

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

**PETER F. NERONHA, RHODE ISLAND
ATTORNEY GENERAL,**

Petitioner,

v.

PROSPECT MEDICAL HOLDINGS, INC.,

Respondent.

C.A. No.

**THE ATTORNEY GENERAL’S PETITION TO ENFORCE DECISION UNDER THE
HOSPITAL CONVERSIONS ACT**

I. INTRODUCTION

1. Pursuant to his obligations under the Hospital Conversions Act, R.I. Gen. Laws § 23-17.14-1 *et seq.*, the Rhode Island Attorney General (“Attorney General”), Peter F. Neronha, petitions this Court for an immediate order requiring the Respondent to comply with the Attorney General’s decision re: Initial Application of Chamber Inc.; Ivy Holdings Inc.; Ivy Intermediate Holdings, Inc.; Prospect Medical Holdings, Inc.; Prospect East Holdings, Inc.; Prospect East Hospital Advisory Services, LLC; Prospect CharterCARE, LLC; Prospect CharterCARE SJHSRI, LLC; Prospect CharterCARE RWMC, LLC dated June 1, 2021 (the “Decision”; see **Exhibit 1**).

2. The Attorney General, through the Decision, approved the sale of Ivy Holdings, Inc., the holding company for Prospect Medical Holdings, Inc. (“Prospect Medical Holdings”), owner of Prospect CharterCARE, LLC (“CharterCARE”), which in turn owns and operates Prospect CharterCARE RWMC, LLC (“Roger Williams Medical Center” or “RWMC”) and

Prospect CharterCARE SJHSRI, LLC (“Our Lady of Fatima Hospital” or “OLF”). Respondent is bound to comply with the conditions laid out in the Decision (the “Conditions”) as part of that approval. R.I. Gen. Laws § 23-17.14-7(4).

3. Respondent has violated multiple Conditions of the Decision. Among other violations, Respondent has failed to ensure that vendors serving the CharterCARE hospitals are paid on a timely basis, in accordance with Condition 7.2 of the Decision. According to representations made by Prospect Medical Holdings, as of September 29, 2023, Roger Williams Medical Center and Our Lady of Fatime Hospital together owed over \$18.9 million in accounts payable 90 days or greater past due.¹ Such failure to comply with the Decision places the financial health and stability of its Rhode Island hospitals in jeopardy.

4. These failures occur within the context of Prospect Medical Holdings’ ongoing and widely reported financial troubles, which have left it unable to meet its rent and vendor obligations at other facilities across the country and which have resulted in hospitals closing and layoffs of hundreds of staff. These serious financial challenges underscore the importance of the financial protections put in place by the Attorney General, through the Conditions in the Decision, in order to ensure that Roger Williams Medical Center and Our Lady of Fatima Hospital receive appropriate and sufficient financial support by their parent company in order to meet the needs of their Rhode Island patients.

5. To ensure the financial health and stability of Roger Williams Medical Center and Our Lady of Fatima Hospital, the Attorney General seeks this relief pursuant to R.I. Gen. Laws § 23-17.14-28(d)(4), which states that “the attorney general may seek immediate relief in the

¹ On November 8, 2023, Prospect represented to the Attorney General that accounts payable greater than 90 days now total **over \$24 million**, as of October 31, 2023.

superior court to enforce any conditions of approval of a conversion” under the Hospital Conversions Act.

II. PARTIES

6. Peter F. Neronha is the Attorney General of the State of Rhode Island. The Attorney General is the State of Rhode Island’s chief law enforcement officer and is authorized to pursue this action pursuant to the Hospital Conversions Act. R.I. Gen. Laws § 23-17.14-28(d)(4).

7. Prospect Medical Holdings, Inc. is a Delaware corporation with its principal offices located at 3415 S. Sepulveda Blvd., Los Angeles, CA 90034 and is the owner of Prospect CharterCARE, LLC, owner and operator of Roger Williams Medical Center and Our Lady of Fatima Hospital.

III. JURISDICTION

8. Subject matter jurisdiction in this case is properly conferred in this Court pursuant to R.I. Gen. Laws §§ 8-2-13 and 23-17.14-28.

9. Personal jurisdiction over the Respondent in this case is properly conferred in this Court based on the Respondent’s presence within the State of Rhode Island or, pursuant to R.I. Gen. Laws § 9-5-33, Respondent’s operation of health care services within the State of Rhode Island.

10. Venue is properly placed in this Court pursuant to R.I. Gen. Laws § 9-4-3.

IV. FACTS

a. *Initial Review and Decision on Prospect CharterCARE Conversion*

11. The Attorney General and the Rhode Island Department of Health (“RIDOH”) are statutorily obligated to review and approve, deny, or approve with conditions any proposed hospital conversion pursuant to and as defined by R.I. Gen. Laws §§ 23-17.14-1 *et seq.* (the “Hospital Conversions Act”).

12. Prospect Medical Holdings, Inc., together with Chamber, Inc., Ivy Holdings, Inc., Ivy Intermediate Holding, Inc., Prospect East Holdings, Inc., Prospect East Hospital Advisory Services, LLC, Prospect CharterCARE, LLC, Prospect CharterCARE SJHSRI, LLC, and Prospect CharterCARE RWMC, LLC (collectively the “Transacting Parties”), submitted an initial application for a proposed hospital conversion with the Attorney General on December 13, 2019, pursuant to the Hospitals Conversions Act.

13. The proposed hospital conversion involved a buy-out of Ivy Holdings, Inc., the ultimate parent company of Prospect Medical Holdings. Prospect Medical Holdings is the owner of CharterCARE, which in turn owns and operates Roger Williams Medical Center and Our Lady of Fatima Hospital. The buyers in the transaction were Samuel Lee (“Lee”) and David Topper (“Topper”), who bought out approximately 60% ownership of Ivy Holdings, Inc. from Leonard Green & Partners (“Leonard Green”), a private equity investor, and other minority shareholders. The conversion resulted in 100% ownership of Ivy Holdings, Inc. by Lee and Topper through a newly formed entity, Chamber, Inc. (“Chamber”).

14. After conducting an intensive review over more than a year, involving hundreds of written questions, dozens of testimonies, and thousands of pages of documents, the Attorney

General released the Decision on June 1, 2021, which approved the transaction subject to a set of Conditions. RIDOH also released their decision on June 1, 2021, which approved the transaction subject to an additional set of conditions.

15. As detailed in the Decision, the Attorney General imposed Conditions on the transaction because of substantial concerns related to the financial health and prior practices of Prospect Medical Holdings, as identified in the review. The Conditions were set to avoid potential future harm that could come to RWMC and OLF because of Prospect Medical Holdings' financial insecurity and any future actions adverse to the financial interests of the hospitals.

16. As detailed in the Decision, Prospect Medical Holdings' value had dropped precipitously over the past ten years. The sale price in this transaction, which involved approximately 60% ownership of the 17-hospital system, was only \$11.9 million. For comparison, a majority portion of these same shares sold for approximately \$150 million in 2010.

17. This significant drop in value was largely attributable to the decisions of Prospect Medical Holdings' former and current owners to leverage the hospital system with significant amounts of debt. In total, at the time of the transaction, Prospect Medical Holdings held over \$3.1 billion in liabilities. Much of this debt was attributable to decisions to sell and re-lease a significant amount of hospital real estate in Connecticut, Pennsylvania, and California and to otherwise take on debt while using portions of its hospital systems as collateral.

18. At the same time that Prospect Medical Holdings took on these liabilities, Prospect Medical Holdings issued a \$457 million dividend to shareholders in 2018.

19. Based on the findings of the review, the Attorney General was concerned that without meaningful oversight, Prospect Medical Holdings would make decisions that were

contrary to the interests of RWMC, OLF, their employees, or their patients, for the benefit of shareholders.

20. The Conditions of the Decision include, among other requirements: a prohibition on the use of RWMC and OLF or their real estate as collateral for further debt, or for the sale of these assets, without approval by the Attorney General; regular financial reporting to the Attorney General on Prospect Medical Holdings and the CharterCARE hospitals; notice to the Attorney General of certain changes to hospital operations, contracts, or other financial changes; certain operating covenants, including the requirement that Prospect Medical Holdings ensure timely payment for CharterCARE expenses related to payroll, employee benefits, and vendor invoices; and establishment of escrow accounts totaling \$80 million, funded at the expense of the Transacting Parties, to be released in accordance with the Transacting Parties' compliance with the Conditions.

b. Findings of Prospect Medical Holdings' Non-Compliance

21. The Attorney General conducts ongoing monitoring to ensure the Transacting Parties' compliance with the Conditions. To aid in this effort, the Attorney General retains a financial consultant, RSM US LLP ("RSM") to review and provide quarterly and annual reports on key financial and other metrics.

22. Ongoing compliance monitoring of the Conditions has revealed a pattern of non-compliance with the Conditions.

23. **Outstanding Accounts Payable.** Under Condition 7.2, Prospect CharterCARE is required to "ensure its vendors are paid on a timely basis. In the event accounts payable days outstanding is greater than 90 days, [Prospect Medical Holdings] shall provide funding to PCC so that accounts payable are less than 90 days at the next quarterly measurement."

24. Further, Condition 5.2 requires that Prospect Medical Holdings “[e]nsure payment of all of PCC’s operating expenses.”

25. This Spring, according to records provided by Prospect Medical Holdings, outstanding accounts payable 90 days or more overdue totaled over \$11 million at the end of March. After the Attorney General demanded that Prospect Medical Holdings take action to come into compliance with Condition 7.2, [REDACTED]

26. [REDACTED] In August, Prospect Medical Holdings experienced a cyber event that delayed its ability to seek reimbursement throughout the hospital system, further compounding its financial issues.

27. By September 30, 2023, Prospect Medical Holdings had allowed the financial condition of the CharterCARE hospitals to deteriorate further, with over \$18.9 million in accounts payable 90 days or more overdue.²

28. Among current outstanding bills are amounts owed to vendors that provide health care staffing and health care supplies and equipment, as well as municipalities. The Attorney General received information from concerned employees stating that certain surgical supplies could not be timely ordered, causing the cancellation of elective surgeries. These cancelled surgeries include surgeries for sleep apnea, a condition that can have lasting results on a person’s

² See n.1. On November 8, 2023, Prospect represented to the Attorney General that accounts payable greater than 90 days now total **over \$24 million**, as of October 31, 2023.

long term chronic health conditions. Moreover, the employees raised concerns about the continued ability to obtain wound care supplies from vendors.

29. The Attorney General also received a complaint from a local HVAC vendor who had performed multiple HVAC repairs at both hospitals and an ambulatory surgical center and had not been paid for work done from late 2022 through October 2023, with outstanding invoices totaling \$108,422.51.

30. **Unauthorized Amendments to TRS Note and Additional Debt Arrangements.** At the time of the Decision, Prospect Medical Holdings held a promissory note (“TRS Note”) with its creditor, MPT TRS Lender PMH, LLC (“MPT”), which provided \$113 million to Prospect Medical Holdings and was due to be repaid by July 2022.

31. Under Condition 10, Prospect Medical Holdings was required to remove the CharterCARE hospitals’ real estate as collateral should the loan not be repaid and to extend the maturity date until April 2026, ensuring that financial resources would not be unnecessarily diverted from the operation of the CharterCARE hospitals. This provision of the condition was met at or around the time of the Decision.

32. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

33. I

34. In May 2023,

35. To ensure ongoing compliance with the Conditions—for example, to ensure that assets belonging to the Rhode Island hospitals were not leveraged access these additional funds, in violation of the Decision—the Attorney General requested the terms of this new arrangement with MPT. Prospect Medical Holdings attested that the new arrangement did not encumber the Rhode Island properties. However, to date, the Attorney General still has not received a copy of the \$375 million recapitalization agreement, in violation of Condition 33.

36. Notably, despite the receipt of these additional funds to Prospect Medical Holdings, the CharterCARE hospitals now hold even higher balances on overdue payments to vendors.

37. Despite the significance of these outstanding balances and the impacts to patient care, on November 3, 2023 Prospect wrote to the Attorney General requesting “a waiver of compliance with Condition 7.2 up to and including March 31, 2024.” See **Exhibit 2**.

38. **Other Instances of Non-Compliance.** The Attorney General is also aware of other instances of non-compliance with the terms of the Decision. I

39. Prospect Medical Holdings failed to provide, or to timely provide, all notices related to regulatory investigations, as required under Condition 21.

40. Further, in multiple instances Prospect Medical Holdings has delayed providing information to the Attorney General when requested, despite their obligation under Condition 33 to provide “any and all information requested by the Attorney General and/or the Attorney General’s monitor(s) to confirm compliance with all Conditions.”

41. The Attorney General continues to receive reporting from Prospect Medical Holdings as part of its obligations under the Decision, and therefore the Office continues to evaluate new information for ongoing compliance. Further findings of noncompliance may result from that ongoing review.

42. The Attorney General has been in ongoing communication with Prospect Medical Holdings about each of these concerns, including informing them of our findings of non-compliance and requests for action to cure violations. Despite these efforts, significant violations related to hospital operating expenses and transparent and timely reporting to the Attorney General, as detailed above, remain outstanding.

c. Current Financial and Operational Concerns

43. At the same time, the Attorney General is aware of ongoing issues related to Prospect Medical Holdings' financial health over the past year. Widespread reporting has documented Prospect Medical Holdings' inability to meet its obligations at their other facilities across the country.

44. In 2019, Prospect Medical Holdings sold much of the real estate of its non-Rhode Island hospitals to its creditor, MPT, in exchange for an infusion of capital, with the obligation to pay rent on those properties moving forward. This added significant expense to the operation of these facilities.

45. Insufficient funding for hospital operations has impacted facilities in multiple states. At Delaware County Memorial Hospital in Philadelphia, Prospect Medical Holdings shut down vital hospital services over the course of 2022, including the maternity, intensive care, and surgical units, before announcing the closure of the hospital's emergency department. After facing a lawsuit from a local non-profit, Prospect Medical Holdings agreed to keep the emergency department open. Ultimately, the Pennsylvania Department of Health had to close the emergency department in November 2022 because of serious understaffing. In March 2023, Prospect Medical Holdings announced a restructuring of the health system resulting in the elimination of over 200 staff positions.

46. This follows Prospect Medical Holding's decision in September 2022 to close Springfield Hospital, another Pennsylvania hospital, and convert it into an ambulatory surgical center.

47. In the first half of 2023, Prospect Medical Holdings was unable to meet its rent obligations at hospitals in California, Connecticut, and Pennsylvania. As part of the May 2023

recapitalization agreement, Prospect agreed to transfer equity interest in Prospect's managed care line of business in lieu of cash rent payments.

48. This followed MPT's decision to write off \$112 million in unbilled Prospect rent from 2022.

49. This has resulted in significant market turmoil for MPT. MPT's stock has fallen over 50% in the past 12 months, in large part because of the financial troubles associated with its investment in Prospect Medical Holdings.

50. In August 2023, Prospect Medical Holdings experienced a system-wide cyber event, disrupting their ability to collect revenue throughout the system.

51. Hospitals in Connecticut owned by Prospect Medical Holdings are also seeing large amounts of outstanding accounts payable, in excess of \$40,000,000 for one hospital, and these amounts are creating similar issues where vendors are instituting credit holds.

52. Prospect Medical Holdings' finances are currently under investigation by the Connecticut Attorney General in connection with a proposed sale of three hospitals to Yale New Haven Health.

53. Respondent's inability to pay rent or fully cover fundamental operational costs for the CharterCARE hospitals and other hospitals across the country creates urgency in ensuring compliance with the Conditions under the Decision.

V. COUNTS

COUNT I

(Violation of the Hospital Conversions Act, R.I. Gen. Laws § 23-17.14-28)

54. Paragraphs 1 through 53 are incorporated herein.

55. Respondent has violated Conditions 5.2, 7.1, 7.2, 10, 13, 14, 15, 16.2, 21, 23, and 33 of the Attorney General’s June 1, 2021 Decision. A number of these violations materially impact the financial and operational well-being of Roger Williams Medical Center and Our Lady of Fatima Hospital.

56. Violations of these Conditions constitute violations of R.I. Gen. Laws § 23-17.14-28(c), which states that “approval of a conversion involving a for-profit corporation as an acquiror shall be subject to any conditions as determined by the attorney general, provided those conditions relate to the purpose of this chapter.”

57. All Conditions in the Decision, including those that guarantee funding for hospital operating costs, require amendments to the TRS Note, and require ongoing reporting to the Attorney General, relate to the purpose of the Hospital Conversions Act as defined at R.I. Gen. Laws § 23-17.14-3, which includes “assur[ing] the viability of a safe, accessible and affordable healthcare system that is available to all of the citizens of the state.”

58. R.I. Gen. Laws § 23-17.14-28(d)(4) provides that “the attorney general may seek immediate relief in the superior court to enforce any conditions of approval of a conversion.”

59. R.I. Gen. Laws § 23-17.14-28(d)(4) further provides that the attorney general may seek relief in the superior court to enforce conditions imposed under the Hospital Conversions Act and “may impose penalties for noncompliance pursuant to § 23-17.14-30.” R.I. Gen. Laws § 23-17.14-30 specifies certain penalties, including “any corrective action necessary to secure compliance under this chapter, and impose a fine of not more than two million dollars (\$2,000,000).”

60. Respondent has failed to meet their obligations under the Conditions, impairing the financial stability of the CharterCARE hospitals and hindering the Attorney General's oversight authority. Although the Attorney General has previously been successful in petitioning the parties to address failures in compliance without judicial enforcement, the severity and urgency of Prospect's noncompliance at this juncture, in the Attorney General's estimation, requires court intervention. The Attorney General has spoken with the Respondent in advance of this filing about their plans to come into compliance with the Conditions, and we did not receive assurance that they were prepared to do so in a timely manner. Therefore, a court order requiring compliance with the terms of the June 1, 2021 Decision and the imposition of associated penalties are appropriate to protect the CharterCARE hospitals and the communities that they serve.

VI. PRAYER FOR RELIEF

WHEREFORE, the Attorney General requests that this Honorable Court, after an opportunity for a prompt and fair hearing, grant the following relief:

1. Find the Respondent in violation of Conditions 5.2, 7.1, 7.2, 10, 13, 14, 15, 16.2, 21, 23, and 33 of the Attorney General's June 1, 2021 Decision;
2. Enter an injunctive order requiring the Respondent to comply with all requirements under the Conditions of the Attorney General's June 1, 2021 Decision through the end of the conditions monitoring period, as defined in the Decision;
3. Order Respondent to comply with all operating covenants within the Decision, including to immediately provide sufficient funds to maintain the normal operations of the hospital, including amounts sufficient to restore the CharterCARE hospitals' ability to order all

medical and surgical supplies, retain physicians, and pay all outstanding CharterCARE accounts payable more than 90 days overdue;

4. Order Respondent to pay a penalty of up to two million dollars (\$2,000,000.00) per violation of the Hospital Conversions Act, as provided by R.I. Gen. Laws § 23-17.14-30; and
5. Grant such other relief as this Court deems just and proper.

Dated: November 8, 2023

Respectfully submitted,

PETER F. NERONHA,
ATTORNEY GENERAL,

/s/ 

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CERTIFICATION OF SERVICE

I, the undersigned, hereby certify that on the 8th day of November, 2023, I mailed and emailed this document to the attorney for the opposing party whose name is Patrica K. Rocha at the following address: Adler Pollock & Sheehan P.C., One Citizens Plaza, 8th Floor, Providence, RI 02903-1345.

/s/ 

EXHIBIT 1

**STATE OF RHODE ISLAND
OFFICE OF ATTORNEY GENERAL**

June 1, 2021

DECISION

Re: Initial Application of Chamber Inc.; Ivy Holdings Inc.; Ivy Intermediate Holdings, Inc.; Prospect Medical Holdings, Inc.; Prospect East Holdings, Inc.; Prospect East Hospital Advisory Services, LLC; Prospect CharterCARE, LLC; Prospect CharterCARE SJHSRI, LLC; Prospect CharterCARE RWMC, LLC

The Office of Attorney General has considered the above-referenced application pursuant to the Hospital Conversions Act, R.I. Gen. Laws Section 23-17.14-1 *et seq.* In accordance with the reasons outlined herein, the application is **APPROVED WITH CONDITIONS.**

I. INTRODUCTION

The Office of Attorney General (“Attorney General”) issues this Decision pursuant to its statutory obligation to review any proposed conversion as defined by the Hospital Conversions Act (“HCA”), R.I. Gen. Laws Section 23-17.14-1, *et seq.*

This proposed conversion involves a for-profit corporation. Therefore, the Attorney General is required to review the conversion subject to the following section of the Act:

Any approval of a conversion involving a for-profit corporation as an acquiror shall be subject to any conditions as determined by the attorney general, provided those conditions relate to the purposes of this chapter. The conditions may include, but not be limited to, the acquiror’s adherence to a minimum investment to protect the assets, financial health, and well-being of the new hospital and for community benefit.

R.I. Gen. Laws § 23-17.14-28(c).

The review conducted by the Attorney General in order to arrive at this Decision required an investigation into the current owners of a national company, Prospect Medical Holdings, Inc.

(hereinafter, “Prospect” or “PMH”).¹ PMH owns hospitals and physician services in five states, including two hospitals and related healthcare services here in Rhode Island. The Rhode Island hospitals owned by PMH are Roger Williams Medical Center (“RWMC”) and Our Lady of Fatima (“OLF”) (collectively referred to herein as the “Rhode Island Hospitals” or “Hospitals”).²

Our investigation revealed a company whose principals and investors have issued millions of dollars in dividends from a business responsible for the safety-net hospitals and services they own, which has translated into debt held by the entire system, such that liabilities now exceed assets by over \$1 billion. In an ever-changing healthcare market, this debt-to-asset ratio raises a concern for the Attorney General that the national company that owns these Rhode Island Hospitals can become unstable, disrupting and even threatening Rhode Island’s third largest hospital system. In other words, PMH is a system that is at risk of developing a lack of financial ability to respond to the volatility of the healthcare market, putting every hospital in its system including our Rhode Island Hospitals at risk of reduction in services, sale, or closure.

