the transaction, that their choice be limited to a slate of nominees put forward by post-transaction Empire (*see* page 47 AG Opinion); **[EHS AND EHF ACCEPTED- HAS BEEN AMENDED TO THE SATISFACTION OF THE AGO. ALSO SEE #13.]**
10. Schedule 9, attached to the Asset Purchase Agreement, must be amended to remove the prohibition against the new Foundation carrying out its charitable purpose through the support of hospitals that compete with CHS. (*see* pages 49-53 AG Opinion); **[EHS AND EHF ACCEPTED-SCHEDULE 9 HAS BEEN AMENDED TO THE SATISFACTION OF THE AGO]**

11. The draft Foundation Agreement must be amended to explicitly state that the new Foundation holds assets distributed to it pursuant to this transaction in charitable trust (*see* page 45 AG Opinion); **[EHS AND EHF ACCEPTED]**
12. The Asset Purchase Agreement must be amended to explicitly require, rather than merely permit, Empire to distribute the net purchase price to the new Foundation (*see* page 46 AG Opinion); **[EHS AND EHF ACCEPTED]**
13. Two additional nominees to serve as initial directors of the new Foundation must be identified to provide a more broadly diverse and representative board (*see* pages 54-55 AG Opinion). **[EHS AND EHF ACCEPTED-ONE ADDITIONAL BOARD MEMBER REMAINS TO BE SELECTED]**
14. If CHS fails to make its required \$100 million capital investment within five years of executing the Asset Purchase Agreement, CHS shall pay any shortfall to the new foundation. (*see* page 45, AG Opinion) **[NOT APPLICABLE TO EHS AND EHF]**
15. Deaconess Medical Center and Valley Hospital and Medical Center will provide charity care in compliance with the charity care policies provided in its Certificate of Need applications, or any subsequent polices reviewed and approved by the Department of Health. Deaconess and Valley will use reasonable efforts to provide charity care in an amount comparable to or exceeding the average amount of charity care provided by hospitals in the Eastern Washington Region. Currently, this amount is 3.35% of adjusted revenue. Deaconess and Valley will maintain records documenting the amount of charity care it provides and demonstrating its compliance with its charity care policies. **[NOT APPLICABLE TO EHS AND EHF]**

Thank you for your cooperation during the review of the application. If you have any questions, please contact Janis Sigman of the Facility Certification Program at (360) 236-2955.

Sincerely,



Steven M. Saxe, FACHE
Director, Health Professions and Facilities

cc: Jeffrey Even, Deputy Solicitor General
Robert Fallis, AAG
Johnna Skyles Craig, AAG
Andrew Murray
Ron McKay

Enclosure



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

August 29, 2008

Kenneth D Hawkins
Community Health Systems
Post Office Box 689020
4000 Meridian Boulevard
Franklin, Tennessee 37067

RE: HC 08-01 Empire/CHS Conversion Applications

Dear Mr. Hawkins:

The department is in receipt of the letter dated August 28, 2008, from Andrew Murray on behalf of Community Health Systems (CHS) agreeing to the conditions as outlined in the Department of Health's letter dated August 20, 2008 that are applicable to CHS. (See Below) The department has reviewed your acceptance letter including your expressed understandings of the intent and application of those conditions, and the amendments to schedule 9.

As a result of the agreement to the applicable conditions as outlined in CHS' August 28, 2008, letter and with the acceptance of the conditions by Empire Health Services and Empire Health Foundation (New Foundation) of its respective conditions the department approves the acquisition of Deaconess Medical Center located in Spokane, and Valley Hospital and Medical Center located in Spokane Valley under the provisions of RCW 70.45.

**DEACONESS MEDICAL CENTER AND VALLEY HOSPITAL & MEDICAL CENTER
CONVERSION CONDITIONS**

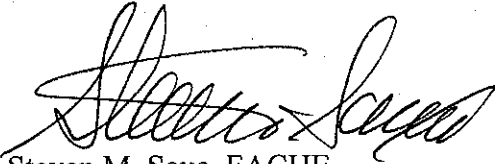
1. These approvals are based on the department's record and the representations made to the department and AGO throughout the review of these Conversion and Certificate of Need applications. **[CHS ACCEPTED]**
2. Prior to the closing of the transaction no material changes are made to the Application, the Asset Purchase Agreement, or the new foundation's Articles of Incorporation and Bylaws except as may be necessary to comply with conditions identified. **[CHS ACCEPTED]**
3. Prior to the closing of the transaction there occur no changes in operations at the Hospitals, or other events, which result in Empire Health Services not receiving fair market value for the Hospitals. **[CHS ACCEPTED]**

4. CHS, Empire, and the new foundation each shall provide to DOH, initially within 120 days after the closing of the acquisition and annually thereafter, such reports as DOH deems necessary to assure compliance with the provisions of RCW 70.45 and any conditions imposed pursuant to RCW 70.45.060(2). This should include but not be limited to, financial reports and accountings of the new foundation's operations, income, expenses and grants. These reports shall be available to the public. **[CHS ACCEPTED]**
5. The new foundation's Articles and Bylaws shall be filed with the Secretary of State's office no later than 120 days following approval of the acquisition **[NOT APPLICABLE TO CHS]**
6. The net proceeds from the sale of Deaconess Medical Center and Valley Hospital and Medical Center shall be dedicated to the permissible health care-related purposes for the benefit of the communities within the region served by both hospitals. The new foundation shall provide to DOH annually, such financial reports, either discretely or as a part of any other reports that demonstrate compliance with this condition. **[NOT APPLICABLE TO CHS]**
7. Upon closing the net proceeds of the sale shall be immediately transferred and held in an interest bearing trust account for the benefit of the new foundation until such time as the initial members of the new foundation's board of directors have been appointed. The financial institution in which such account is established shall be subject to DOH's approval. The principal and interest in such trust account shall be transferred to the new foundation immediately following the appointment of the initial members of the new foundation's board of directors. **[NOT APPLICABLE TO CHS]**
8. The post-transaction Empire bylaws must be amended to include the requirement, set forth elsewhere in the application, that one of the Empire directors be selected from among three nominees of the new Foundation (*see* page 11, AG Opinion). **[CHS ACCEPTED]**
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Sincerely,



Steven M. Saxe, FACHE
Director, Health Professions and Facilities

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