The Attorney General must respond to this risk by protecting the Rhode Island Hospitals. With this Decision the Attorney General is requiring the current owners address the financial uncertainty facing RWMC and OLF by imposing Conditions that include the creation of three escrow accounts³ that total \$80 million, and will exist for the sole benefit of these Rhode Island Hospitals. The precise Conditions placed on these funds create a backstop, allowing the funds to

¹ The reference to Prospect and PMH throughout this decision refers to Prospect Medical Holdings, Inc., Ivy Holdings Inc. (“Ivy”), and Ivy Intermediate Holdings, Inc. (“IIH”), although almost all actions are taken by Prospect Medical Holdings, as Ivy and IIH operate only as holding companies for Prospect Medical Holdings. As such, Ivy and IIH have no operations other than taking required corporate actions, and no financial activities outside of loaning funds to Prospect Medical Holdings. *See* Response to Initial Application Question 16; Supplemental Response S-24.

² PMH also owns a number of non-hospital healthcare entities in Rhode Island.

³ This financial commitment is initially in the form of escrow accounts created by Prospect and Leonard Green. Prospect’s escrows will be converted to letters of credit by August 15, 2021. Leonard Green will make reasonable commercial efforts to also convert its escrows to letters of credit by that same date.

be accessed in the event PMH fails to comply with its ongoing obligation under this Decision to meet the Rhode Island Hospitals' operating expenses and capital needs, or in the event of insolvency, and then only subject to the approval of the Attorney General. In other words, these are not funds on which PMH itself can draw for the ongoing operation of these Hospitals. Instead, the funds will serve as security for the Rhode Island Hospitals—protection from the financial risk Prospect's owners have introduced into the system to which the Hospitals belong. Such funds shall be entirely out of the reach of Prospect's owners and creditors, and will be protected in the event of insolvency. The Attorney General considers this condition absolutely necessary to ensure the ongoing operation of the Hospitals and their ability to serve the health care needs of Rhode Islanders.

The fact that PMH adhered to conditions placed upon it here in Rhode Island—conditions that permitted its purchase of the Rhode Island Hospitals in 2014—does not change the fact that the decisions made by PMH and its owners at the national level now require this response. The 2014 purchase of the Rhode Island Hospitals by PMH was subject to the regulatory approval of both the Attorney General and the Rhode Island Department of Health (“DOH”), pursuant to the HCA and specifically Section 23-17.14-28. The approval of PMH's purchase was therefore subject to conditions that required PMH to make specified investments in the Rhode Island Hospitals. The Attorney General monitored PMH to assure the mandated financial conditions were satisfied. The financial conditions imposed by the regulators, compliance of which was confirmed by the Attorney General, have protected the Rhode Island Hospitals from underfunding and, specifically, the loss of assets experienced by other hospitals in the PMH system. Again, the fact that Rhode Island's regulatory oversight has succeeded in providing some degree of protection to our local Hospitals does not eliminate the need for the protective Conditions included in this Decision.

Discrete and identifiable decisions made by PMH’s owners led to its current financial condition. Details of the Transacting Parties’⁴ financial decisions and resulting circumstances are described in the reports prepared by financial experts on behalf of the Attorney General and DOH, the Carris and PYA Reports, respectively.⁵ These are among the materials upon which this Decision relies. Specific financial details are also discussed below in the context of relevant statutory criteria. However, these comprehensive Reports and the Attorney General’s consideration of criteria as well as the Conditions to which this Approval with Conditions is subject are best understood in the context of the Transacting Parties’ overall financial condition and the most significant decisions that contributed to that condition.

The Transacting Parties provided the audited financial statements (sometimes referred to as “AFS”) of PMH for fiscal years ending September 30, 2015, through September 30, 2020. In 2017, Prospect’s assets exceeded its liabilities by approximately \$67 million. PYA Report 12. As of their most recent, Fiscal Year 2020, audited financial statement, PMH had total assets of \$2,042,389,000 and total liabilities of \$3,102,004,000—the latter exceeding the former by over \$1 billion.⁶ *Id*; see Table 1, *infra*. In Fiscal Year 2018,⁷ PMH borrowed money and thereby assumed

⁴ “Transacting Parties” is defined in Section II below.

⁵ The expert report filed by James P. Carris, CPA, (“Carris Report”) is attached to this Decision as Appendix C. The expert report filed by PYA, P.C. is attached to this Decision as Appendix D.

⁶ Consideration of the effects of COVID-19 on PMH’s financial condition is highly relevant. As noted by the Report of Attorney General’s financial expert James P. Carris:

For the year ended 9/30/20, PMH recognized approximately \$117 million in Pandemic relief grant income. While PMH reported comprehensive loss of approximately \$90 million for FY 2020, the loss would have been over \$200 million without this programmatic support.

Carris Report 10.

Overall, based on PMH’s audited financial statements, its financial condition was improved in the short term, not worsened, by the pandemic. *See* PYA Report 19.

⁷ PMH FY2018 & 2019 AFS. CIIH16-000942-001003.

\$1.12 billion in debt obligations. PYA Report at 15. Also in 2018, the PMH Board of Directors authorized \$457 million of these borrowed funds to be distributed as dividends (“2018 Dividend”). *Id.* This type of transaction where money is borrowed to pay shareholders is called a leveraged dividend recapitalization. The primary beneficiaries of the dividend were Leonard Green, David Topper, and Sam Lee. In the immediate term, the 2018 Dividend was equal to approximately 60 days of operating expenses, leaving PMH cash and cash equivalents equal to approximately 1 day of operating expenses. *Id.* As noted in the Carris Report, “the 2018 [leveraged dividend recapitalization] transaction substantially weakened the balance sheet of PMH, benefitting the shareholders while providing minimal or no funds to any of the local operating entities.” Carris Report 2-3.

In 2019, PMH increased its liabilities by selling certain of its hospital real estate assets in California, Connecticut, and Pennsylvania, and then leasing them back.⁸ *Id.* at 9. Proceeds from this “sale/lease-back” transaction were used to pay debt assumed in 2018. PYA Report 15. Also in 2019, PMH entered into a promissory note (the “TRS” note) and received approximately \$113 million. *Id.* at 11. According to the terms of that note, if it matured without being paid or renegotiated, the Rhode Island Hospitals would have been subject to a sale/lease-back.⁹ *Id.*

Since 2019, PMH has assumed additional debt that is significant to the review by and Decision of the Attorney General. Specifically, PMH received approximately \$276 million in federal funds under the CARES Act as advances on Medicare reimbursement, which will be recouped by the federal government from Medicare reimbursements due to the hospitals under the

⁸ PMH FY2018 & 2019 AFS. CIIH16-000942-001003.

⁹ The Conditions place upon this Approval have eliminated sale of the Rhode Island Hospitals as a means of satisfying this Note for at least the next five (5) years. In any event, such a transaction would constitute a conversion and could not proceed unless approved by the Attorney General. *See* R.I. Gen. Laws § 23-17.14-4(6).

Centers for Medicare and Medicaid Services (“CMS”), under CMS’s Accelerated and Advance Payment Program or Medicare Advance Payment Program (the “MAAP Program”). *Id.* at 16. \$27.5 million of these “MAAP” funds are due to be recouped from the Rhode Island Hospitals. *Id.* at 9.

Both financial experts who evaluated the Proposed Transaction¹⁰ for the State of Rhode Island, James Carris for the Attorney General and PYA for DOH, discuss PMH’s financial decisions dating back to 2018 as relevant to Prospect’s current financial status. PYA concludes: “These patterns in operational performance and recapitalization are relevant because PMH has somewhat limited ability, in the form of current liquidity especially after recoupment of MAAP funds, to weather additional or continued financial challenges. *Id.* at 16, *see also* Carris Report 11-12.

This Decision is also based on a review of decisions by the relevant boards of directors, in light of the multiple board-specific criteria set forth in the HCA. The Attorney General notes a theme of transparency in these criteria. That is, the HCA criteria direct a probing of conversion-related decisions that should provide the opportunity to test assumptions and expectations that will ultimately come to roost on the involved Rhode Island Hospitals. Here, the Transacting Parties employed no objective criteria, no outside or independent consultants, and no discernible analyses in the process of deciding upon the transaction we review. These decisions by the Transacting Parties are concerning to the Attorney General and further support conditions which will protect the Rhode Island Hospitals going forward.

Finally, and again in accord with the Attorney General’s statutory duties under the HCA, the character, competence, commitment, and standing in the community of the Transacting Parties

¹⁰ “Proposed Transaction” is defined in Section II below.

was reviewed. For this purpose, the Attorney General took into account the matters discussed above as well as reports from people ‘on the ground’ at these hospitals. The Transacting Parties financial decisions and choices remain a decisive factor, revealing as they do a focus on wealth that puts at risk the well-being of institutions and people who communities in five states rely upon for care, often (as is the case with healthcare) at the time of greatest need. These ‘character’ criteria likewise informed the Conditions which the Attorney General imposes in this Decision.

Approval of a transaction that permits a 60% owner to exit a system of safety-net hospitals, when that system includes two key healthcare institutions in our State, gives this Attorney General great pause when that owner has realized hundreds of millions of dollars and would leave behind a system that is highly leveraged, that is, where liabilities greatly exceed assets. However, to permit that owner to remain would, in effect, maintain the status quo and would in no way protect these Rhode Island Hospitals in the long term nor “[a]ssure the viability of a safe, accessible and affordable healthcare system that is available to all of the citizens of the state.” R.I. Gen. Laws §23-17.14-3(1). And it is that purpose the Attorney General is directed to pursue. Therefore, the Attorney General has concluded that the transaction can proceed only if the following Conditions are met – conditions imposed to assure financially secure, continually operating, and better governed healthcare institutions here in Rhode Island, subject to effective monitoring to the full extent of the Attorney General’s statutory authority.

For reasons set forth more fully herein, the Attorney General is issuing a DECISION TO APPROVE WITH CONDITIONS, which Conditions include (but are not limited to) requirements that Prospect and Leonard Green: (1) immediately set aside \$80 million in either escrow or letter of credit for the sole benefit of the Rhode Island Hospitals, payable at closing, which funds can only be accessed if PMH fails to comply with Conditions requiring payment of operating losses

and capital expenditures, or in the event of insolvency; (2) pay all operating losses over the next five (5) years; (3) invest \$72 million in capital expenditures through the end of fiscal year 2026 based on the schedule set forth in the Conditions below (at a minimum of \$10 million each year); (4) forego any management fees; (5) amend the TRS Note to extend its maturity date and remove the sale/leaseback option for the Rhode Island Hospitals during such an extension, and thereafter only with the approval of the Attorney General; (6) assume payment of the MAAP and PACE liabilities of the Rhode Island Hospitals; (7) maintain essential health services throughout the PCC System; (8) take actions to reform Board practices and constitute the local Board with community members; and (9) provide monitoring and reporting to the Attorney General to ensure oversight and compliance with all Conditions.

II. BACKGROUND

A review under the Hospital Conversions Act begins with the filing of an initial application with the Attorney General and DOH. The parties filed their initial application (“Initial Application”) with the Attorney General on December 13, 2019 (resubmitted on February 4, 2020). The parties (collectively, “Transacting Parties”) to the Initial Application are identified below:

- **Chamber Inc.** (“Chamber”) is a Delaware corporation. Chamber is a newly formed entity that will become the parent of IIH after the close of the Proposed Transaction. The two shareholders of Chamber will be Samuel Lee (“Lee”) and David Topper, through his family trust, (“Topper”).
- **Ivy Holdings Inc.** (“Ivy”) is a Delaware corporation and the current parent of IIH and will remain the parent of IIH after the close of the Proposed Transaction. Ivy current shareholders are Green Equity Investors V, L.P. Green Equity Investor Side V, L.P. (together, “Leonard Green”), Lee, Topper, and less than 10% minority shareholders.
- **Ivy Intermediate Holding Inc.** (“IIH”) is a Delaware corporation and the current parent of PMH and will remain the parent of PMH after the close of the Proposed Transaction.

care entities and manages the provision of health care service for managed care enrollees through its network of specialists and primary care physicians.

- **Prospect East Holdings, Inc.** (“Prospect East”) a Delaware corporation which is a wholly-owned subsidiary of PMH. Prospect East holds PMH’s interest in Prospect CharterCARE, LLC.
- **Prospect East Hospital Advisory Services, LLC** (“Prospect Advisory”), a Delaware limited liability company, which is a wholly-owned subsidiary of PMH. Prospect Advisory oversees and assists in the management of the day-to-day operations of Prospect CharterCARE, LLC.
- **Prospect CharterCARE, LLC**, (“PCC or Prospect CharterCARE”) a Rhode Island limited liability company, which will own the entities that own and operate and hold licensure for the hospitals, RWMC and OLF. Prospect CharterCARE, LLC is currently owned 85% by Prospect East and 15% by CharterCARE Community Board (“CCCB”), however, a buy-out of CCCB’s interest by PCC is contemplated as more fully described below.
- **Prospect CharterCARE RWMC, LLC** (“RWMC”), is a Rhode Island limited liability company, which owns and hold the licensure for Roger Williams Medical Center. RWMC is wholly-owned by Prospect CharterCARE, LLC. RWMC is a 220-bed acute care, community hospital located in Providence, Rhode Island.
- **Prospect CharterCARE SJHSRI, LLC** (“OLF”) is a Rhode Island limited liability company, which owns and holds the licensure for Our Lady of Fatima Hospital. Fatima is wholly-owned by Prospect CharterCARE, LLC. Fatima is a 278-bed acute care, community hospital located in North Providence, Rhode Island.

See Response to Initial Application Question 1, Tab 6 and Appendix A (Organizational Charts pre- and post-transaction).

In its simplest form, the structure of the transaction outlined in the Initial Application (the “Proposed Transaction”) is a buy-out of Leonard Green and the minority shareholders (approximately 60% the company) by Lee and Topper (the current approximately 40% owner) for a total of \$11,940,992.00 for their shares. *See* Appendices A & B.

III. REVIEW CRITERIA

The Attorney General has the statutory duty and authority under the Hospital Conversions Act, R.I. Gen. Laws § 23-17.14-1, *et seq.* to:

- Review a conversion as defined by the HCA and as proposed by the Transacting Parties; and
- Issue a Decision that shall
- Approve, Disapprove, or Approve with Conditions.

The application of this statutory duty and authority in the context of this for-profit conversion directs a review pursuant to an established process, *see id.* § 23-17.14-28(c), and § 23-17.14-3, and a development of Conditions that relate to the purpose of the HCA, *see id.* § 23-17.14-28(c), as discussed below.

The HCA states that “[a]ny approval of a conversion involving a for-profit corporation as an acquiror shall be subject to any conditions as determined by the attorney general, provided those conditions relate to the purpose of this chapter.” *Id.* § 23-17.14-28(c). The statute also says that these conditions “may include, but not be limited to, the acquiror’s adherence to a minimum investment to protect the assets, financial health, and well-being of the new hospital and for community benefit.” *Id.*

The conversion currently under review involves a “for-profit corporation as an acquiror,” namely, Chamber Inc. Hospital Conversion Application 1, *see id.* § 23-17.14-4(2) (“Acquiror” means the person or persons which gain(s) an ownership or control in the new hospital as a result of a conversion”). According to Section 23-17.14-28(c), this conversion is therefore “subject to any conditions as determined by the attorney general, provided those conditions relate to the purpose of this chapter.” The purpose of the HCA is, *inter alia*, to:

(1) Assure the viability of a safe, accessible and affordable healthcare system that is available to all of the citizens of the state;

(2) To establish a process to review whether for-profit hospitals will maintain, enhance, or disrupt the delivery of healthcare in the state and to monitor hospital performance to assure that standards for community benefits continue to be met;

(3) To establish a review process and criteria for review of hospital conversions . . .

Id. § 23-17.14-3.

This purpose has, as required by Section 23-17.14-28(c), guided the Attorney General’s review of the Proposed Transaction. To ensure that the conditions the Attorney General imposes on its approval of this conversion “relate to the purpose of [the HCA],” the Attorney General has reviewed the entire record using the criteria found in the HCA that pertain to for-profit hospitals. These criteria are located at R.I. Gen. Laws Section 23-17.14-7(c), specifically its subsections (3)–(9), (11)–(18), (20)–(25), and (27)–(30).¹¹ They are:

(3) Whether the board established appropriate criteria in deciding to pursue a conversion in relation to carrying out its mission and purposes;

(4) Whether the board formulated and issued appropriate requests for proposals in pursuing a conversion;

(5) Whether the board considered the proposed conversion as the only alternative or as the best alternative in carrying out its mission and purposes;

(6) Whether any conflict of interest exists concerning the proposed conversion relative to members of the board, officers, directors, senior management, experts or consultants engaged in connection with the proposed conversion including, but not limited to, attorneys, accountants, investment bankers, actuaries, health care experts, or industry analysts;

(7) Whether individuals described in subdivision (c)(6) were provided with contracts or consulting agreements or arrangements which included pecuniary

¹¹ Subsections (1), (2), (10), (19), and (26) regard charitable assets and other concerns related to non-profits. Because all Transacting Parties are for-profit entities and do not maintain charitable assets, these conditions were not applicable to the Attorney General’s review. These criteria are included in Section 7 to apply in the event a for-profit entity purchases a non-profit hospital, which is not the case here.

rewards based in whole, or in part on the contingency of the completion of the conversion;

(8) Whether the board exercised due care in engaging consultants with the appropriate level of independence, education, and experience in similar conversions;

(9) Whether the board exercised due care in accepting assumptions and conclusions provided by consultants engaged to assist in the proposed conversion;

...

(11) Whether the board exposed an inappropriate amount of assets by accepting in exchange for the proposed conversion future or contingent value based upon success of the new hospital;

(12) Whether officers, directors, board members or senior management will receive future contracts in existing, new, or affiliated hospital or foundations;

(13) Whether any members of the board will retain any authority in the new hospital;

(14) Whether the board accepted fair consideration and value for any management contracts made part of the proposed conversion;

(15) Whether individual officers, directors, board members or senior management engaged legal counsel to consider their individual rights or duties in acting in their capacity as a fiduciary in connection with the proposed conversion;

(16) Whether the proposed conversion results in an abandonment of the original purposes of the existing hospital or whether a resulting entity will depart from the traditional purposes and mission of the existing hospital such that a cy pres proceeding would be necessary;

(17) Whether the proposed conversion contemplates the appropriate and reasonable fair market value;

(18) Whether the proposed conversion was based upon appropriate valuation methods including, but not limited to, market approach, third party report or fairness opinion;

...

(20) Whether the conversion is proper under applicable state tax code provisions;

(21) Whether the proposed conversion jeopardizes the tax status of the existing hospital;

(22) Whether the individuals who represented the existing hospital in negotiations avoided conflicts of interest;

(23) Whether officers, board members, directors, or senior management deliberately acted or failed to act in a manner that impacted negatively on the value or purchase price;

(24) Whether the formula used in determining the value of the existing hospital was appropriate and reasonable which may include, but not be limited to factors such as: the multiple factor applied to the “EBITDA” – earnings before interest, taxes, depreciation, and amortization; the time period of the evaluation; price/earnings multiples; the projected efficiency differences between the existing hospital and the new hospital; and the historic value of any tax exemptions granted to the existing hospital;

(25) Whether the proposed conversion appropriately provides for the disposition of proceeds of the conversion that may include, but not be limited to:

(i) Whether an existing entity or a new entity will receive the proceeds;

(ii) Whether appropriate tax status implications of the entity receiving the proceeds have been considered;

(iii) Whether the mission statement and program agenda will be or should be closely related with the purposes of the mission of the existing hospital;

(iv) Whether any conflicts of interest arise in the proposed handling of the conversion's proceeds;

(v) Whether the bylaws and articles of incorporation have been prepared for the new entity;

(vi) Whether the board of any new or continuing entity will be independent from the new hospital;

(vii) Whether the method for selecting board members, staff, and consultants is appropriate;

(viii) Whether the board will comprise an appropriate number of individuals with experience in pertinent areas such as foundations, health care, business, labor, community programs, financial management, legal, accounting, grant making, and public members representing diverse ethnic populations and the interests of the affected community; and

(ix) Whether the size of the board and proposed length of board terms are sufficient;

...

(27) Whether a right of first refusal to repurchase the assets has been retained;

(28) Whether the character, commitment, competence and standing in the community, or any other communities served by the transacting parties are satisfactory;

(29) Whether a control premium is an appropriate component of the proposed conversion; and

(30) Whether the value of assets factored in the conversion is based on past performance or future potential performance.

An application of these criteria to this conversion was also necessary to the Attorney General's identification of those facts in the record material to the Attorney General's statutory mandate to "subject [this conversion] to any conditions [that] . . . relate to the purpose of this chapter." *Id.* § 23-17.14-28(c). That is to say, the identified criteria provided the Attorney General the requisite lens with which to view the record, assuring that all the Conditions imposed herein relate to the HCA's purpose, as required by Section 23-17.14-28(c).

The Attorney General's authority under the HCA includes the authority to "adopt rules and regulations to accomplish the purpose of this chapter." R.I. Gen. Laws § 23-17.14-32. This authority is relevant to the Attorney General's construction of the HCA provisions discussed above and elsewhere in this Decision. The construction of various HCA provisions is also provided with an awareness that Rhode Island law "accord[s] great deference to an agency's interpretation of its rules and regulations and its governing statutes, provided that the agency's construction is neither clearly erroneous nor unauthorized." *Endoscopy Assocs., Inc. v. R.I. Dep't of Health*, 183 A.3d 528, 533 (R.I. 2018).¹²

IV. **RECORD**

The record the Attorney General reviewed and considered in rendering this Decision includes the Transacting Parties' Initial Application; supplemental responses and information

¹² As the seat of the Office of Health Care Advocate, the Attorney General also has the power "[t]o take all necessary and appropriate action . . . to secure and insure compliance with the provisions of title[] 23," which includes the HCA. *Id.* § 42-9.1-2(a)(5).

provided thereto; and relevant, publicly available information. Also included in the record are the statements under oath taken by the Attorney General and DOH of the following individuals:

Prospect CharterCARE

1. Jeffrey H. Liebman, CEO of Prospect CharterCARE
2. David Ragosta, CFO of Prospect CharterCARE
3. Daniel Ison, Vice President of Finance Operations, Prospect CharterCARE
4. Lynn Leahey, RN, Chief Nursing Officer - OLF
5. Eleanor Milo, DNP, RN, CENP, NEA-BC, Chief Nursing Officer - RWMC
6. Edwin J. Santos, Prospect CharterCARE - former PCC Category A board member
7. Joseph DiStefano, Esq., Prospect CharterCARE -former PCC Category A board member
8. Andrea Doyle, MD, Prospect CharterCARE former PCC Category A board member
9. Edward Quinlan, Prospect CharterCARE - former PCC Category A board member

Prospect Medical Holdings¹³

10. Samuel Lee, CEO of Prospect Medical Holdings
11. David Topper, Senior Vice President, Prospect Medical Holdings
12. Mark Johnson, CFO of Prospect Medical Holdings
13. George Pillari, Senior Vice President of Integration and Operations of Prospect Medical Holdings

Leonard Green

14. Alyse Wagner, Partner, Leonard Green
15. John Baumer, Partner, Leonard Green

United Nurses & Allied Professionals (“UNAP”)

16. Christopher Callaci, General Counsel, UNAP

The record, moreover, includes comments submitted during the public informational meeting required by the HCA. *See* R.I. Gen. Laws § 23-17.14-7(b)(3)(iv). A public notice was published regarding this informational meeting, as well as a solicitation of written comments

regarding the Proposed Transaction. The Attorney General and DOH jointly held this meeting, virtually via Zoom, on December 10, 2020, from 5 p.m. to 7 p.m.¹⁴ At the beginning of the session, the Transacting Parties were provided an opportunity to give a presentation regarding the Proposed Transaction; afterwards, public comment was taken. Over the course of the meeting, 17 speakers provided public comment.

V. PROCEDURAL HISTORY

Hospital conversions involving RWMC and OLF have been approved by the Attorney General twice before. In 2009, RWMC and OLF (St. Joseph Health System of Rhode Island at the time) affiliated through the creation of CharterCARE Health Partners (“CCHP”). See Attorney General HCA Decision dated October 28, 2009 (“2009 Decision”). Both hospitals were suffering losses at the time, and the purpose of the affiliation was to stem those losses through efficiencies in a combined system. *Id.* at 15-16. The affiliation was approved, with conditions, by Attorney General Patrick Lynch in 2009. *Id.*

Despite the efficiencies achieved through the CCHP affiliation, the system was still struggling with significant operating losses, aging plants, and capital needs. *See* Attorney General HCA Decision dated May 16, 2014 at 7 (“2014 Decision”). In 2011, CCHP began looking for a partner. *Id.* at 9. Ultimately, CCHP selected PMH and contemplated a joint venture whereby PMH owned 85% and CCHP owned 15% of the newly-formed joint venture, called Prospect CharterCARE. *Id.* at 3. The governing structure of the new entity was split equally—50% of the PCC board is appointed by PMH’s ownership interest and 50% is appointed by CCHP’s ownership interest. *Id.* Importantly, this transaction contemplated a \$50 million long-term

¹⁴The meeting took place virtually because, at the time, CDC Guidelines did not allow for in-person meetings, on account of the COVID-19 pandemic.

capital commitment¹⁵ to be funded directly by PMH and an annual \$10 million routine commitment by PCC. *Id.* at 21. The joint venture was approved, with conditions, by Attorney General Peter F. Kilmartin in 2014. *Id.*

Prospect CharterCARE operates two hospitals in Rhode Island, RWMC and OLF. Prospect CharterCARE also operates a number of other non-hospital healthcare facilities in Rhode Island. Prospect, the ultimate parent company to the 85% owner of PCC, operates 17 hospitals in 5 states, as well as many non-hospital healthcare facilities. Prospect was formed in 1996 and started with hospitals in California. Since 2014, Prospect has expanded outside of California to Rhode Island, Connecticut, Pennsylvania, Texas, and New Jersey.¹⁶

In the years following the 2014 transaction, the Attorney General monitored compliance with the conditions by Prospect, CCHP, and the CharterCARE Foundation through an independent monitor, Affiliated Monitors Inc. (“AMI”). Overall, AMI found that Prospect was compliant. *See* AMI First Report on Compliance by Prospect CharterCARE, CharterCARE Community Board, and CharterCARE Foundation with Conditions of Certification Pertaining to the Acquisition of Roger Williams Medical Center, St. Joseph Health Services of Rhode Island, Our Lady of Fatima Hospital and Other Entities dated December 20, 2018 (“AMI First Report”); AMI Second Interim Report on Compliance by Prospect CharterCARE, CharterCARE Community Board, and CharterCARE Foundation with Conditions of Certification Pertaining to the Acquisition of Roger Williams Medical Center, St. Joseph Health Services of Rhode Island, Our Lady of Fatima Hospital and Other Entities dated March 20, 2020 (“AMI Second Report”); AMI Final Report on Compli-

¹⁵ This amount was later increased to approximately \$62 million after the sale of Elmhurst Rehab & Healthcare Center and some of smaller properties. A more complete explanation of this matter is provided in AMI’s Final Report on Compliance dated December 23, 2020.

¹⁶ Prospect has since closed the hospitals in Texas and is in the process of selling the New Jersey hospital.

ance by Prospect CharterCARE, CharterCARE Community Board, and CharterCARE Foundation with Conditions of Certification Pertaining to the Acquisition of Roger Williams Medical Center, St. Joseph Health Services of Rhode Island, Our Lady of Fatima Hospital and Other Entities dated December 23, 2020 (“AMI Final Report”). However, it was often difficult to timely receive information, and AMI noted “the entity did not seem to be focused on collecting and organizing the information necessary to demonstrate its compliance with the conditions set forth in the HCA Decision until pressed by the Attorney General.” *See* AMI Second Report at 26. Late last year, AMI concluded its monitoring of Prospect’s financial commitments and found that overall Prospect had spent \$63,815,932.22 on long-term capital expenditures and PCC had spent \$51,398,707.77 during the four-year monitoring period for routine expenses. *See* AMI Final Report at 35.

However, through this review, the Attorney General discovered that RWMC and OLF subsequently entered into Property Assessed Clean Energy (“PACE”)¹⁷ financing agreements totaling approximately \$60 million. The financing attaches to the respective property as a tax lien—essentially an encumbrance on the property. The PACE financing funds completed in-flight and new projects. [REDACTED]

[REDACTED]. Ison SUO 110:18-111:6, March 15, 2021. This is problematic, as loans taken out by PMH remain as liens on the Rhode Island Hospitals, a matter addressed by the Conditions imposed by this Decision.

Another issue that emerged in the first years after the 2014 transaction was the St. Joseph Health System’s pension liability. This pension liability was a looming concern for CCHP when it pursued a partner in 2011. *See* 2014 Decision at 9. In 2017, the severely underfunded St. Joseph’s

¹⁷ The PACE program provides financing for clean and renewable energy improvements.

pension went into receivership. *See St. Joseph Health Services of Rhode Island, Inc. v. St. Josephs Health Services of Rhode Island Retirement Plan, as amended*, PC-2017-3865 (R.I Super. Ct 2017). While the pension was not assumed by Prospect as part of the PCC joint venture, litigation ensued with a number of claims—including fraud and misrepresentation—asserted against PMH, Leonard Green, and others regarding the handling of the pension. Ultimately, a settlement was reached, after years of contentious litigation. PMH agreed to a payment of \$27,250,000 with no admission of liability.

In the fall of 2019, the Attorney General was notified of the Proposed Transaction, which is described as a buy-out of the private equity investor, Leonard Green & Partners (“Leonard Green”). Initial Application Response to Question 1. The ultimate parent company, Ivy Holdings Inc., would undergo a change of ownership. Ivy is a holding company that owns PMH. Approximately 60% of Ivy is currently owned by Leonard Green and most of the remaining, approximately 40%, is currently owned by the CEO of PMH, Sam Lee, and another its executives, David Topper. The Proposed Transaction consists of Lee and Topper creating a new entity, Chamber Inc., that will take full control of Ivy, PMH, and, by extension, RWMC and OLF. In other words, Lee and Topper will come to own 100% of Ivy and PMH by buying out Leonard Green’s share for approximately \$12 million. *Id.*

Leonard Green initially invested in PMH in 2010 in a “going private” transaction by purchasing a majority of PMH’s then-publicly traded shares for approximately \$150 million and assuming PMH’s liabilities (although Leonard Green never paid those liabilities). *See* Supplemental Response S5-3; *see also* Baumer SUO I 102:5-11, February 9, 2021. Since then, Leonard Green has held a majority of the board seats on Prospect and Ivy—[REDACTED]
[REDACTED]. *See* Wagner SUO I 26:25-27:5; 28:2-4, February 8,

2021; Baumer SUO I 35:19-36:14. The impetus for the Proposed Transaction is that the Leonard Green wants to divest its investment in Prospect. *See* Wagner I 88:10–25; *id.* at 89:25–90:10. This investment has had a significant return: in 2018 alone, Prospect shareholders received \$457 million in dividends, most of which went to Leonard Green. Baumer SUO I at 93:7–17.

An Initial Application was submitted by the Transacting Parties on December 13, 2019 and resubmitted on February 4, 2020. On March 4, 2020, the Attorney General informed the Transacting Parties that there were deficiencies to the Initial Application and requested additional information. On March 25, 2020, the Attorney General received a letter addressing the deficiencies within the Initial Application. Thereafter, on April 8, 2020, the Attorney General and DOH issued the Transacting Parties a notice of completeness letter, starting the 120-day review process. During the review, 7 sets of Supplemental Questions consisting of 279 questions were sent to and responded to by the Transacting Parties.

Three months into the initial 120-days, it became clear to both the Attorney General and DOH that this review would not be complete—healthcare was changing as a result of the COVID-19 global pandemic, the parties had delayed providing relevant information, and there were still many unanswered questions related to the purchase price and other impacts of the Proposed Transaction. *See* Joint Attorney General & DOH Letter to Transacting Parties dated July 3, 2020. On July 3, 2020, the Attorney General and DOH notified the Transacting Parties that the decision deadline would be extended by 90 days. *Id.* As the months unfolded, it became clear to the Attorney General and DOH that they would need additional time to complete a thorough review of the Proposed Transaction, so they notified the Transacting Parties on October 20, 2020 that the decision deadline would be extended to January 29, 2021. *See* Joint Attorney General & DOH Letter to Transacting Parties dated October 20, 2020. On January 18, 2021, the Attorney General

and DOH again informed the Transacting Parties that the deadline would need to be extended and no new date was provided. *See* Joint Attorney General & DOH Letter to Transacting Parties dated January 18, 2021. This extra time was necessary to complete a thorough and robust review of the Proposed Transaction.

VI. DISCUSSION

As outlined above, the review criteria contained in the Hospital Conversions Act applicable to the Proposed Transaction are found at R.I. Gen. Laws Section 23-17.14-7(c). For organizational purposes we have addressed them grouped by topic below.

A. FINANCIAL CRITERIA

The following section discusses the financial criteria and conditions applicable to the HCA conversion under review.

The first group of these concern the value of the proposed transaction, *see* R.I Gen. Laws § 23-17.14-7 (c)(17), (18), (24); the second group consider the Transacting Parties' financial decisions and how those decisions affected both the Proposed Transaction's value, *see id.* § 23-17.14-7 (c)(23), as well as the Attorney General's decision to impose financial Conditions on its approval of the Proposed Transaction, *see id.* § 23-17.14-28(c). As with the other criteria discussed in this Decision, the Attorney General addresses these criteria and conditions upon consideration of the entire record before it.

1. Value of the Transaction

As it reviewed the Proposed Transaction, the Attorney General considered whether its value is one that is fair and that has been reasonably derived. In particular, R.I Gen. Laws Sections 23-17.14-7 (c)(17), (18), and (24) ask the Attorney General to consider the following:

(17) Whether the proposed conversion contemplates the appropriate and reasonable fair market value;

(18) Whether the proposed conversion was based upon appropriate valuation methods including, but not limited to, market approach, third-party report, or fairness opinion;

(24) Whether the formula used in determining the value of the existing hospital was appropriate and reasonable

The Attorney General considers these criteria to set an expectation that the value of a proposed conversion will be capable of objective review by a regulator through examination of valuation methods, outside opinions, and valuation formulas. It is important to note at the outset that no objective valuation methods were used by the Transacting Parties. *See* Response to Initial Application Question 23.

The Proposed Transaction contemplates Lee and Topper (through his family trust) buying out Leonard Green's current ~60% stake in PMH's holding company, Ivy Holdings Inc., as well as that of various minority shareholders'. Response to Initial Application Questions 1–2; Carris Report 1–2; PYA Report 22. Lee and Topper plan to pay Leonard Green and the other shareholders a total of \$11,940,992.00 for their shares.¹⁸ Response to Initial Application Question 1. But rather than use their own money to facilitate the transaction, Lee and Topper anticipate taking the \$11.9 million out of PMH to secure the buyout. Carris Report 1–2. In addition to the cash consideration, Leonard Green will benefit from the Proposed Transaction by being relieved of its responsibility for PMH's approximately \$3.1 billion in current liabilities. PYA Report 18.

The valuation of the Proposed Transaction's concerns the Attorney General for many reasons, the first of which is the source of its \$11.9 million capital cost. The Transacting Parties' testimony on this point evinced a willingness to conflate PMH's assets with the individual assets

¹⁸ Pursuant to Condition 1, "\$10,000,000 payable to Leonard Green pursuant to the Merger Agreement shall be contributed by Leonard Green to the funding of the Escrow Accounts set forth in Condition 6."

of Lee and Topper. The protection and treatment of assets of a safety-net hospital system should be viewed differently from an individual's own wealth.¹⁹ [REDACTED]

[REDACTED]

[REDACTED].” Topper SUO 158:14–15, Dec. 16, 2020. [REDACTED]

[REDACTED].” Lee SUO I 124:6–7, Feb. 25, 2021. From Leonard Green’s perspective, [REDACTED]

[REDACTED] Baumer SUO I 126:25–14. [REDACTED]

[REDACTED] Wagner SUO I 171:2–9, Feb. 8, 2021. Such testimony reveals a troubling perspective held by the Transacting Parties and Leonard Green, namely, that no difference exists between the money belonging to a company that operates over a dozen safety-net hospitals and the money located in the personal bank accounts and investment vehicles of Lee and Topper.

Moving to “[w]hether the proposed conversion contemplates the appropriate and reasonable fair market value,” R.I Gen. Laws § 23-17.14-7 (c)(17), the Attorney General notes that the \$11.9 million price for approximately 60% of PMH is a startlingly low sum for a company owning 17 hospitals in 5 states—especially considering that Leonard Green’s portion of these shares sold for approximately \$150 million in 2010. *See* Baumer SUO I 101:15-102:11. If credited, this marks a 92% loss in PMH’s value in just over a decade, and indicates that PMH is now worth, in total, around just \$20 million. Carris Report 2. Such a precipitous drop is at least in part a function of the debt burden Leonard Green and Lee participated in placing on PMH in 2018 to pay a \$457 million dividend benefiting themselves and other shareholders. *See* Lee SUO I 120:11–19. But

¹⁹ Noteworthy is the fact that neither Lee nor Topper consider the company’s \$3 billion in liabilities as their individual obligation.

even with PMH’s significant debt, there are indications that the company is worth more than its principals acknowledge; in November 2019, the chief executive at another healthcare company, Prime Healthcare Services (“Prime”), offered \$50 million for PMH. *See, e.g.,* Howard Fine, *Prospect Fights Hostile Offer*, L.A. Bus. J., Dec. 6, 2019, <https://labusinessjournal.com/news/2019/dec/06/prospect-fights-hostile-offer/>. [REDACTED]

[REDACTED] Lee SUO I 118:2-13.

Aside from comments regarding Prime’s offer, the Transacting Parties have provided the Attorney General nothing to substantiate the \$11.9 million capital cost. Response to Initial Application Question 23 (“[N]o reports were prepared in connection with the negotiations and ultimate execution of the transaction agreement.”); *see* Carris Report 2 (“[W]e have no way of determining if the \$12 million acquisition price is fair and reasonable.”). They failed to subject the sale to the valuation methods mentioned Section 23-17.14-7 (c)(18), i.e., a “market approach, third-party report, or fairness opinion.” *See* Lee SUO I 120:2-6 [REDACTED]

[REDACTED]

[REDACTED] According to Sam Lee’s testimony, [REDACTED]

[REDACTED]

[REDACTED] Lee SUO I

118:2-13.

Rather than by the methods statutorily recognized in Section 23-17.14-7 (c)(18), \$11.9 million was a number arrived at via [REDACTED]

[REDACTED] Pillari SUO 51:12-16; 56:23-57:1;

March 22, 2021; Baumer SUO I 119:7-15. [REDACTED]

[REDACTED] *See* Wagner SUO I 127:6-129:7. [REDACTED]

[REDACTED] *Id.* And Wagner

believes [REDACTED]

Id. Leonard Green also looked to [REDACTED]

[REDACTED] Baumer SUO I 109:5–17. [REDACTED]

[REDACTED] Again, this [REDACTED] falls far short of the independent and objective methods contemplated by the Hospital Conversions Act.

Given the foregoing, the Attorney General determines that the HCA criteria concerning valuation have not been met. No objective measures of valuation were employed to arrive at the sale price for 60% of the company. Any claim that the Proposed Transaction “contemplates the appropriate and reasonable fair market value” of PMH is belied by [REDACTED]

[REDACTED] Moreover, executives at both PMH and Leonard Green indicated that neither a “market approach, third-party report, [n]or [a] fairness opinion” were undertaken to substantiate the proposed value of PMH. The Transacting Parties’ insistence on evasion and mystification in response to inquiries into valuation—Baumer’s testimony, for example, [REDACTED]

[REDACTED],” Baumer SUO 109:9–17—means the Attorney General cannot say that the Transacting Parties used “appropriate valuation methods” or that “the formula used in determining the value of [PMH] was appropriate and reasonable.”

2. Further Predicates for Financial Conditions

Other of the Transacting Parties’ financial decisions are relevant to the Attorney General’s HCA review when viewed through the lens of the following two applicable statutory sections:

Whether officers, board members, directors, or senior management deliberately acted or failed to act in a manner that impacted negatively on the value or purchase price.²⁰

...

Any approval of a conversion involving a for-profit corporation as an acquiror shall be subject to any conditions as determined by the attorney general, provided those conditions relate to the purposes of this chapter. The conditions may include, but not be limited to, the acquiror's adherence to a minimum investment to protect the assets, financial health, and well-being of the new hospital and for community benefit.

R.I. Gen. Laws § 23-17.14-7(c)(23); 23-17.14-28(c).

a. PMH's Relationship to the Rhode Island Hospitals

Founded in 1996, PMH currently owns 17 hospitals in 5 states. These include RWMC and OLF, both of which PMH purchased in mid-2014. PMH FY2020 AFS 15; *see generally* 2014 Decision. Although intermediate entities exist between PMH and the Rhode Island Hospitals, PMH is the company to whose financial fortunes the Rhode Island Hospitals are most tethered: PMH deploys its standard practice through which [REDACTED]

[REDACTED] Johnson SUO 94:11–95:1, [REDACTED]

[REDACTED] *id.*; the Rhode Island Hospitals' [REDACTED]

[REDACTED] Johnson SUO 35:18–36:12; [REDACTED]

[REDACTED]

[REDACTED] *see id.* at 95:5–22; Lee

²⁰ Both Lee and Baumer admitted as much under oath: When the Attorney General asked Lee [REDACTED]

[REDACTED] Lee SUO I 120:11–14. And he provided the following explanation: [REDACTED]

[REDACTED] Lee SUO I 120:16–19. In other words, [REDACTED]

[REDACTED] Lee SUO I 121:14–15. Mr. Baumer [REDACTED]

[REDACTED] Baumer

SUO I 109:23–110:6. The \$457-million, debt-financed shareholder dividend and this testimony regarding same is sufficient evidence to support the Attorney General's conclusion that PMH's board "deliberately acted or failed to act in a manner that impacted negatively on the value or purchase price." R.I. Gen. Laws § 23-17.14-7(c)(23). This criterion has not been satisfied.

SUO I 141:22–142:1. *See* Topper SUO 116:23–117:4; Carris Report 3 (“PMH manages all cash flow and determines what items will be paid and when they will be paid.”). Despite its dependence on PMH, PCC’s CFO testified that he has no access to and has never seen PMH’s financial statements. Ragosta SUO I 31:20–32:1 Dec. 14, 2020; *see also* DiStefano SUO 96:11–18, Nov. 9, 2020 (“I have never seen a financial statement from [PMH], at least not maybe since 2014.”).

This difference PMH has had to make up between the Rhode Island Hospitals’ revenue and expenses has not been insignificant: Between Fiscal Year 2015 and Fiscal Year 2019, the cumulative loss experienced by RWMC was \$16.6 million. Carris Report 5. That number for OLF was \$8.7 million. *Id.* at 3. RWMC and OLF’s local parent company, PCC, has run even further in the red, having lost a cumulative \$88.2 million from Fiscal Year 2015 to Fiscal Year 2020. *Id.* at 6. These deficits are why auditors for RWMC, OLF, and PCC have repeatedly stated that they are “financially dependent on [their] parent company.” *Id.* 4, 5–7 (“[PCC]” is not substantially viable without support from PMH.”); *see* PCC FY2020 AFS (“As of September 30, 2020, the Company had a receivable of approximately \$32 million due from PMH and its subsidiaries . . . and the Company is dependent on this receivable settling in order to maintain its current liquidity.”). The average annual amount that PMH has contributed to the Rhode Island Hospitals over and above what the Rhode Island Hospitals themselves earned in revenue is \$14.7 million.²¹ There seem to be no signs that this need will soon abate: PCC’s vice president of finance operations, Daniel Ison, testified [REDACTED]

[REDACTED] Ison SUO 175:20–176:22.

²¹ This total number includes a management fee with a yearly average of \$6,977,000. *See* PCC FY2015–2020 AFS. The Attorney General has made it a Condition of this transaction that the management fee be discontinued, which is consistent with the stated plans of the Transacting Parties.

Whether PMH will continue to subsidize PCC and its Rhode Island Hospitals is a major concern. Topper’s testimony on this point was less than reassuring: [REDACTED]

[REDACTED]

[REDACTED] In his words, [REDACTED]

[REDACTED]

Topper SUO 95:4-16; 103:10-18, 104:22-105:10; 140:25-141:8. Asked, [REDACTED]

[REDACTED] Topper answered, [REDACTED]

[REDACTED]

[REDACTED] 103:10-15.²²

Prospect has made such “hard choices” with respect to other hospital systems it owns. In 2019 and 2020 PMH shuttered Nix Health System in Texas. PMH is currently trying to sell its East Orange General Hospital in New Jersey because [REDACTED]

[REDACTED] Topper SUO 104:12–105:10.

The Attorney General asked Topper about his financial commitment to PMH’s Rhode Island hospitals in particular. [REDACTED]

[REDACTED] Topper SUO 141:5–7. The

Attorney General is concerned that the continued financial struggles at PMH’s Rhode Island Hospitals—described above and documented in the expert reports—will soon cause PMH to view them as no longer “an investment that is worthwhile.” *See* Johnson SUO 146:2–7 Feb. 11, 2021

[REDACTED] Lee SUO I 83:15–18 [REDACTED]

[REDACTED]; Topper SUO 135:15–17 [REDACTED]

²² As with other financial conclusions reached by Lee and Topper, most notably the purchase price of ~60% of the company’s shares, no objective analyses or benchmarks appear to be relied upon to define the [REDACTED]

[REDACTED]

[REDACTED] The Attorney General is also concerned that without long-term financial planning—PMH’s CFO [REDACTED]

[REDACTED] Johnson SUO 142:15–143:8—
PMH will be left without a turnaround strategy if and when the light starts (or continues) flickering in Rhode Island.

PYA wonders too that “if PCC operations do not improve to a point where they are contributing to the profitability and/or growth of PMH, it remains unclear whether the new board of IH and PMH would continue funding those portfolio investments.” PYA Report 19. Of further concern is a situation where the only thing keeping crucial Rhode Island healthcare facilities from being underfunded or closing is Lee and Topper’s undefined view of “the numbers.” *See* Lee SUO I 132:18–133:8 [REDACTED]

[REDACTED] Quinlan SUO 120:22–24, Jan. 7, 2020 (stating that the PCC board of directors had no role in making sure PMH provided the Rhode Island Hospitals with adequate resources).

The relevant financial statements do make clear, however, that PMH has tried to improve “the numbers” at the Rhode Island Hospitals. One of the most effective initiatives in this regard has regrettably been to cut costs by way of reducing the Rhode Island Hospitals’ respective workforces: In Fiscal Year 2018, RWMC had 997.86 full-time equivalents, which dropped to 935.21 by the end of Fiscal Year 2019. Change in Effective Control Application of Prospect et al. (“CEC Application”) App. A I. During the same time period, the number of full-time equivalents at OLF fell from 990.26 to 926.02. *Id.* App. A II. Eliminating these jobs saved RWMC and OLF 3% and 8% on their respective wage and salary expenditures. *See* PMH FY2018-2019 AFS.

Despite these force reductions, and as mentioned above, [REDACTED]

[REDACTED] Ison SUO 175:20-176:11.

PMH has also saved money by failing to cover annual depreciation of the Rhode Island Hospitals' capital: For example, from Fiscal Year 2017 through Fiscal Year 2020, PCC only replaced approximately 66% of the annual depreciated value of its assets. PYA Report 10. *Contra* Lee SUO II 20:18-23, March 9, 2021 (stating that PCC has replaced 100% of depreciated capital). The ideal amount of capital investment is typically closer to 100%. PYA Report 10; *see also* Lee SUO II 20:4–11. [REDACTED]

[REDACTED] Johnson SUO 100:13–101:20. The amounts PCC has expended on charity care—0.15% and 0.3% of its operating expenses in Fiscal Year 2019 and Fiscal Year 2020, respectively—is also below some industry standards. PYA Report 10, 14.

b. Overview of PMH's Finances

Money problems have not been limited to PMH's subsidiaries; PMH itself has and continues to struggle financially. *See, e.g.*, PYA Report 19 (explaining that “PMH has reported limited liquidity and a highly leveraged position in recent fiscal years”); Carris Report 11-12.²³ During the 6-year period from Fiscal Year 2015 to Fiscal Year 2020, the company took a cumulative comprehensive loss of \$603 million, and has seen its long-term debt increase from \$451 million in Fiscal Year 2015 to almost \$1.6 billion in Fiscal Year 2020. *See* Carris Report 7–9 (“Growth has been primarily funded through debt and the sale-leaseback of certain properties to MPT.”). By the end of Fiscal Year 2020, PMH's assets exceeded its liabilities by more than \$1

²³ This assessment is not shared by Leonard Green partner Wagner. *See* Wagner SUO I 149:19–21 (claiming that PMH “continues to do . . . very well”).

billion. *Id.* at 8; *see* PYA Report 13 (showing share of liabilities to total assets growing from Fiscal Year 2017 to Fiscal Year 2020).

The company's debt has not been cheap: PMH has had to make approximately \$478 million in interest payments from Fiscal Year 2015 through Fiscal Year 2020. *See* Moody's Investor Service, *Rating Action: Moody's places ratings of Prospect Medical Holdings on review for downgrade*, Feb. 12, 2019, https://www.moodys.com/research/Moodys-places-ratings-of-Prospect-Medical-Holdings-on-review-for--PR_395207 (noting that, "[a]t [PMH's] current leverage levels," tens of millions of dollars of California Quality Assurance Fee ("QAF") reimbursement payments "must be used to repay term loan borrowings. As a result, even when QAF payments are received, they will not be a source of ongoing liquidity for the company."). What is more, the company's ballooning debt has not always translated into enough liquidity to pay its bills: In 2019, PMH needed a \$41-million capital contribution from Leonard Green, Lee, and Topper. PYA Report 15; *see* Carris Report 11 ("[PMH] cannot continue to have significant operating losses and fund necessary capital projects and expect to survive long-term."). The accumulated debt has, as discussed below, turned PMH into a highly leveraged concern. *See* Carris Report 8, 11 ("[PMH's] rapid growth and increase in debt have strained the company's balance sheet. . . . PMH is a highly leveraged company that continues to have large annual losses."); *see also* Moody's Investors Service, *Rating Action: Moody's downgrades Prospect Medical Holdings, Inc.'s CFR to B3; outlook changed to negative*, Mar. 28, 2019, https://www.moodys.com/research/Moodys-downgrades-Prospect-Medical-Holdings-Incs-CFR-to-B3-outlook--PR_397518 (citing PMH's "very high financial leverage, shareholder-friendly financial policies, and a history of failing to meet projections" as reasons for downgrading the company's creditworthiness).

A considerable portion of the approximately \$3.1 billion in liabilities currently on PMH's books is the result of three transactions PMH entered into with Medical Properties Trust, Inc. ("MPT") in 2019. Carris Report 9. In the first of these, PMH sold its hospitals in Connecticut, Pennsylvania, and all but one of its hospitals in California to MPT for approximately \$1.4 billion. *Id.* MPT then leased these hospitals back to PMH. *Id.* PMH, according to its agreement with MPT, will pay rent for at least the next 15 years in order to continue operating in facilities it owned until recently. *Id.* In the second transaction, PMH took out a ~\$51 million mortgage on one of its California hospitals; this mortgage is at a 7.5% interest rate per annum and matures in 2034. *Id.* And in the third transaction, PMH signed a promissory note in exchange for \$113 million from MPT, referred to herein as the "TRS Note." *Id.* Interest on the note is 7.5% per annum and subject to an annual escalation clause. *Id.* PMH must pay back the full note amount by July 2022. *Id.* Alternatively, and subject to approval by the Attorney General and DOH pursuant to the HCA, PMH could discharge the note by selling to and leasing back the Rhode Island Hospitals from MPT. *Id.* [REDACTED]

[REDACTED] *See, e.g.,* Liebman SUO 178:16–18; 179:7–11; 214:24–215:1, Oct. 29, 2020. In their statements under oath, [REDACTED]

[REDACTED] *See, e.g.,* Johnson SUO 78:3–10; 79:13–20; Lee SUO I 183:5–9 [REDACTED]

The Attorney General has addressed this threat to the Rhode Island Hospitals' real estate by prohibiting it from being pledged or used as collateral unless approved by the Attorney General. *See* Conditions 9 and 17. Such prohibition stems from the recognition that the Rhode Island Hospitals' real property, each and together, constitutes a significant proportion of the assets of

PCC—a finding based upon the fact that the Hospital properties constitute a significant proportion of PCC’s real property; that they each and together house and support a significant proportion of the services provided by PCC; and that a significant proportion of PCC’s employees work at the Hospitals. The assets of PCC do not include the cash generated by PCC, which is swept up daily to Prospect, making the Rhode Island Hospitals’ real property a greater proportion of PCC’s assets than it otherwise would be.

In addition to the indebtedness created by the TRS Note, PMH in 2020—when it was no longer subject to the conditions of the 2014 Decision—obtained a \$42 million Property Assisted Clean Energy (“PACE”) loan to pay for improvements to RWMC. Carris Report 10. The loan has a 5.75% annual interest rate and is secured by a lien on RWMC itself. *Id.*; PYA Report 11. An \$18 million PACE loan with the same rate of interest was taken out in early 2021. Carris Report 10. This money is for improvements to, and is secured by, a lien on, OLF. Carris Report 10, PYA Report 11.

PMH recently tapped another temporary source of cash by applying for and receiving money from the federal government pursuant to the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”) and the Paycheck Protection Program and Health Care Enhancement Act (“PPPHCE Act”). Carris Report 10–11. PMH-owned hospitals, including those in Rhode Island, also received relief money from their respective state governments. *Id.* In total, PMH and its affiliates have received approximately \$459 million in COVID-19 relief from the federal government. *See* PYA Report 16. Approximately \$183 million of this money is a grant to PMH and will not need to be paid back. *Id.* PMH will, however, have to find a way to return approximately \$276 million of this government aid over the next 17 months, pursuant to the

MAAP Program. Carris Report 10-11, PYA Report 16. PCC itself is due to return \$27.5 million of the \$276 million total. PYA Report 9.

Like the TRS Note, the debts attached to the Rhode Island Hospitals by the PACE and MAAP borrowing are the subject of Conditions imposed pursuant to this Approval with Conditions. In order to ensure the MAAP liability does not remain with the Rhode Island Hospitals in the event of a sale or insolvency, the Conditions require PMH to fund a \$27 million escrow to be used if PMH does not make these payments, so that this obligation is never left on the Rhode Island Hospitals. The Financial Conditions further require PMH to assume all payments for the PACE debt while it owns the Hospitals, an obligation also protected by millions of dollars in cash escrow.

c. Leonard Green's Role in PMH

The financial performance of the Rhode Island Hospitals and PMH sketched above has occurred while both have been under the ultimate control of Leonard Green, the company with the largest share of PMH stock and the majority of PMH board seats, *see, e.g.*, Wagner SUO I 37:13–21, and the one which is seeking an exit in this conversion. [REDACTED]

[REDACTED] *E.g.*, Wagner SUO I 55:12–57:11. Leonard Green typically uses these funds to buy stakes, some majority others minority, in various companies. Baumer SUO I 96:20–97:24. [REDACTED]

[REDACTED] Baumer SUO I 49:10–11; 91:8–12; Wagner SUO I 56:4–6; 97:16–98:23; *see also* Wagner SUO I 35:21–23 [REDACTED]

A large portion of that return on investment is expected [REDACTED]

[REDACTED] See Wagner SUO I 88:3–6; 94:15–95:21. The latter method for extracting a return on Leonard Green’s investments—used in the case of PMH—is known as a dividend recapitalization. Carris Report 2-3; Wagner SUO I 25:7–23, 83:24–84:13; see Lee SUO I 66:11–14 [REDACTED]

[REDACTED] Leonard Green also makes money by [REDACTED]

[REDACTED] E.g., Wagner SUO I 131:6–16; 134:7–135:7.

[REDACTED] Baumer SUO I 88:20–24. [REDACTED]

[REDACTED] See *Id.* at 101:15–102:11. [REDACTED]

[REDACTED] *id.* at 107:17–108:2; Supplemental Response S-46 (“[T]he [Leonard Green] entities purchased shares at the [] time it became a private equity investor.”). Except for the approximately \$25 million it contributed in 2019 as part of an \$41-million capital contribution to PMH, which was returned to Leonard Green in under a year, Leonard Green has never put any of its own money into PMH. Supplemental Response S-46 [REDACTED]

[REDACTED] Wagner SUO I 139:21–42; 176:8–12.

But it has taken money out: As mentioned above, in 2012, while under the control of Leonard Green, PMH paid Leonard Green and other PMH shareholders (primarily Lee and Topper) a \$188-million dividend from the proceeds of bonds that PMH issued. See PMH FY2013 AFS at 50. And in 2018, PMH paid Leonard Green and PMH shareholders (again, primarily Lee

and Topper) a total of \$457 million in dividends. Carris Report 8. These funds, like those in 2012, came from placing debt on the company, and were paid [REDACTED] [REDACTED] See, e.g., DiStefano SUO 98:3–24; Doyle SUO 124:3–129:14. The absence of oversight by board members is concerning to the Attorney General and, in accord with the criteria contained within the Hospital Conversions Act, is addressed with Conditions that require proper training for board members and install proper board by-laws.

The scale and timing of the 2018 Dividend is especially troubling: When it was paid, the \$457 million represented approximately 60 days of PMH’s operating expenses. PYA Report 15; Lee SUO II 101:9–16. And it came at a time when PMH had only 1 day’s worth of cash on hand. Carris Report 8; cf. Lee SUO II 72:15–73:18 [REDACTED] [REDACTED] Fiscal Year 2018, moreover, was the year that PMH had a net loss of over \$240 million and in which its total liabilities exceeded its total assets by over \$620 million. PYA Report 12. That year the company reported approximately \$260 million in unfunded pension obligations in the national system. PMH FY2018 AFS. Despite these realities, [REDACTED] [REDACTED]. Lee SUO II 97:10–12, March 9, 2021.

2018 was also the year, as mentioned above, when a significant number of employees at the Rhode Island Hospitals were terminated. Ragosta SUO II 32:12–33:9, March 19, 2021.

[REDACTED] [REDACTED] During this period, and also mentioned above, PMH’s capital investments were not keeping up with depreciation at the Rhode Island Hospitals. Notwithstanding these struggles, Wagner testified [REDACTED] Wagner SUO I 144:1-

145:2; *see also* Supplemental Response S2-10 (“The Company’s senior management determined that the Company had sufficient surplus and that the making of the dividend was in the [C]ompany’s best interest.”); Lee SUO I 135:10–136:14 [REDACTED]

PMH’s CEO Sam Lee personally received approximately [REDACTED] of this 2018 dividend, Lee SUO 137:2–4; Topper (via his family trust) took home between [REDACTED] Topper SUO 150:21–23. These numbers likely account for why this dividend was [REDACTED]

[REDACTED] Baumer SUO I 141:12–15; Lee SUO I 136:9–11 [REDACTED] All told, from 2012 to 2020, Leonard Green, Lee, and Topper have together paid themselves over half a billion dollars in cash from debt that went onto PMH’s books—this while the company took the aforementioned \$603 million cumulative comprehensive loss from Fiscal Year 2015 to Fiscal Year 2020. *See* Wagner SUO I 140:16–21 [REDACTED]

[REDACTED] The disconnect between investor returns and financial performance contradicts, among other of the Transacting Parties’ representations, PMH’s CFO Mark Johnson’s testimony that “[t]here are really not” major difference between PMH’s business model and that of non-profit hospitals. Johnson SUO 22:9–12.

The reason provided under oath for paying these huge dividends is almost as alarming as their size and timing: the dividends were taken because, in Leonard Green’s estimation, [REDACTED] [REDACTED] Wagner SUO I 83:24-85:7; *see* Carris Report 7-8. Instead of using what Wagner called PMH’s “extra earnings” to further pay down existing debt, invest in its facilities, or contribute to a rainy-day fund, she and Leonard Green saw them as a nuisance that was [REDACTED] Wagner SUO I 84:14–24

Wagner SUO I 166:8–9 [REDACTED] Moody’s Investors Service, Mar. 28, 2019, *supra* (“Moody’s believes that hospital industry-wide challenges to growth and margin expansion, including weak patient volume trends and increasing cost pressures, will constrain organic earnings and cash flow growth going forward.”). As PYA wrote in its report, PMH currently “has somewhat limited ability, in the form of current liquidity especially after recoupment of [funds advanced to PMH by the federal government during the COVID-19 pandemic], to weather additional or continued financial challenges.” PYA Report 16; *see also* Carris Report 7 (“COVID-19 adversely affected [PMH’s] operations in FY 2020”). “That, in turn,” said PYA, “is a risk to the ongoing financial viability of PCC as a PMH subsidiary.” *Id.*; Carris Report 11 (“While pandemic relief from governmental entities has provided PMH with some short-term liquidity, that liquidity will evaporate as governmental funds are repaid and accounts payable becomes normalized.”).

Adding to the Attorney General’s concern is the Transacting Parties’ own characterizations of PMH’s financial condition, both historically and currently. *See, e.g.*, Lee SUO I 143:23–144:2, 144:16–18 [REDACTED] Johnson SUO 33:18–21 [REDACTED]

[REDACTED] Topper SUO 89:13–14 [REDACTED]
[REDACTED] *Contra* Lee SUO II 106:7–11 [REDACTED]
[REDACTED]

[REDACTED] The Transacting Parties sometimes contradictory representations about the condition of PMH have hurt their credibility in the Attorney General’s assessment of the transaction.

emergencies and natural disasters, skilled labor availability, supply chain continuity, [and] regulatory compliance investigations.” PYA Report 18.

Besides the dividends it took, Leonard Green also made money from PMH by charging it [REDACTED] from Fiscal Year 2010 through Fiscal Year 2018.²⁵ Supplemental Response S5-4. Leonard Green partners and PMH executives testified that [REDACTED]. *See* Wagner SUO I 135:19–136:8. In fact, Baumer, the Leonard Green partner most involved with PMH, testified that he spends [REDACTED] Baumer SUO I 35:21–2. All told, Leonard Green made [REDACTED] initial investment in PMH. Baumer SUO I 93:7–17; Wagner SUO I 98:24–99:15; *see* Wagner SUO I 106:25–107:1 [REDACTED]

d. PMH’s Financial Stability

PMH’s “financial health . . . is of vital importance to [PCC] and its subsidiaries and affiliates.” Carris Report 7. Which is why it is concerning that in March 2019, Moody’s Investors Service downgraded its assessment of PMH’s creditworthiness by giving the company a B3 rating. Moody’s Investors Service, Mar. 28, 2019, *supra*. This rating indicates the company’s degree of financial instability is such that lending it money would be “considered speculative and . . . subject to high credit risk.” Moody’s Investors Service, *What is a credit rating?*, <https://ratings.moody’s.io/ratings>. Moody’s cited PMH’s “very high financial leverage, shareholder-friendly financial policies, and a history of failing to meet projections” as reasons for downgrading the company’s creditworthiness. Moody’s Investors Service, Mar. 28, 2019, *supra*;

²⁵ Two separate management fees are discussed in this Decision and should be distinguished. Leonard Green charged [REDACTED]. In addition, PMH ‘charged’ a management fee to PCC which was reflected in the Audited Financial Statements as part of operating expenses. PMH has agreed, and the Attorney General in Condition 11 has required, that upon the buy-out of the 15% CCCB ownership, no management fees will be assessed.

see Wagner SUO I 165:11–22 [REDACTED]

[REDACTED]

In July 2019, after PMH had announced its deal with MPT, Moody’s commented that “the sale-leaseback transaction does not address the company’s continuing operating challenges and lease-adjusted leverage will likely remain high.” Moody’s Investors Service, *Announcement: Moody’s: Prospect Medical’s sale-leaseback improves liquidity, however operating challenges remain*, Jul. 16 2019, https://www.moodys.com/research/Moodys-Prospect-Medicals-sale-leaseback-improves-liquidity-however-operating-challenges--PR_405116. The Service went on to say that there was “no immediate impact on Prospect Medical’s B3 Corporate Family Rating or its negative rating outlook.” *Id.* The Attorney General notes that it was around this time that, by Leonard Green’s lights, [REDACTED] Wagner SUO I 88:7-25.

Various ratios are used by Moody’s and others to gauge a company’s financial health. *See* Moody’s Investors Service, Mar. 28, 2019, *supra*. The following sections record the values of two ratios calculated by the Attorney General’s financial expert—measures of PMH’s solvency and liquidity, respectively. Each section then compares the values for PMH with those of publicly traded hospital companies.²⁶ PYA provided similar comparisons, to similar effect, in its report. PYA Report 14. Again, the Attorney General notes a contradiction between financial reality as depicted in PMH’s financial statements and how it is represented in testimony by PMH, including by PMH’s CFO, who testified that when compared to other participants in the industry, PMH’s financial position [REDACTED] Johnson SUO 86:5–13; Lee SUO II 27:17–20

[REDACTED]

²⁶ [REDACTED]

[REDACTED] Wagner SUO 127:23–129:7.

i. Solvency

The debt-to-equity ratio measures a company's solvency, that is, the company's ability to meet its debt and other financial obligations for the foreseeable future. The lower the value of this ratio, the more solvent the company. A negative debt-to-equity ratio means a company's liabilities outnumber its assets.

The following chart ("Table 1") plots PMH's debt-to-equity ratios from Fiscal Year 2015 through Fiscal Year 2020, which are based on PMH's audited financial statements and calculated by the Attorney General's financial expert. Also plotted are the median debt-to-equity ratios of publicly traded, for-profit hospital companies (*i.e.*, those assigned Standard Industrial Classification 806 by the federal government) for Fiscal Year 2015 through Fiscal Year 2019.²⁷

²⁷ Source: <https://www.readyratios.com/sec/industry/806/>. The Attorney General recognizes that the for-profit, hospital companies used as comparators are not all of similar size to Prospect; however, as companies in the same industry, the comparisons are useful.

TABLE 1

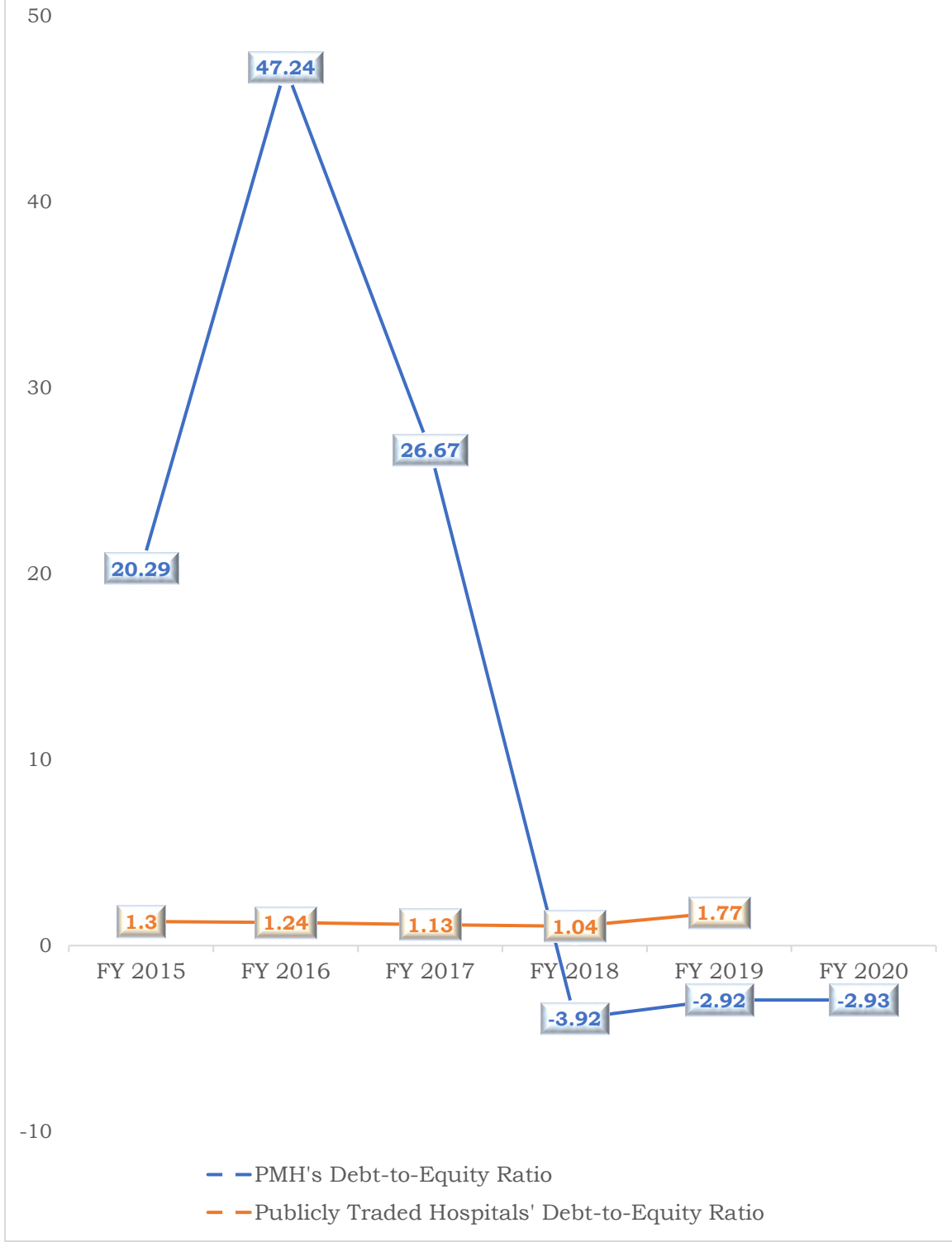


Table 1 shows that PMH had a debt-to-equity value well over 1.0 for Fiscal Years 2015, 2016, and 2017, after which the ratio became negative for the rest of the period. Carris Report 8 (“The debt-to-equity ratio has been negative for the past three years because of large losses and the \$500 million in dividend payments.”). The Attorney General takes particular note of the fact that the plunge in this ratio’s value coincided with the \$457-million dividend taken in Fiscal Year 2018. *Accord Carris Report 2–3* (“[T]he 2018 transaction substantially weakened the balance sheet of PMH, benefitting the shareholders while providing minimal or no funds to any of the local operating entities.”). Moody’s Investors Service, Mar. 28, 2019, *supra* (“Since completing a debt-funded sponsor dividend in early-2018, Prospect’s leverage has increased significantly.”). These values and their trend line indicate that PMH’s ability to meet its medium- and long-term debt obligations are becoming more uncertain with each passing year. *See PYA Report 17* (“PMH is in a highly leveraged position.”). Table 1 also shows that PMH’s debt-to-equity ratios do not compare favorably with those of its publicly traded, for-profit peers, which have hovered between 1.0 and 2.0, and never dipped below 0.0.

ii. Liquidity

Another metric used to gauge a company’s financial health is the quick ratio. *See Carris Report 8*. This ratio measures a company’s liquidity, that is, its ability to cover short-term financial obligations such as payroll, vendor invoices, and outstanding or impending interest payments. Higher values of the quick ratio indicate a company able to meet its short-term obligations; lower values mean the opposite.

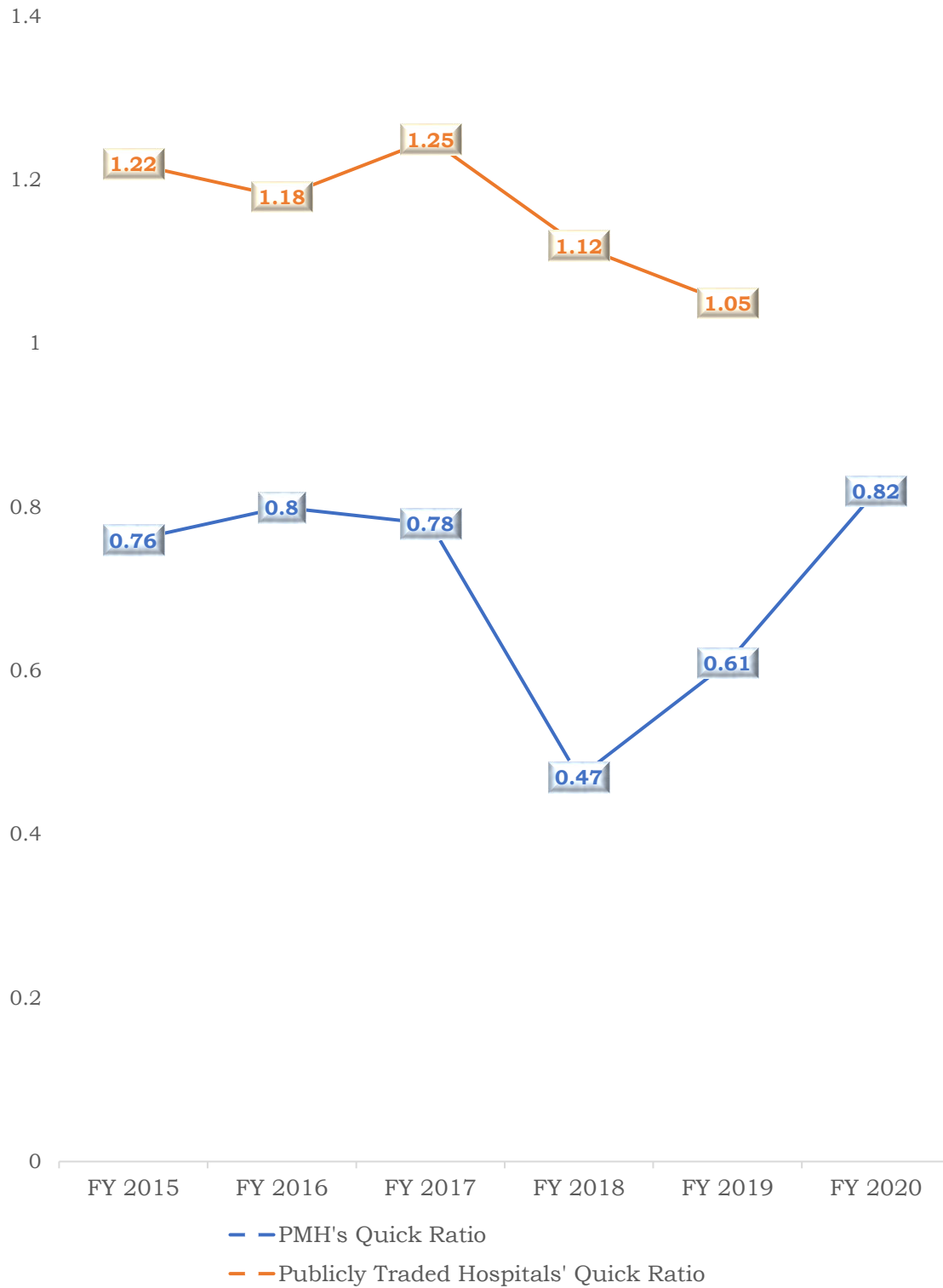
A quick ratio of 1.0, for example, means that a company has a dollar of liquid assets for every dollar in current liabilities. A ratio less than 1.0 indicates that a company has less than a dollar available to pay every dollar in short-term obligations. A ratio of 0.5 would mean a company

has only 50 cents to cover every \$1 in short-term obligations. In essence, the lower the value of this ratio, the more likely it is that a company will be unable to pay its bills. This could force the company to make up for the shortfall by selling illiquid assets at a steep discount or seeking protection in bankruptcy.

The following chart (“Table 2”) plots PMH’s quick ratios from Fiscal Year 2015 through Fiscal Year 2020, which are based on PMH’s audited financial statements and calculated by the Attorney General’s financial expert. Also plotted are the median quick ratios of publicly traded, for-profit hospital companies (i.e., those assigned Standard Industrial Classification 806 by the federal government) for Fiscal Year 2015 through Fiscal Year 2019.²⁸

²⁸ Source: <https://www.readyratios.com/sec/industry/806/>.

TABLE 2



As Table 2 shows, PMH’s quick ratio was under 1.0 at the end of every Fiscal Year from 2015 to 2020, meaning that the company had less than \$1 to cover every \$1 in short-term financial obligations. *See* Carris Report 11 (expressing concern about liquidity crisis at PMH “within 18 to 24 months”). *Contra* Wagner SUO I 149:23–105:1 [REDACTED] [REDACTED] Like the value of its debt-to-equity ratio, PMH’s quick ratio dipped significantly in Fiscal Year 2018, the year of the \$457-million dividend, and the year when Wagner testified [REDACTED] [REDACTED] Wagner SUO I144:11–145:2. This despite Wagner’s acknowledgment that [REDACTED] [REDACTED] *Id.* at 80:8–10. Although these dividends were issued three years ago, with two of the same owners remaining after the transaction, concerns remain and the Conditions imposed by the Attorney General are necessary.

The drop in the value of PMH’s quick ratio illustrates the cash shortfall that precipitated the \$41 million capital contribution made to PMH by its shareholders in Fiscal Year 2019. *See* Wagner SUO I 146:14–22 [REDACTED] [REDACTED] [REDACTED] Moody’s Investors Service, Mar. 28, 2019, *supra* (“Prospect exited its first quarter ending December 31, 2018 without any unrestricted cash and \$20 million of availability on its ABL facility (unrated), thereby limiting financial flexibility. In response to this, Prospect’s sponsor and certain members of management provided the company with a \$41 million cash infusion on January 25, 2019.”). PYA’s report suggests that PMH’s operational performance, assets to serve as collateral, and soon the absence of Leonard Green as a financial partner leaves unclear PMH’s ability to access capital going forward to help paper over future liquidity crises.

See PYA Report 17. The Attorney General sees this as creating a circumstance where PMH will not be able to find operational cash when it is needed. See Carris Report 9 (“PMH has sold substantially all its real property There is very little left to leverage to provide liquidity.”) Moody’s Investors Service, Mar. 28, 2019, *supra* (referring to PMH’s “cash flow cycle” as “typically volatile”).

The uptick in the value of PMH’s quick ratio for Fiscal Year 2020 is due in large part to the federal government’s COVID-19 relief money that flooded in last year to buoy PMH’s balance sheets. Carris Report 10-11 (“Most of the increase [in PMH’s cash on hand] appears to be from these government programs.”); see Baumer SUO I 128:22–129:2 [REDACTED]

[REDACTED] As discussed previously, much of this relief money will be recovered by the federal government via reduced Medicare reimbursement rates. Carris Report 11 (“While pandemic relief from governmental entities has provided PMH with some short-term liquidity, that liquidity will evaporate as governmental funds are repaid and accounts payable becomes normalized.”). And, PYA says, if “delays in economic recovery continues, such delays could have negative impacts on PMH’s and PCC’s liquidity and ability to meet obligations to third parties.” PYA Report 19.

Table 2 above also shows that PMH’s ratio lagged the median ratio of publicly traded hospital companies, which remained over 1.0 from Fiscal Year 2015 to Fiscal Year 2019. This indicates that PMH was at a relatively higher risk of running out of cash or other liquid assets to meet its short-term financial obligations than its publicly traded counterparts.

* * *

As evidenced above, PMH has a history of prioritizing shareholder returns over stable balance sheets. *Accord* Carris Report 11 (“My overall conclusion is that PMH is a highly leveraged

company that continues to have large annual losses. . . . [T]he current owners issued \$500 million in dividends which benefitted the shareholders and weakened the financial position of PMH.”). The company’s commitment to realizing short-term, debt-financed dividends has likely been, in part, the product of Leonard Green’s desire to make back its initial investment plus a return before selling the company, all in just a few years. As opposed to the wellbeing of Rhode Islanders, [REDACTED]

[REDACTED] Wagner SUO I 95:8–9. PMH will hopefully adopt a steadier, less-leveraged, longer-term business plan once Leonard Green exits.

But hope is not enough when it comes to ensuring the continued viability and development of critical Rhode Island healthcare services, particularly when the keys to the company will be handed over to two men who have supported and implemented many of the decisions that kept PMH walking a financial tightrope for years. *See* Baumer SUO I 78:15–18 [REDACTED]

[REDACTED] Wagner SUO I 57:12–18 (same); *see also* Wagner SUO I 19:9–13 [REDACTED]

[REDACTED] Topper SUO 34:16–19 [REDACTED]

[REDACTED]

[REDACTED] Topper SUO 167:2–4 [REDACTED]

[REDACTED]

In order to protect RWMC and OLF from PMH’s practice of operating with substantial leverage, little liquidity, and sizable interest payments, the Attorney General has decided to impose long-term, bankruptcy-shielded monetary conditions that ensure “the acquiror’s adherence to a minimum investment to protect the assets, financial health, and well-being of the new hospital and for community benefit.” § 23-17.14-28(c); *accord* Carris Report 11-12 (suggesting imposition of

financial conditions with similar characteristics). These conditions will secure a future where PMH continues to help its Rhode Island Hospitals meet their operating and non-operating expenses. The conditions also require that PMH increase its capital investment in the Rhode Island Hospitals, both to make up for deferred capital expenditures and to prevent further deferments.

The Conditions mandate that funds necessary for the PCC system be secured up front by \$80 million in either cash escrows or irrevocable standby letters of credit. *See* Carris Report 12 (recommending that financial conditions “be pre-funded or otherwise protected in the event of a restructuring by PMH”). There are two primary reasons for this requirement: The first is to guarantee that operations at the Rhode Island Hospitals will be protected if PMH’s financial position tips into an “Insolvency Event,” as that term is defined in the Conditions below. The second reason for the escrows/letters of credit—as well as a reason for requiring that PMH pay all future costs of the PACE loans—is to dissuade PMH management from treating its Rhode Island Hospitals like it has those in other states: as assets available for encumbrance by PMH in order to forestall a liquidity crunch or insolvency crisis brought on by a business model that has prioritized returns on investment over the needs of safety-net hospitals.

Rhode Islanders can ill afford their healthcare infrastructure serving as a private bank for private investors. The financial conditions the Attorney General imposes here are necessary to protect the State and its citizens from the fallout of such previous practices and from the practices themselves going forward.

B. BOARDS OF DIRECTORS

Numerous provisions of R.I. Gen. Laws Section 23-17.14-7(c) involve a review of the actions of the board of directors of the existing hospital, the acquiree.²⁹ Applying these criteria to

²⁹ *See e.g.*, Hospital Conversions Act, R. I. Gen. Laws §§ 23-17.14-7(c) (3), (4), (5), (8), (9), (10), (11), (13), (14), (15), and (23).

the instant review, the Attorney General reviewed the actions of the boards of directors with respect to their decision to pursue this the Proposed Transaction, the board’s use of consultants, and the structure of the board post-conversion. In addition, the Attorney General makes observations of the functioning of both the PMH and the local boards that pertain to Section 23-17.14-28(c) and the purpose of Chapter 23-17.14. Where board-specific criteria direct consideration of a criterion “in relation to carrying out its mission and purposes,” the Attorney General includes in his consideration the mission and purpose of Prospect CharterCARE which, of course, PMH as the owner of those hospitals is likewise obligated to advance.

1. Board Decision to Pursue a Conversion³⁰

The first criteria of the Hospital Conversions Act guiding the review of the actions of the board of directors in pursuing a conversion is found at R.I. Gen. Laws Section 23-17.14-7(c)(3):

Whether the board established appropriate criteria in deciding to pursue a conversion in relation to carrying out its mission and purposes.

Here, the board of directors did not establish any criteria in the context of pursuing the conversion. *See* Response to Initial Application Question 7. This absence of articulated criteria interferes with the Attorney General’s ability to conduct a meaningful evaluation of the bases for the transaction, such as any goals or plans associated with it, including whether such bases are “appropriate.” This vacuum also undercuts the ability to consider the reasons for the transaction in relation to the mission and purpose of either the PMH board or the Rhode Island Hospitals. Thus, the board’s decision not to establish such criteria is concerning.

Notwithstanding the absence of established criteria, the Transacting Parties offered an explanation for the transaction in the context of their Initial Application. The transaction is

³⁰ For purposes of this section, the reference to “board of directors” means the board of Prospect Medical Holdings, Inc. and Ivy Holdings, Inc.

described as a buy-out of the private equity investors Leonard Green—essentially an in-house transaction—such that criteria in the traditional sense were not applied. *See* Response to Initial Application Question 1. Unlike the traditional third-party transaction, Leonard Green as seller is familiar with the buyers, particularly Lee, who had been operating the company for the entirety of Leonard Green’s investment in Prospect. Leonard Green representatives on the Prospect board testified that, overall, [REDACTED]

See Baumer SUO I 164:14-23; Wagner SUO I 70: 6-25. Additionally, while not “criteria” in the traditional sense, Leonard Green did require certain terms to be made part of the Merger Agreement in order to effectuate the buy-out because [REDACTED]

[REDACTED] *See* Baumer SUO I 118:16-24 (referencing Section 6.09 of the Merger Agreement, a requirement that no dividends be paid for two (2) years or until Prospect fulfilled a \$50 million mandated pension payment (in addition to a \$70 million pension payment that was made initially *see* Section 4.07)); *see also* Supplemental Response S2-5.

As this applicable section of the HCA directs consideration of whether the decision to pursue a conversion relates to the “mission and purpose,” the Attorney General evaluated the decision on those terms, as well. The entity closest to the delivery of health care in Rhode Island and owned by the Transacting Parties is PCC. Its purpose is stated as follows:

The purposes of the Company are: (i) to provide and promote the growth of health care services in the greater Providence, Rhode Island metropolitan service area (including charitable care and community health services); (ii) to provide efficient and cost-effective rendering of health care services for the benefit of health care consumers in the greater Providence, Rhode Island metropolitan service area; (iii) to provide quality medical care at competitive charges; (iv) to provide consumers of health care choice in providers of care; (v) to own, manage, operate, lease or take any other action in connection with operating the Hospitals and other health care related services and businesses; (vi) to acquire (through asset acquisition, stock acquisition, lease or otherwise) and develop other property, both real and personal, in connection with providing health care related services, include, without limitation, general acute care hospitals, specialty care hospitals, diagnostic imaging

centers, ambulatory surgery centers, nursing homes, clinics, home health care agencies, psychiatric facilities and other health care providers; (vii) to deploy ambulatory locations of care; (viii) to recruit and integrate physicians; (ix) to institute safety and quality improvement initiatives; and (x) generally to engage in such other business activities and to do any and all other acts and things that the Board of Directors deems necessary, appropriate or advisable from time to time in furtherance of the purposes of the Company as set forth in this Section 3.1.

Amended & Restated Limited Liability Company of Prospect CharterCARE, LLC dated June 20, 2014 (“LLC Agreement”) Section 3.1.

It is concerning that, as described by the Transacting Parties, the Proposed Transaction was not contemplated “in relation to” these purposes. It is notable to the Attorney General that the purpose for which PCC is organized is closely aligned with the purpose of the Hospital Conversion Act found at § 23-17.14-3(1)—“Assure the viability of a safe, accessible and affordable healthcare system that is available to all the citizens of the State”—to which the Attorney General is directed in § 23-17.14-28(c).

The criterion found at R.I. Gen. Laws Section 23-17.14-7(c)(4) states: “Whether the board formulated and issued appropriate requests for proposals in pursuing a conversion.” There were no requests for proposals—appropriate or otherwise—formulated by the board, again precluding a full review of factors relevant to the decision to pursue the Proposed Transaction. As this was an in-house buy-out of majority stockholders where the sellers comprise 60% of the board, what the Transacting Parties took into account when negotiating the purchase price may be considered “requests for proposals.” In that regard, the Transacting Parties described the following factors:

1. The enterprise value of PMH;
2. The equity value of PMH;
3. The dividend recapitalization transaction which occurred in fiscal year 2018;³¹
4. Future obligations of PMH; and
5. Future capital needs of PMH.

³¹ The dividend recapitalization was a board-approved dividend payment of \$458 million that was made by Prospect to its shareholders in February 2018.

See Initial Application, Tab 23.

While in the context of the Proposed Transaction the above factors were outlined in the Transacting Parties' responses to requests and referenced in testimony, [REDACTED] [REDACTED] See Baumer I 110:24-111:6; Lee I 120:12-19. In other words, there is no independent objective evidence based on which the Attorney General can evaluate the factors the Transacting Parties say they considered.

Section R.I. Gen. Laws § 23-17.14-7(c)(5) states: "Whether the board considered the proposed conversion as the only alternative or as the best alternative in carrying out its mission and purposes." Here, the board considered no alternatives to the Proposed Transaction. In fact, when another offer came in from Prime, [REDACTED] Lee SUO I 118:2-12. Nor is there any evidence that, in deciding to consider only this form of Conversion, the parties accounted for "mission and purpose."

The criterion at R.I. Gen. Laws § 23-17.14-7(c)(11) states: "Whether the board exposed an inappropriate amount of assets by accepting in exchange for the proposed conversion future or contingent value based upon success of the new hospital." The Merger Agreement does not include consideration that is based upon future or contingent value based upon success of Prospect or the Rhode Island Hospitals. In fact, Prospect has been funding losses at the Rhode Island Hospitals since the joint venture in 2014. PYA Report 7. Through testimony, Prospect management [REDACTED] [REDACTED]

See Johnson SUO 147:9-12 [REDACTED] Pillari SUO 102:1-6, March 22, 2021 [REDACTED]

[REDACTED] With respect to the future security (and thus the future value) of the Rhode Island Hospitals, the post-conversion 33% owner David Topper testified [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] The current and post-conversion owner Lee testified that he [REDACTED]
[REDACTED]

[REDACTED] Lee SUO II 41:2-11. While it may seem at first reassuring that the prospective new owners are prepared to commit their own wealth to the Rhode Island Hospitals, [REDACTED]

[REDACTED] However, this is consistent with the evaluation of the Attorney General’s financial expert James Carris, who notes in his report that he anticipates a liquidity crisis for Prospect within 18 to 24 months. Carris Report 11.

To the extent it is the purpose of these criteria to allow meaningful and objective regulatory review of transfers of interest in Rhode Island hospitals, the Attorney General finds that purpose frustrated by the lack of independent, professional, and appropriate criteria; appropriate requests for proposal; and consideration of alternatives in relation to the Proposed Transaction.

2. Board Use of Consultants³²

Two criteria in the Hospital Conversions Act deal with a board’s use of consultants. *See* R.I. Gen. Laws §§ 23-17.14-7(c)(8) and (9). These read as follows:

(8) Whether the board exercised due care in engaging consultants with the appropriate level of independence, education, and experience in similar conversions; and

(9) Whether the board exercised due care in accepting assumptions and conclusions provided by consultants engaged to assist in the proposed conversion.

³² For purposes of this section, the reference to “board of directors” means the boards of Prospect Medical Holdings, Inc. and Ivy Holdings, Inc.

The Transacting Parties offered a limited rationale for the process they followed in arriving at the transaction. Specifically, the parties said they are sophisticated and did not need outside assistance for valuation. *See* Initial Application, Tab 23.³³ However, no consultants, other than corporate and outside counsel, were engaged by the board related to the proposed conversion. *See id.* at Responses to Question 8; Question 9. This is concerning to the Attorney General. These criteria direct consideration not simply of whether or not consultants were used by the Transacting Parties in evaluating the Proposed Transaction. The statute directs an evaluation of whether consultants were independent of the parties, brought sufficient training and experience to their review, whether the transacting parties accepted assumptions and conclusions of these qualified and independent reviewers, and, overall, whether due care was exercised by the Board with respect to each of these factors. As is evident from the precise language of these criteria, in a transaction involving a for-profit entity, the ability to see objective and reviewable bases for the conversion is key to the regulator's Decision. Arguably, objectivity is even more important where, as here, the parties are engaged in an in-house transaction without even market forces to pressure a transaction of value to the overall company.

Here, there was no independent eye on this transaction, leaving no basis to conclude that Prospect exercised due care in engaging consultants. R.I. Gen. Laws § 23-17.14-7(c)(8).

3. Remaining Board Criteria

Additional criteria in the Hospital Conversions Act deal with the structure of the board post-conversion. *See* 23-17.14-7(c)(25)(vi)–(ix).³⁴ These read as follows:

³³ Aside from the manner by which the Transacting Parties arrived at the valuation, concerns about the resulting valuation itself are addressed in Section A above.

³⁴ Another consideration is whether the new entity has bylaws and articles of incorporation. *Id.* § 23-17.14-7(c)(25)(i). Here, both have. The new corporate entity that will purchase Leonard Green and the minority owners' shares is Chamber. Chamber is a Delaware corporation incorporated on September 17, 2019. CEC Application Tab 26. Chamber was created for the purposes of effecting the Proposed Transaction. Initial Application 1. Chamber's bylaws were provided by the Transacting Parties and essentially mirror Ivy's bylaws. CEC Application Tab 26.

- (vi) whether the board of any new or continuing entity will be independent from the new hospital;
- (vii) Whether the method for selecting board members, staff, and consultants is appropriate;
- (viii) Whether the board will comprise an appropriate number of individuals with experience in pertinent areas such as foundations, health care, business, labor, community programs, financial management, legal, accounting, grant making, and public members representing diverse ethnic populations and the interests of the affected community; and
- (ix) Whether the size of the board and proposed length of board terms are sufficient.

As is evident, with respect to a transaction involving a for-profit purchase of a Rhode Island hospital or hospital system, the legislature points the Attorney General to consideration of the process by which a board is composed and the skills and diversity of the people who populate the board.

The criterion at R.I. Gen. Laws § 23-17.14-7(c)(14) provides: “Whether the board accepted fair consideration and value for any management contracts made part of the proposed conversion.” The Attorney General evaluated the two management service agreements Prospect has assumed to date since it purchased the Rhode Island Hospitals and does not find a basis to conclude the management services were provided for “fair consideration and value.”

As part of Leonard Green’s investment in Prospect in 2010, a ten-year Management Services Agreement (“LG Management Agreement”) was entered into between Prospect and Leonard Green. *See* C-CIIH-007669-007675. The Transacting Parties asserted that this type of fee “is a standard private equity fee intended to compensate Leonard Green for its time and resources spent working with PMH.” *See* Supplemental Response S3-11. The fee is no longer being collected and “[f]ollowing the closing of the Proposed Transaction, this fee will be eliminated and not

replaced with anything equivalent from any other party.” *Id.* It appears from the testimony that nothing is needed to replace those services, as Prospect used the services infrequently, if at all. *Id.* The conclusion of this arrangement raises the question as to the value of the services paid for given they were rarely used and are not being replaced.

The other management agreement that was considered during this review is the Management Services Agreement that operates between Prospect CharterCARE and Prospect Advisory. *See* 2014 Decision at 15 f. 39 (citing Initial Application Exhibit 18). As part of the 2014 Prospect CharterCARE joint venture, Prospect East, as the managing member of Prospect CharterCARE, LLC, delegated its day-to-day management of the Rhode Island Hospitals to Prospect Advisory under the Management Services Agreement (“PCC Management Agreement”), which provides for a number of services, including assistance with operational activities. *Id.* Under the PCC Management Agreement, Prospect Advisory works with senior leadership team members of Prospect CharterCARE, LLC to run the day-to-day operations of the Rhode Island Hospitals. This type of agreement is unique to Prospect CharterCARE because of the joint venture; Prospect does not have these types of agreements with its other hospital subsidiaries. As discussed below, the parties contemplate that the Prospect CharterCARE joint venture will be dissolved, and Prospect will gain 100% ownership in Prospect CharterCARE. Prospect plans to eliminate the PCC Management Agreement once the St. Joseph’s pension settlement is approved. *See* Supplemental Response S7-9. As is already contemplated by the Transacting Parties, the Attorney General will require that the Management Services Agreement be terminated as a condition of approval. The Attorney General will also require that no accrued management fees be assessed against, or collected from, PCC.

4. Other Board Issues

Throughout the Attorney General’s review of the Proposed Transaction, there were a number of other board related issues and concerns that surfaced as to both the Prospect and Ivy boards of directors, as well as the Prospect CharterCARE board of directors. Given the recurring attention in the Hospital Conversions Act to the conduct, composition, and professionalism of boards of directors of for-profit acquirors, the Attorney General includes these observations in this Decision in fulfillment of his duties under the Act.

a. Duty of a Healthcare Board

Throughout this review, the Attorney General has focused on the duty of a healthcare board, especially in the face of the Prospect and Ivy boards permitting new debt in order to issue large dividends, leading, as it has, to a significantly untenable debt-to-asset ratio and financial risk, in a sector that not only employs thousands of Rhode Islanders but on which we often must rely for care at our most vulnerable moments. As discussed above, by passing the Hospital Conversions Act, the legislature accounted for and balanced the risks associated with for-profit ownership of hospitals and hospital systems by requiring the Attorney General to “protect the assets, financial health, and well-being of the new hospital ...” R.I. Gen. Laws § 23-17.14-2(c).

Towards that end, and specifically with respect to the functioning of the boards of directors, the Attorney General has addressed elsewhere in this Decision the extent to which the Transacting Parties exhibit a conflict between a drive to maximize their own income and the duty to protect safe, viable, accessible healthcare. Here, it was concerning that a board member did not differentiate between the duties associated with membership on a healthcare board from any other board, [REDACTED]

[REDACTED] See Baumer SUO I 41:10-15. Also concerning is that another board

member testified [REDACTED] See Wagner SUO I 35:21-25; 36-1.

b. Additional Concerns: Prospect CharterCARE Board

Under the terms of the 2014 transaction, it was contemplated that the governing board of Prospect CharterCARE, LLC would be a 50/50 board (the “PCC Board”) with half of its members selected by and through Prospect East’s ownership (Category B members) and the other half of the members selected by and through CCCB’s ownership (Category A members). See 2014 Decision at 36. The PCC Board was intended to be the organized governing body responsible for the management and control of the operations of the Rhode Island Hospitals, and governed by the terms of the LLC Agreement. *Id.* The LLC Agreement specifically charges the PCC board with “overall oversight and ultimate authority over the affairs of the Company and the Company Subsidiaries,” and defines 24 actions that require approval of the PCC Board. See LLC Agreement Section 12.1.; Section 8.3. Included in those 24 actions are “[d]evelopment and approval of a strategic plan for the Company” and “[a]pproving the annual operating and capital budgets of the Company.” *Id.* at Section 8.3(b) & (c).

Throughout the review, the Attorney General discovered that the PCC board members were not observing best practices expected of the governing body. Board members did not seem to have a basic working knowledge of the financials of the Prospect CharterCARE. One Category A board member was not aware of Prospect sweeping the cash of PCC daily, see [REDACTED] [REDACTED] or the structure of the PCC board. Another board member was not aware of Category A and Category B members, see [REDACTED] At least two of the four Category A board members had never seen or were not familiar with the LLC Agreement. See [REDACTED] [REDACTED]

Additionally, and of particular concern, [REDACTED]

[REDACTED] See DiStefano SUO 138:17–140:6; Doyle SUO 67:16-68:5. Through testimony, it was reported that [REDACTED]

[REDACTED] See Ison SUO 51:16-24, 52:7-15. [REDACTED]

[REDACTED] See Doyle SUO 83:4-84:3. It appears to the Attorney General that the PCC board was simply putting a “rubber stamp” on the actions of Prospect. This is especially concerning when half the PCC board was comprised of representatives (by voting rights) of CCCB. Finally, a long-time member of the PCC board was being compensated under a consulting agreement with Prospect beginning in 2018, a clear and direct conflict of interest. See C-CIIH-008520.

It was also concerning that the PCC board was not provided with information regarding the Proposed Transaction until months after the Merger Agreement was signed, when the Transacting Parties were preparing to re-file the HCA Initial Application in February 2020 and needed signed Conflict of Interest Statements from the PCC board members. See Supplemental Response S-4; see also [REDACTED] While the PCC board would not have a vote as to whether its parent company entered into a transaction, in order to perform their mandated functions, members of the PCC board should, at a minimum, have been provided with a presentation and an opportunity to inquire into the reason for the departure of the 60% private equity owner.

During the pendency of the HCA review, in July 2020, the Liquidating Receiver of CCCB removed and replaced the existing Category A board members. See C-CIIH-007827-007828. That

change prompted a dispute between Prospect and CCCB that resulted in suspension of meetings of the PCC board after June 2020 (except for a special meeting to approve a settlement related to the St. Joseph pension plan litigation). It is highly concerning that the governing body with obligations to oversee two Rhode Island safety-net hospitals was not meeting during the COVID-19 pandemic.

Thereafter, in December 2020, Prospect entered into a Settlement Agreement to resolve all litigation related to the pension (hereinafter referred to as “Pension Settlement”). *See* Case No. 1:18-cv-00328-WES/PC-2017-3856. As part of the Pension Settlement, the LLC Agreement was amended to remove the requirement that the actions listed in Section 8.3 of the LCC Agreement require the approval of the Category A board members. *See* Pension Settlement ¶15. There was also an agreement that the newly appointed Category A board members would not attend any PCC board meeting during the pendency of the proceedings for the settlement agreement. *Id.* at ¶ 19 Agreement. Both of these provisions are concerning to the Attorney General. Certainly, the Attorney General appreciates the complex and contentious litigation that resulted from the St. Joseph pension plan and the enormous amount of time and effort all parties put into a resolution to the matter. To address his concerns, the Attorney General imposes Conditions requiring the LLC Agreement to be amended to require a majority vote of the board members, which will continue to have 40-49% community representation, for all matters in Section 8.3 after the proceedings are complete. Additionally, since approval of the settlement and subsequent buy-out is expected to occur after this Decision, any and all changes to terms of the settlement must be reported to and approved by the Attorney General.

Once Prospect becomes the 100% owner of Prospect CharterCARE, it will have the authority to nominate both Category A and Category B members and/or further amend the LLC

Agreement to remove the Category A members altogether. While Prospect has stated they intend to maintain the Category A members post buy-out, there is currently no requirement to do so. The Attorney General continues to recognize the importance of maintaining local representation on the PCC board, especially with an out-of-state parent, but the board members must be fully engaged and honor their fiduciary duties. Therefore, appropriate conditions will be put in place to ensure the continuance of a locally represented board with meaningful representation that lacks any conflicts of interest and has the tools it needs to fulfill its fiduciary duties.

C. CHARACTER, COMMITMENT, COMPETENCE AND STANDING IN THE COMMUNITY

R.I. Gen. Laws Section 23-17.14-7(c)(28) asks “Whether the character, commitment, competence and standing in the community, or any other communities served by the transacting parties are satisfactory. Section 7(c)(28) is an important and encompassing portion of the Hospital Conversions Act review criteria. Here, the relevant parties under review are Prospect, as well as Lee and Topper, who will become the sole owners of Prospect as a result of the Proposed Transaction. The character, commitment, competence, and standing in the community of Prospect, Lee, and Topper raise serious concerns that must be addressed in a manner to ensure the continued viability of the hospitals.

1. Important Community Asset

Before discussing the character, commitment, competence, and standing in the community of Prospect, Lee, and Topper, the Attorney General wants to recognize the importance of RWMC and OLF in the landscape of Rhode Island healthcare. Both hospitals provide vital services to their surrounding communities. RWMC, an academic medical center, has the state’s only bone marrow transplant program and dedicated behavioral health emergency department. Both hospitals serve

crucial populations, including psychiatric, cancer, and geriatric patients, to name a few. Throughout this review, the Attorney General has seen the dedicated services of the frontline workers that make it possible for these facilities to run and provide care to Rhode Islanders. And it would be neither fair nor accurate to ignore the fact that many of these improvements have occurred under Prospect’s ownership. Capital investments in RWMC and OLF since 2014 have revived aging physical plants, expanded services, and attracted new physicians. *See* AMI Final Report at 35. Even this year, RWMC opened “Rhode Island’s first completely dedicated emergency room unit to treat mental health, drug and alcohol medical emergencies”—certainly an essential need in the state.³⁵

2. Character, Commitment, Competence, and Community Standing as Evidenced by Quality, Employee Relations, Regulatory Failures, and Closed Hospitals

In Rhode Island, the Center for Medicare & Medicaid Services (“CMS”) mediocre star ratings of these hospitals have not improved since 2014 (both were rated at a 3 in 2014).³⁶ In fact, OLF’s star rating has decreased and is most recently at a 2.³⁷ RWMC and OLF are in the bottom half of the state’s hospitals overall based on CMS ratings.³⁸ The Rhode Island Hospitals have been penalized by CMS since 2014 by a reduction in Medicare payments under a program that measures

³⁵<https://www.chartercare.org/news/roger-williams-medical-center-opens-behavioral-health-and-substance-use-emergency-treatment-unit/>.

³⁶ Henry Powderly, *CMS updates hospital star ratings, more than 500 earn top marks*, Healthcare IT News, July 23, 2015, <https://www.healthcareitnews.com/news/cms-updates-hospital-start-ratings-more-500-earn-top-marks> (search “Roger Williams Medical Center” and “Our Lady of Fatima”); <https://www.medicare.gov/care-compare/details/hospital/410004?city=Providence&state=RI> (“Roger Williams Medical Center” as of April 23, 2021).

³⁷ <https://www.medicare.gov/care-compare/details/hospital/410005?city=Providence&state=RI> (“Our Lady of Fatima” as of April 23, 2021).

³⁸<https://www.medicare.gov/care-compare/results?searchType=Hospital&page=1&city=Providence&state=RI&radius=25&sort=closest> (comparing all Rhode Island Hospitals as of April 23, 2021).

rates of infections, blood clots, and other preventable complications that occur at hospitals.³⁹ The Attorney General received a 2017 consulting report that outlines findings of inspection of the equipment in operating rooms at OLF and identifies priority items to address as well as an action plan. *See* C-CIIH-008262-008316. Litigation ensued when Prospect refused to provide an internal report associated with this issue. *See NLRB v. Prospect CharterCARE*, No. 19-2289 (1st Cir. 2019).

We heard from hospital employees that supply shelves are often empty, the equipment and supplies are “substandard,” and old equipment is left unreplaced. *See* Public Meeting, testimony of Lynn Blais 89:13-90:18, Dec. 10, 2020; *see also* testimony of Cindy Fenchel 79:2-22; 79:23-80:5 (noting assault of employees by behavioral health patients due to lack of security guards and larger turnover rate of employees). In March 2020, there was a COVID outbreak in the geriatric psychiatric unit at OLF that infected 19 of the 21 patients. *Id.* at 92:9-13. Unfortunately, 6 later died. *Id.* While the Attorney General appreciates that hospitals across the State and nation were grappling with preparedness for the pandemic early on, these numbers are startling. PCC management has vigorously disputed these criticisms and asserts that the quality of care provided at these hospitals is high. *See* Milo SUO 95:14-23, October 27, 2020; Leahey SUO 64:18-66:7, 143:16-146:15; 147:14-148:8, October 26, 2020.

These concerns are not limited to Rhode Island. Prospect was under a Certificate of Need settlement agreement with the Connecticut Department of Public Health (“DPH”) related to its acquisitions of three Connecticut hospitals in 2016.⁴⁰ Despite meeting all conditions of the

³⁹ Jordan Rau, *Look Up Your Hospital; Is It Being Penalized by Medicare?* KHN, Feb. 18, 2021, <https://khn.org/news/hospital-penalties/> (search “Rhode Island” for penalties from 2015-2021).

⁴⁰<https://portal.ct.gov/OHS/Health-Systems-Planning/Certificate-of-Need/Hospital-Mergers-Acquisitions-and-Compliance> (Waterbury, Docket No. 15-32017-486; Manchester Memorial Hospital & Rockville General Hospital, Docket No. 15-32016-486).

settlement agreement, DPH extended that consent order for 18 months due to clinical and quality concerns.⁴¹ We are informed that the consent order is due to expire in May 2021.

Another consideration here is the relationship among Prospect, the Rhode Island nurses, and other essential front-line workers.⁴² United Nurses and Allied Professionals (“UNAP”), representing roughly 600 employees at OLF, raised concerns about Prospect and registered objections to the Proposed Transaction throughout the entirety of the Attorney General’s review. As mentioned above, the Attorney General heard from union leadership about lack of appropriate and quality medical equipment, staffing shortages, and morale issues. *See* Callaci SUO 86:12-88:21 (identifying inadequate staffing, inadequate equipment, and lack of trust of Prospect as the three major concerns that UNAP has with the operations of OLF). Since Prospect’s acquisition of PCC, roughly 400 ancillary employees formed a union because they were “unhappy with the pressure that comes with inadequate staffing,” among other things. *Id.* at 91:9-22. According to Christopher Callaci, counsel for United Nurses and Allied Professionals which represents staff at Prospect hospitals, roughly 50 to 70 employees at Prospect Rhode Island Home Health and Hospice are voting on whether to organize a union because they are unhappy with Prospect as an employer. *Id.* at 29:5-23. The Attorney General is concerned that labor relations at these two safety net hospitals appear to be fraught. Hopefully, with the resolution of the St. Joseph’s pension case,

<https://www.courant.com/news/connecticut/hc-news-waterbury-manchester-rockville-hospitals-scrutiny-20191210-ina3iijrzzdj3atlwi2lokyqhq-story.html>.

⁴¹ Josh Kovner, *Oversight of for-profit owner of Waterbury, Manchester, Rockville hospital continued for 18 months after suicide, string of medical errors*, Hartford Courant, Dec. 10, 2019, At the time of writing of this decision, a final report on compliance has not been completed.

⁴² The Attorney General notes that a number of physicians have given statements at the Public Meeting and Health Services Council meetings and none have raised concerns about Prospect’s ownership. In fact, many have praised Prospect. With that said, several (though by no means all) of those physicians were recruited under Prospect’s ownership or have formed relationships with Lee, Topper and other Prospect executives, which has not been the experience for the nurses and other frontline workers.

as well as the departure of the private equity owner, the new owners can work on repairing and stabilizing this relationship in the future.

In recent years, Prospect made plans to sell, and later closed, some of its other hospitals. *See* CIIH16-000976. In 2019, Prospect decided to close the Nix Hospital System (“Nix”) in Texas (selling some of its assets to real-estate investors) and sell the East Orange General Hospital (“EOGH”) in New Jersey, as both were “going concern” businesses. *Id.* The sale of EOGH is currently pending. The Attorney General understands that Prospect’s business model of acquiring distressed hospitals with a plan to make them profitable cannot always be successful, but Prospect did not close or sell a hospital during the course of the first twenty years it had been in this business. The recent pattern is concerning. *See* 2014 Decision p. 45.

Further, it cannot go without saying that other conduct discussed herein (*see supra*, Sections A. Board of Directors) weigh heavily against the character, commitment, competence, and standing in the community of these parties. The dysfunctional board, the conflicts, and the failure of the Transacting Parties to meaningfully vet the Proposed Transaction all must be considered and not ignored.

3. Financial Decisions and Priorities of the Transacting Parties

It is significant that the Hospital Conversions Act includes character, competence, commitment, and community standing among the criteria used to review a transaction involving a for-profit acquiror. Clearly the legislature contemplated that, notwithstanding the fact that for-profit companies are permitted to purchase hospitals in Rhode Island, they must be judged not merely based on their ability to meet their own goal of making a profit; both DOH and the Attorney General are directed to consider for-profit acquirors based on higher and more universal measures.

Before addressing the Transacting Parties larger financial decisions, it must be noted that that, while Prospect has made the capital investments required under the 2014 Decision, it has nonetheless failed to keep up with depreciation at the PCC hospitals. *See* PYA Report 10. These equipment concerns [REDACTED]

[REDACTED] *See* C-CIIH-013996.

The Transacting Parties have left a hospital system described in the PYA Report as in a financial condition that “absent governmental assistance associated with the COVID-19 public health emergency, could raise questions regarding the ongoing financial viability of PMH to support its subsidiaries, including PCC.” PYA Report 12. They have also realized over half a billion dollars in dividends that is now carried on the PMH books as debt. *See* Section A, and references therein. Given their course of conduct, it should come as no surprise that the two post-closing owners [REDACTED]

[REDACTED] Topper SUO 140:25-141:8; Lee SUO II 41:2-11.

E. Tax Implications of the Proposed Transaction

There are three criteria in the Hospitals Conversions Act that deal with the tax implications of the Proposed Transaction.⁴³ These criteria have historically been viewed through the lens of a non-profit corporation converting to a for-profit corporation. For instance, considering “[w]hether the conversion is proper under applicable state tax code provisions” (and “[w]hether the proposed conversion jeopardizes the tax status of the existing hospital”) hinges on a non-profit losing its status, which has important tax and other implications. Likewise, “[w]hether appropriate tax status implications of the entity received the proceeds of have been considered” is applicable to a for-profit entity receiving proceeds from a non-profit, which may be charitable or otherwise restricted.

⁴³ *See* R.I. Gen. Laws §§ 23-17.14-7(c)(20), (21) and (25)(ii).

As the Transacting Parties are already for-profit corporations and for-profit limited liability companies, these criteria were not applicable to the Attorney General’s review.

G. MISCELLANEOUS

There are several additional HCA criteria the Attorney General considers applicable to this conversion and that do not fit neatly into the above categories. Those criteria are discussed below. Also discussed below are the HCA’s monitoring requirements.

1. Right of First Refusal

The HCA requires the Attorney General to consider “[w]hether a right of first refusal to repurchase the assets has been retained.” R.I Gen. Laws § 23-17.14-7 (c)(27). The Proposed Transaction does not include a right of first refusal, nor is one necessary.

2. Control Premium

The HCA includes a criterion asking “[w]hether a control premium is an appropriate component of the proposed conversion.” R.I Gen. Laws § 23-17.14-7 (c)(27). The Transacting Parties did not indicate that the buyer will be paying a control premium for Leonard Green’s shares. The Attorney General finds that a control premium would be inappropriate in any case, given the already-significant amount of control Lee exercises over PMH and its subsidiaries. *See, e.g.*, Lee I SUO 47:9-20; 172-3-173:20 (describing his responsibilities as CEO of PMH); Baumer SUO I 22:23–25:18; 30:10–20; 35:17–36:14 [REDACTED]

[REDACTED]

[REDACTED]

3. Monitoring

The HCA mandates that “[f]or a period of five (5) years following the effective date of the conversion . . . [t]he department of health and the department of attorney general shall monitor,

assess, and evaluate the acquiror’s compliance with all of the conditions of approval, as well as annually review the impact of the conversion on healthcare costs and services within the communities served.” R.I. Gen. Laws § 23-17.14-28(d).

The HCA also compels the acquiror—here, Chamber, Inc.— to “pay for the costs” of such “monitoring, evaluation, and assessment in an amount to be determined by the attorney general or the director as they deem appropriate.” *Id.* The money to pay these costs is to be “placed in escrow during the term of the monitoring period.” *Id.*

The Attorney General has conditioned its approval of this conversion on a requirement that Chamber, Inc. enter all agreements with the Attorney General necessary to fulfill its statutory duty to fund the Attorney General’s post-conversion monitoring, evaluation, and assessment. Because the Attorney General expects to choose an entity to begin undertaking these functions soon following the issuance of this Decision, the Attorney General will prompt Chamber, Inc. to enter the required agreements forthwith.

V. CONCLUSION

The overall financial risk created by the financial condition of the Rhode Island Hospitals’ parent company, PMH, threatens to overwhelm the benefits the Hospitals have realized under PMH’s ownership, which is especially concerning because RWMC and OLF are both valued community assets. The financial choices of the Transacting Parties and the condition in which those choices have left the company that owns these Rhode Island healthcare institutions is at odds with the future security of these local hospitals, and the Attorney General does not hesitate to conclude that significant financial conditions are required as a “minimum investment to protect the assets, financial health, and well-being of the new hospital and for community benefit.” R.I. Gen. Laws § 23-17.14-28(c).

Wherefore, based upon the information provided above in this Decision, the Proposed Transaction is **APPROVED WITH CONDITIONS**. These conditions are outlined below.

VI. CONDITIONS

All of the following Conditions are directly related to the proposed conversion and the purposes of the Hospital Conversions Act. The Attorney General's APPROVAL WITH CONDITIONS is contingent upon the satisfaction of the Conditions. The Proposed Transaction shall not take place until CERTAIN CONDITIONS have been satisfied. The Attorney General shall enforce compliance with these Conditions pursuant to the Hospital Conversions Act, including R.I. Gen. Laws Section 23-17.14-30.

DEFINITIONS

The following definitions shall apply to the terms used in these Conditions⁴⁴:

- (1) "Agent/Trustee" as that term is used in these Conditions shall mean a third party, selected by the Attorney General, who, in the event that any escrow or letter of credit funds are delivered to the Agent/Trustee pursuant to Conditions 6.5 or 6.6, respectively: (a) shall act as a fiduciary for the Rhode Island Hospitals and other PCC providers included in these Conditions, (b) who shall hold the funds from the Escrow Accounts and/or Letters of Credit, as applicable, in trust for the Rhode Island Hospitals and other PCC providers included in these Conditions, and (c) shall have duties and powers specific to the holding and distribution of funds delivered to the Agent/Trustee pursuant to Conditions 6.5 and 6.6 as set forth in the Trustee Agreement. The Agent/Trustee may be replaced at any time at the direction of, or with the approval of, the Attorney General.
- (2) "Agent/Trustee Agreement" as that term is used in these Conditions shall mean the document that sets forth the Agent/Trustee's powers and duties specific to the holding and distribution of any funds delivered to the Agent/Trustee pursuant to Condition 6. The Agent/Trustee Agreement and any amendments or modifications thereto shall be subject to the approval of the Attorney General. The Agent/Trustee Agreement shall be approved by the Attorney General no more than sixty (60) days after the closing.
- (3) "CAPEX" shall mean routine and strategic capital investments recognized by GAAP that are limited to the following, unless otherwise approved by the Attorney

⁴⁴ Terms not defined below shall be defined in accordance with the Decision.

General: new equipment, equipment replacement, facility renovation, new facilities, construction in progress, medical office space, implementation of new services, information systems and licenses, physician practice acquisitions up to but no greater than \$5 million during the Conditions and Monitoring Period, and shall include commitments incurred pursuant to capital financing leases.

- (4) “Community Director” shall be defined as an individual who resides or works within the Prospect CharterCARE Service Area and has the appropriate skill sets to serve on a hospital board of directors. *See* R.I. Gen. Laws § 23-17.14-7(25)(viii).
- (5) “Conditions” shall mean Conditions 1-34 and all subparts as set forth herein.
- (6) “Conditions and Monitoring Period” shall begin upon issuance of the Decision and extend through September 30, 2026 of Fiscal Year 2026 and such time thereafter up to reversion of funds pursuant to Condition 6.
- (7) “Essential Health Care Services” to be provided by PCC and its subsidiaries shall mean the following:
 - a) A 24-hour emergency department;
 - b) Medical/Surgical Services and Intensive/Coronary Care Unit;
 - c) Acute Dialysis Services;
 - d) Inpatient and Outpatient Rehabilitation Services, including Sub-acute;
 - e) Ambulatory Care Services;
 - f) Emergency Services, including emergency behavioral health services;
 - g) Inpatient and Outpatient Psychiatric/Mental Health/Addiction Medicine Services;
 - h) Diagnostic Imaging and Interventional/Radiology Services, including diagnostic Cardiac Catheterization;
 - i) Laboratory/Pathology;
 - j) Inpatient and Outpatient Cancer Services including Blood and Marrow Transplantation/ Surgical and Radiation Oncology;
 - k) Sleep Lab;
 - l) Wound Care/Hyperbaric Services;
 - m) Homecare/Hospice services; and,
 - n) Any other primary care service, as defined by R.I. Gen. Laws § 23-17.14-18 and under Rhode Island Department of Health regulations related to said statute, not listed herein.
- (8) An “Insolvency Event” shall occur if Prospect or any of its subsidiaries and/or affiliates shall: (a) file a voluntary bankruptcy petition, (b) be the subject of an involuntary bankruptcy petition that is not dismissed within forty-five days of its filing, (c) suffer, request or acquiesce in the appointment of a receiver, guardian, conservator, trustee, custodian, liquidator or other similar official over such entity or substantially all of the property or assets of such entity that is not reversed or

vacated within forty-five days of such appointment, or (d) make an assignment for the benefit of creditors, or (e) seek or be the subject of any case seeking relief under any federal, state or other statute, law or regulation relating to the creditor/debtor relationship other than as is described in clauses (a) to (d) above (each, a “Proceeding”); provided, however, that it shall not be an Insolvency Event hereunder if the aggregate revenues of the entity or entities subject to the Proceeding (each, an “Affected Entity”) do not exceed 5% of the consolidated revenues of Prospect and all of its consolidated subsidiaries for any of the preceding three fiscal years; and provided further, that the preceding proviso shall not be applicable if, as a direct or indirect result of the Proceeding, Prospect or any of its other subsidiaries or affiliates either (i) lose access to cash in the ordinary course of business in an amount greater than the revenues of the Affected Entity or Entities, or (ii) suffer a material disruption to their operations in the ordinary course of business, in each case, for a period greater than seven (7) days.

- (9) “Leonard Green” shall mean Green Equity Investors V, L.P. (“GEI V”), Green Equity Investors Side V, L.P. (“GEI Side V”), and Ivy LGP Co-Invest LLC (“LGP Co-Invest”).
- (10) “MAAP Obligations” shall mean PCC’s obligations under the **CMS Accelerated and Advance Payment** Program or Medicare **Advance Payment** Program, including all recoupments, fines, penalties and any other related costs and expenses.
- (11) “PCC” or “Prospect CharterCARE” shall mean, collectively, Prospect CharterCARE, LLC and its subsidiaries in existence as of as of the date of the Decision; provided that neither Prospect CharterCARE Elmhurst, LCC nor Prospect CharterCARE Ancillary Services, LLC, shall be included in the definition of PCC or Prospect CharterCARE.

I. TRANSACTION

- 1. The transaction shall be implemented as outlined in the Initial Application, including all Exhibits and Supplemental Responses and as modified and/or amended consistent with these conditions, provided that \$10,000,000 payable to Leonard Green pursuant to the Merger Agreement shall be contributed by Leonard Green to the funding of the Escrows set forth in Condition 6.
- 2. For the duration of the Conditions and Monitoring Period, upon any change in what was represented by the Transacting Parties in the Initial Application, Merger Agreement, or any supplemental responses describing post-closing actions of the Transacting Parties in connection with the approval of this transaction, notice shall be provided to the Attorney General no fewer than thirty (30) days prior to the implementation of any such change.
- 3. For the duration of the Conditions and Monitoring Period:
 - (a) Provide notice to the Attorney General identifying any post-closing contracts, material amendments to existing contracts, or termination of contracts, among any

of the Transacting Parties and any of the current officers, directors, board members, members, or senior management of Prospect CharterCARE and its subsidiaries, no fewer than thirty (30) days prior to the implementation of any such change; and

(b) Provide notice to the Attorney General identifying any post-closing contracts, material amendments to existing contracts, or termination of contracts, among any of the Transacting Parties and any of the current officers, directors, board members, members, or senior management of Prospect Medical Holdings, except for changes to employment contracts, compensation or distribution agreements, no fewer than thirty (30) days prior to the implementation of any such change.

4. Prospect shall pay all costs and expenses due from the Transacting Parties pursuant to the Reimbursement Agreement dated January 28, 2020 in full prior to the closing of the Proposed Transaction.

II. FINANCIAL CONDITIONS

5. **Financial Commitment:** Leonard Green, solely with respect to Condition 5.1, and Prospect shall provide the following support (collectively, the “Financial Commitment”) to PCC:

5.1 Provide for the Escrows and/or Letters of Credit as set forth in Condition 6.

5.2 Ensure payment of all of PCC’s operating expenses and pay the difference between PCC’s total net revenue and total operating expenses (net operating loss) on an ongoing basis.

5.3 Beginning in Fiscal Year 2020 through the end of Fiscal Year 2026, spend not less than \$72.0 million on CAPEX for the Rhode Island Hospitals only, unless otherwise approved by the Attorney General, which shall be spent according to the following schedule:

(a) For the period covering Fiscal Year 2020 and the first three quarters of fiscal year 2021, not less than \$12.0 million; and

(b) For the period between October 1, 2021 and September 30, 2026, not less than \$60 million shall be spent as follows:

i. not less than \$10.0 million during each fiscal year;

ii. not less than \$24 million in CAPEX shall be spent by September 30, 2023; and

iii. not less than \$48 million in CAPEX shall be spent by September 30, 2025.

5.4 No more than \$27 million of PACE financing may be applied against the minimum CAPEX requirement.

- 6. Escrow/Letters of Credit:** Prospect, its parent entities and/or principal shareholders shall fund the following escrow accounts (collectively the “Escrows”) and provide the following irrevocable standby letters of credit (the “Letters of Credit”):
- 6.1 Interim Escrows. Pursuant to one or more escrow agreements acceptable to the Attorney General, Prospect, its parent entities and/or principal shareholders and Leonard Green shall, prior to Closing of the Proposed Transaction, fund three (3) escrow accounts as follows (collectively the “Interim Escrows”):
- (a) The amount of \$12,000,000, of which Prospect shall fund \$4,000,000 and Leonard Green shall fund \$8,000,000 (“the Global Conditions Escrow”);
 - (b) The amount of \$41,000,000 (the “CAPEX Escrow”), of which Prospect shall fund \$14,200,000 and Leonard Green shall fund \$26,800,000;
 - (c) The amount of \$27,000,000, funded entirely by Prospect (“MAAP Escrow”);
 - (d) The Interim Escrows shall comply with, among other things, the terms set forth in Condition 6.5;
 - (e) All funds that Leonard Green is required to provide for the Interim Escrows shall be paid directly by Leonard Green; and
 - (f) The Interim Escrows shall remain in place until replaced as set forth in Conditions 6.2 and 6.3, and the Attorney General shall provide written instructions to the escrow agent for the Interim Escrows to release the funds in the Interim Escrows for the purpose of providing the Letters of Credit and/or Escrows required by Conditions 6.2 and 6.3.
 - (g) In the event a draw or a reduction is required from the Interim Escrows, such draw or reduction shall take place in accordance with the provisions of Conditions 6.4 or 6.5 as applicable.
- 6.2 Prospect Letters of Credit. Prospect, its parent entities and/or principal shareholders shall, on or before August 15, 2021, provide three (3) irrevocable standby letters of credit (collectively the “Prospect Letters of Credit”), in accordance with and subject to Condition 6.6, as follows:
- (a) A \$4,000,000 letter of credit that shall not expire until the Attorney General has determined that Prospect has complied with all Conditions through September 30, 2026 (“Prospect Global Conditions LOC”).
 - (b) A \$14,200,000 letter of credit (the “Prospect CAPEX LOC”) that shall be reduced in accordance with the CAPEX Escrow/LOC Reduction Schedule set forth in Condition 6.4.

- (c) A \$27,000,000 letter of credit (the “MAAP LOC”) that shall not expire until the Attorney General has determined that all of PCC’s MAAP Obligations have been satisfied in full. The MAAP LOC shall, among other things, secure Prospect’s guaranty of PCC’s MAAP Obligations (see Condition 9). The MAAP LOC shall be reduced quarterly, only upon the written determination of the Attorney General, by the amount of the PCC’s MAAP obligations that have been satisfied in the preceding quarter.
- 6.3 Leonard Green Obligations. Leonard Green shall, on or before August 15, 2021, either fund Escrows or provide irrevocable standby Letters of Credit, in accordance with and subject to Conditions 6.5 and 6.6, provided that Leonard Green shall use reasonable commercial efforts to obtain the Letters of Credit as set forth in this Condition 6.3.
- (a) Provide an Escrow or a Letter of Credit in the amount of \$8,000,000 that shall not expire until the Attorney General has determined that Prospect has complied with all Conditions through September 30, 2026 (“LG Global Conditions Escrow/LOC”).
 - (b) Provide an Escrow or a Letter of Credit in the amount of \$26,800,000 (the “LG CAPEX Escrow/LOC”) that shall be reduced in accordance with the CAPEX Escrow/LOC Reduction Schedule set forth in Condition 6.4.
- 6.4 “CAPEX Escrow/LOC Reduction Schedule” shall mean the following reductions in the Prospect CAPEX LOC and the LG CAPEX Escrow/LOC (collectively the “CAPEX Funds”) based on the following conditions:
- (a) An \$8 million reduction in the CAPEX Funds, with 40% of the reduction returning to Prospect and 60% of the reduction returning to Leonard Green, on the later to occur of September 30, 2021, or the date upon which all of the following conditions have been satisfied: (a) the Attorney General has determined in writing, based upon documentation provided by Prospect no later than July 30, 2021, that Prospect has spent not less than \$12.0 million in CAPEX for the Rhode Island Hospitals between October 1, 2019, and June 30, 2021, (provided that none of the foregoing CAPEX payments shall be included in the calculation of the minimum CAPEX requirement set forth in Condition 5.3(b)); (b) Prospect has provided Letters of Credit in accordance with Condition 6.2; and (c) Leonard Green has provided Escrows or Letters of Credit in accordance with Condition 6.3.
 - (b) A \$6.0 million reduction in the CAPEX Funds upon the written determination by the Attorney General that Prospect has complied with all Conditions through September 30, 2022, with the reduction prorated between Prospect and Leonard Green based on the Reduction Percentages.
 - (c) A \$7.0 million reduction in the CAPEX Funds upon the written determination by the Attorney General that Prospect has complied with all Conditions through

September 30, 2023, with the reduction prorated between Prospect and Leonard Green based on the Reduction Percentages.

- (d) A \$7.0 million reduction in the CAPEX Funds upon the written determination by the Attorney General that Prospect has complied with all Conditions through September 30, 2024, with the reduction prorated between Prospect and Leonard Green based on the Reduction Percentages.
- (e) A \$7.0 million reduction in the CAPEX Funds upon the written determination by the Attorney General that Prospect has complied with all Conditions through September 30, 2025, with the reduction prorated between Prospect and Leonard Green based on the Reduction Percentages.
- (f) A \$6.0 million reduction in the CAPEX Funds upon the written determination by the Attorney General that Prospect has complied with all Conditions through September 30, 2026, with the reduction prorated between Prospect and Leonard Green based on the Reduction Percentages.
- (g) If Prospect fails to comply with a mandated condition in a given fiscal year, the scheduled reduction for that fiscal year shall not occur until the Attorney General has determined in writing that Prospect has remedied the failure.
- (h) The term “Reduction Percentages” shall mean 66.67% to the LG CAPEX Escrow/LOC and 33.3% to the Prospect CAPEX LOC.

6.5 The following terms, among others, shall apply to the Escrows:

- (a) The Escrows shall not be funded by PCC’s revenue, funded by a loan secured by PCC’s assets, or collateralized by PCC’s assets;
- (b) The funds in the Escrows shall, at the written direction of the Attorney General, be distributed to the Agent/Trustee, if, as determined by the Attorney General (i) Prospect fails to comply with its obligations under II. Financial Conditions (Conditions 5-11) or Condition 22 (Continuity of Services), and/or (ii) an Insolvency Event occurs;
- (c) The Attorney General shall provide written instructions, in accordance with these Conditions, to the escrow agent regarding the distribution of funds from the Escrows;
- (d) The Escrows shall not be reflected as a liability of PCC or the Hospitals on their financials;

- (e) The Escrows, with the exception of the Interim Escrows set forth in Condition 6.1, shall be (i) with an entity that conducts business in the State of Rhode Island, (ii) be subject to Rhode Island law, and (iii) be subject to an agreement that provides, among other things, for disputes to be resolved in the courts of Rhode Island;
- (f) The agreements governing the Escrows shall be approved by the Attorney General; and
- (g) The escrow agent shall be approved by the Attorney General.

6.6 The following terms, among others, shall apply to the Letters of Credit:

- (a) The Letters of Credit shall not be funded by PCC's revenue, funded by a loan secured by PCC's assets, or collateralized by PCC's assets;
- (b) The Letters of Credit shall list the Agent/Trustee as the beneficiary;
- (c) The Letters of Credit shall be irrevocable standby letters of credit in a form acceptable to the Attorney General;
- (d) The Letters of Credit may be drawn upon by the Agent/Trustee, at the written direction of the Attorney General, if, as determined by the Attorney General: (i) Prospect fails to comply with its obligations under II. Financial Conditions (Conditions 5-11) or Condition 22 (Continuity of Services) and/or (ii) an Insolvency Event occurs;
- (e) The Attorney General shall provide written instructions, in accordance with these Conditions, to the financial institution issuing the Letters of Credit regarding the reduction in the Letters of Credit;
- (f) The Letters of Credit shall not be reflected as a liability of PCC or the Hospitals on their financials;
- (g) The Letters of Credit shall be (i) with an entity that conducts business in the State of Rhode Island, (ii) be subject to Rhode Island law, and (iii) be subject to an agreement that provides, among other things, for disputes to be resolved in the courts of Rhode Island;
- (h) The agreements governing the Letters of Credit shall be approved by the Attorney General; and

- (i) The Letters of Credit shall be issued by one or more financial institutions approved by the Attorney General.
- 6.7 Reduction determinations with respect to the CAPEX Escrows and the Letters of Credit, as applicable, will be made by the Attorney General within thirty (30) days after documentation provided by Prospect to support a reduction is deemed complete by the Attorney General, such completeness determination not to be unreasonably withheld.
- 6.8
 - (a) If the Attorney General determines in writing, as provided in Condition 6.7, that Prospect has failed to comply with any of the required Conditions at any time in a given fiscal year, the Attorney General shall provide Prospect with written notice specifying in reasonable detail the Condition(s) that the Attorney General has determined has not been satisfied and the reasons therefor, and Prospect shall have thirty business days to cure any and all deficiencies with respect to such specified Condition(s). If Prospect has cured any and all deficiencies with respect to such Condition(s) within thirty (30) days of such written notice, the Attorney General shall make the scheduled reduction determination as provided in Condition 6.7.
 - (b) The Attorney General shall notify Prospect ten (10) days prior to any draw of the Escrows or Letters of Credit pursuant to Conditions 6.5(b) or 6.6(d), respectively, such notification to specify in reasonable detail the Condition(s) that the Attorney General has determined has not been satisfied and the reasons therefor, unless exigent circumstances exist, including but not limited to significant service disruptions or imminent closure of either of the Rhode Island Hospitals which require an immediate draw, in which case the Attorney General shall so inform Prospect, and may proceed with the draw within two (2) business days.
- 6.9 Prospect and Leonard Green shall pay all fees and costs associated with the Escrows and Letters of Credit.
- 6.10 Agent/Trustee Agreement. Any of the funds from the Escrows and/or the Letters of Credit that are delivered to the Agent/Trustee shall be governed by the Agent/Trustee Agreement. Prospect and Leonard Green shall execute the Agent/Trustee Agreement within five (5) business days of its approval by the Attorney General.

7. **Operating Covenants**

- 7.1 PCC shall ensure all payroll, including salaries, retirement contributions and benefits, payroll taxes, property taxes, sales taxes, hospital taxes and fees and workers compensation is paid on a timely basis. In the event that any such payments are delinquent by more than 15 days, PMH shall provide funding in an amount equal to the delinquency and cure the delinquency within thirty (30) days upon notification of the delinquency.
- 7.2 PCC shall ensure its vendors are paid on a timely basis. In the event accounts payable days outstanding is greater than 90 days, PMH shall provide funding to PCC so that accounts payable are less than 90 days at the next quarterly measurement.

8. **PACE Obligation:** Prospect shall guarantee the satisfaction of, and pay, all obligations owed by the Rhode Island Hospitals for PACE financing, including all debt service payments, fines, penalties and any other PACE related costs and expenses during the period of Prospect's ownership of Prospect CharterCARE and the Rhode Island Hospitals, and shall enter into an agreement prior to closing of the Proposed Transaction to meet this obligation.
9. **MAAP Obligation**
 - 9.1 Prospect shall guarantee the satisfaction of, and pay, all MAAP Obligations of the provider organizations within PCC, including the Rhode Island Hospitals and shall enter into an agreement prior to closing of the Proposed Transaction to meet this obligation.
 - 9.2 Prospect shall use its best efforts to obtain favorable terms for the repayment of all of the MAAP Obligations of all the provider organizations within PCC, including the Rhode Island Hospitals, and provide the Attorney General with the terms of any such agreement.
10. **TRS Note and MPT Amendments:** Prospect shall extend the maturity of the TRS Note⁴⁵ to five (5) years from April 30, 2021, and none of the PCC assets shall be used to satisfy the TRS Note during said five (5) year period, including through a sale/lease-back of said assets. Thereafter, any transfer of the PCC assets, including through a sale/lease-back, shall not occur unless and until approved by the Attorney General pursuant to the Hospital Conversion Act, R.I. Gen. Laws § 23-17.14-1 *et seq.* Prospect shall amend the TRS Note to reflect these Conditions and execute it prior to the closing of the Proposed Transaction.
11. **Management Fees:** Upon consummation of the contemplated buy-out of the 15% CCCB ownership in Prospect CharterCARE as approved by the courts or September 30, 2021, whichever is sooner, the Prospect CharterCARE Management Services Agreement shall be terminated and no management fees shall be assessed to or collected from PCC, including prior accrued management fees. During the Conditions and Monitoring Period, no management fees or other similar charges and assessments of any type pertaining to Prospect's central office functions shall be levied against Prospect CharterCARE or the Rhode Island Hospitals.

III. MONITORING AND NOTICE

12. Prospect shall comply with all necessary agreements for payment of reasonable costs associated with the expert(s) to assist the Attorney General with monitoring and enforcing compliance with the Conditions pursuant to R.I. Gen. Laws § 23-17.14-28(d)(3) and for payment of the fees of the Agent/Trustee during the Conditions and Monitoring Period. Escrow accounts shall be established and funded pursuant to these agreements prior to the closing of the Proposed Transaction.
13. Not later than the fiftieth (50th) day after the end of each fiscal quarter, Prospect shall provide the Monitor and the Attorney General with quarterly financial statements, quarterly

⁴⁵ The TRS Note is defined herein on pp. 5 and 32.

balance sheet, quarterly statement of operations and quarterly statement of cash flows (including accounts payable and any amounts due to or due from affiliates), for Prospect Medical Holdings and Prospect CharterCARE and any other evidence documenting compliance with II. Financial Conditions (Conditions 5-11) and Condition 22 for the preceding quarter, which documents shall be certified as accurate by Prospect's Chief Financial Officer, and the PCC board minutes (Condition 29).

14. Not later than February 15th of each year, Prospect shall furnish the Monitor and the Attorney General with the audited annual financial statements of Prospect Medical Holding and Prospect CharterCARE, including but not limited to: (a) documentation of compliance with II. Financial Conditions (Conditions 5-11) and Conditions 16-29 for the preceding fiscal year, including any and all supporting documents for expenditures, including but not limited to general ledgers, current contracts, invoices, receipts, and (b) providing a projected capital budget for PCC for the next three (3) years.
15. During the Conditions and Monitoring Period, Prospect shall provide the Attorney General with evidence of a board vote of the Boards of Prospect and PCC, each accepting the audited financial statements of both Prospect and PCC.
16. **MPT, TRS Merger Agreement, PACE, MAAP, and Insolvency Event Notice:** During the Conditions and Monitoring Period, provide the Attorney General with:
 - 16.1 notice of any proposed change to the documents related to the MPT Transaction⁴⁶ to the extent the changes concern, will by their terms apply to, or will materially impact any Rhode Island entities, no fewer than thirty (30) days prior to the implementation of any such change;
 - 16.2 notice of any activity concerning the TRS Note, including but not limited to, repayment, refinancing, default and/or waiver, no fewer than thirty (30) days prior to the implementation of any such change;
 - 16.3 copies of any and all notices provided to or received by a party under the Merger Agreement;
 - 16.4 notice of any proposed change to the documents related to the obligations owed by the Rhode Island Hospitals for PACE financing, no fewer than thirty (30) days prior to the implementation of any such change;
 - 16.5 notice of any proposed change to the documents related to the MAAP obligations of the provider organizations within PCC, including the Rhode Island Hospitals, no fewer than thirty (30) days prior to the implementation of any such change; and
 - 16.6 notice of any and all Insolvency Event(s) of Prospect and/or any of its subsidiaries. For purposes of this Condition, the exclusion of Proceedings for Affected Entities whose

⁴⁶ The MPT Transaction is defined herein on p. 32.

aggregate revenues do not exceed 5% of the consolidated revenues of Prospect and all of its consolidated subsidiaries for any of the preceding three fiscal years, shall not apply.

17. During the Conditions and Monitoring Period provide sixty (60) days' written advance notice to the Attorney General of any terminations or material amendments to the internal agreements between the Rhode Island entities and Prospect and its affiliates (e.g., Management Agreement).
18. During the Conditions and Monitoring Period provide sixty (60) days' written advance notice to the Attorney General of any and all new proposed organizational agreements between the Rhode Island entities and Prospect and its affiliates.
19. During the Conditions and Monitoring Period, real or personal property, including any lines of service, owned by PCC with a value in excess of \$100,000 shall not be sold, transferred or encumbered without prior notice of at least sixty (60) days and approval by the Attorney General. This condition shall not be construed to limit the authority of the Attorney General under R.I. Gen. Laws § 23-17.14-1, *et seq.*
20. Prospect shall provide any and all notifications related to the Settlement Agreement in Case # 1:18-cv-00328-WES/PC-2017-3856, including but not limited to, all court approvals and implementation of the contemplated buy-out of the 15% CCCB ownership in Prospect CharterCARE.
21. During the Conditions and Monitoring Period, Prospect and Prospect CharterCARE shall provide:
 - (a) Any and all notices of investigation, violations, adverse findings, determinations and actions including fines and penalties, or complaints from the Office of Inspector General, Securities and Exchange Commission, Internal Revenue Service, Centers for Medicare and Medicaid Services, United States Department of Justice, any state attorney general, the Rhode Island Department of Health, Rhode Island Medicaid, any other Rhode Island regulatory body, or any hospital accreditation organizations, as well as any and all documents related to the resolution of any notices or complaints;
 - (b) Any and all notices or complaints received from the state of Rhode Island or a Rhode Island municipality for violations, or potential violations, of state tax law, including but not limited to, any notice for delinquency in payments of taxes; and
 - (c) All notices, complaints, or other documents shall be provided to the Attorney General within fifteen (15) days of receipt by Prospect and/or Prospect CharterCARE.

IV. BENEFITS, GOVERNANCE AND CONTINUITY OF SERVICES

22. During the Conditions and Monitoring Period, Prospect and PCC shall keep the Rhode Island Hospitals open and operational and maintain and continue to provide at each Hospital and all non-hospital settings the full complement of Essential Health Care Services. PCC shall continue to provide access to quality healthcare services and maintain good standing status with all state and federal licensing and regulatory requirements and shall meet all accreditation standards. There shall be no suspension, termination, or material reduction of Essential Health Care Services currently provided by PCC without the prior approval by the Rhode Island Department of Health.
23. During the Conditions and Monitoring Period, PMH shall guarantee funding of the PCC 401K retirement plan(s) matching contributions in accordance with the methodology in place as of the most recent plan year. Nothing herein shall impair the right of any union now existing, or to be formed at any of the PCC entities in the future, to negotiate changes to existing collective bargaining agreements and/or to enter new collective bargaining agreement provisions with respect to 401K retirement plan(s).
24. For the six (6) months following the issuance of the Decision, Prospect shall make no changes to benefits currently provided under PCC's current plans, including vacation, sick leave, holiday, health insurance, life insurance, and continued COBRA coverage, at current levels. Thereafter and during the Conditions and Monitoring Period, Prospect shall continue to provide benefits, including vacation, sick leave, holiday, health insurance, life insurance, and continued COBRA coverage. Nothing herein shall impair the right of any union now existing, or to be formed at any of the PCC entities in the future, to negotiate changes to existing collective bargaining agreements and/or to enter new collective bargaining agreement provisions with respect to benefits.
25. During the Conditions and Monitoring Period Prospect and/or Prospect CharterCARE shall provide written notice to the Attorney General (i) within ten (10) days upon the adoption of any resolution or plan to implement a reduction in workforce, layoff, furlough, or other restructuring of the workforce that will lower the number of employed FTEs by thirty (30) or more in the course of a fiscal year at PCC, or by ten (10) or more clinical staff (physicians and/or nurses) at either of the Rhode Island Hospitals; and (ii) again no fewer than thirty (30) days prior to the implementation date thereof.
26. During the Conditions and Monitoring Period, Prospect CharterCARE shall continue to provide charity care consistent with its current charity care policy and consistent with all applicable laws and Rhode Island Department of Health Regulations 216-RICR-40-10-23, and provide the Attorney General with supporting documentation evidencing its charitable and uncompensated care expenditures.
27. Prospect and Chamber shall notify the Attorney General of the initial board members prior to closing of the Proposed Transaction and, during the Conditions and Monitoring Period, shall notify the Attorney General of any change in the boards within thirty (30) days of such change.

28. Within thirty (30) days of Prospect's buyout of the 15% CCCB ownership in Prospect CharterCARE, the corporate document that functions as bylaws for Prospect CharterCARE shall be amended to require approval of the majority of all board members, for all matters that were previously listed in Section 8.3 of the Prospect CharterCARE LLC Agreement, dated June 20, 2014.
29. Following Prospect's buyout of the 15 % CCCB ownership in Prospect CharterCARE, and through completion of the Conditions and Monitoring Period, the board shall include Samuel Lee, a licensed and practicing physician, and consist of 40-49% Community Directors. All of the Community Directors shall: (1) be independent of and not employed by or affiliated with Prospect or its affiliates; and (2) not be an elected official or an individual that is subject to the Code of Ethics. The corporate document that functions as the bylaws shall be amended to reflect this Condition within thirty (30) days of Prospect's buyout of the 15% CCCB ownership in Prospect CharterCARE. Prospect shall produce all PCC board minutes to the Attorney General with the quarterly reporting set forth in Condition 13.
30. Prospect CharterCARE shall notify the Attorney General of the initial board members within thirty (30) days of the implementation of Condition 29 and, during the Conditions and Monitoring Period, shall notify the Attorney General of any change in board members board within thirty (30) days of such change.
31. During the Conditions and Monitoring Period, all board members of Prospect, Chamber, and Prospect CharterCARE shall be required to complete fiduciary training on an annual basis and provide certification of completion to the Attorney General.
32. During the Conditions and Monitoring Period, all board members of Chamber, Prospect and Prospect CharterCARE shall file annual conflict of interest statements on a form provided by the Attorney General no later than May 31 of each year. Additionally, any newly appointed board member must file a conflict of interest statement within thirty (30) days of appointment.
33. Prospect, Prospect CharterCARE, and any and all subsidiaries shall provide, within a reasonable time, any and all information requested by the Attorney General and/or the Attorney General's monitor(s) to confirm compliance with all Conditions stated herein.
34. If Prospect and PCC seek a determination by the Attorney General that any information submitted pursuant to the above Conditions should be deemed confidential and/or proprietary under R.I. Gen. Laws § 23-17.14-32, they shall submit such information clearly labeled "Request for Confidentiality" and shall including the legal citation and/or explanation for the reason that the information should be deemed confidential.

Peter F. Neronha
Attorney General

Miriam Weizenbaum
Chief, Civil Division

Jessica Rider, SAAG
Health Care Advocate

NOTICE OF APPELLATE RIGHTS

Under the Hospital Conversions Act, this Decision constitutes a final order of the Office of Attorney General. Pursuant to R.I. Gen. Laws Section 23-17.14-34, any transacting party aggrieved by a final order of the Attorney General under this chapter may seek judicial review in the superior court in accordance with Section 42-35-15.

CERTIFICATION

I hereby certify that on this 1st day of June 2021, a true copy of this Decision was sent via electronic and first-class mail to counsel for the Transacting Parties.

EXHIBIT 2

November 3, 2023

VIA ELECTRONIC DELIVERY

Julia Harvey, Esq.
Special Assistant Attorney General
Office of the Healthcare Advocate
Office of the Attorney General
150 South Main Street
Providence, RI 02903

Re: Hospital Conversions Act Initial Application (“HCA Application”) of Chamber Inc.; Ivy Holdings Inc.; Ivy Intermediate Holdings, Inc.; Prospect Medical Holdings, Inc. (“PMH”); Prospect East Holdings, Inc.; Prospect East Hospital Advisory Services, LLC; Prospect CharterCARE, LLC (“PCC”); Prospect CharterCARE SJHSRI, LLC; Prospect CharterCARE RWMC, LLC (the “Transacting Parties”) Conditions of Approval.

Dear Ms. Harvey:

I am writing on behalf of the Transacting Parties regarding Condition 7.2 of the State of Rhode Island Office of the Attorney General’s (“RIAG”) June 1, 2021 Decision (the “Decision”) on the HCA Application. Specifically, Condition 7.2 states:

PCC shall ensure its vendors are paid on a timely basis. In the event accounts payable days outstanding is greater than 90 days, PMH shall provide funding to PCC so that accounts payable are less than 90 days at the next quarterly measurement.¹

As you know, PMH and PCC were affected by a cyber attack beginning on August 1, 2023. As a result of that cyber attack, PMH and PCC had no access to their electronic systems for 45 days. In addition, PMH and PCC are still working on recovery of their billing and collections system,

¹ As reported to RSM, as of June 30, 2023, PCC’s accounts payable days outstanding was not greater than 90 days. As a result of the cyber attack, PCC’s accounts payable days outstanding exceeded 90 days on September 30, 2023. Pursuant to Condition 7.2, accounts payable must be less than 90 days at the next quarterly measurement, namely December 31, 2023. Accordingly, there is currently no violation of Condition 7.2. As set forth herein, as a result of the cyber attack, the Transacting Parties are seeking an extension of that compliance date.

Julia Harvey, Esq.
November 3, 2023
Page 2

which are anticipated to be fully functional in mid-November, which will allow the catch-up process to begin. Due to the attack and effects on PMH and PCC's systems, revenue streams for PMH and PCC have been delayed substantially. More than \$150 million of PMH revenues could not be billed in August and September due to the cyber-attack. This revenue delay has impacted PCC's ability to collect cash and timely pay vendors; however, as PMH and PCC's operations return to status quo in the coming weeks and all catch-up claims are billed to insurers, cash collections will gradually increase over the next three to four months, thereby allowing PCC to address outstanding accounts payable. In addition, PMH is finalizing its cyber/business interruption insurance claim related to the cyber attack with anticipated payment of insurance proceeds in early 2024. Accordingly, the Transacting Parties are requesting an extension and waiver of compliance with Condition 7.2 up to and including March 31, 2024, due to the cyber attack and corresponding insurance claim which is near completion.

The cyber attack was an unprecedented and unforeseen event which the Transacting Parties continue to address. In particular, the Transacting Parties are continuing to work with their vendors to ensure the continuation of quality care to the hospital's communities despite the cyber attack.

Please contact us with any questions. The Transacting Parties will meet and provide any information requested to RSM to verify the significant effects of this event on PMH and PCC.

As always, thank you for your consideration.

Sincerely,

/s/ Patricia K. Rocha

PATRICIA K. ROCHA
procha@apslaw.com

cc: Miriam Weizenbaum, Esq.
Sarah Rice, Esq.
Von Crockett
George Pillari
Alfredo Sabillo
Frank Saidara, Esq.
Richard R. Beretta, Jr., Esq.
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Patrick N. Sampson, Esq.