

JOSH STEIN
ATTORNEY GENERAL



REPLY TO:
KEVIN ANDERSON
SENIOR DEPUTY
ATTORNEY GENERAL
kander@ncdoj.gov

July 25, 2022

Ms. Julie Faenza
Project Analyst
North Carolina Department of Health and Human Services
Healthcare Planning and Certificate of Need Section
Division of Health Service Regulation
2704 Mail Service Center
Raleigh, NC 27699-2704

[DELIVERED VIA EMAIL TO: dhsr.con.comments@dhhs.nc.gov]

RE: Mission Hospital's Certificate of Need Application (Project ID: B-012232-22)

Dear Ms. Faenza:

In accordance with N.C. Gen. Stat. § 131E-185(a1)(1), Attorney General Josh Stein submits these comments on the application (Project ID: B-012232-22) filed by Mission Hospital ("Mission") to add acute care beds to its facility in Asheville. Mission's application is one of three competing applications to meet the need identified in the 2022 State Medical Facilities Plan for 67 acute care beds in Buncombe, Graham, Madison, and Yancey Counties.

The Department of Health and Human Services should deny Mission's application.¹ Currently, Mission has almost no competition for acute care in Buncombe County. The lack of competition is the result of Mission's unique history. Mission effectively operated as a legislatively authorized monopoly for over twenty years, and no new hospitals have opened even after Mission's arrangement with the State ended in 2016. This lack of competition harms residents of western North Carolina by increasing the cost, and reducing the quality, of health care services in the region. Awarding Mission this Certificate of Need would exacerbate the lack of competition and resulting harm. Accordingly, the Department should deny Mission's application and instead approve an application from a qualified competitor.²

¹ Comments to the Department may include "[d]iscussion and argument regarding whether, in light of the material contained in the application and other relevant factual material, the application complies with relevant review criteria, plans, and standards." N.C. Gen. Stat. § 131E-185(a1)(1)(c).

² The Attorney General takes no position as between the competing applications of AdventHealth (Project ID: B-012233-22) and Novant Health (Project ID: B-012230-22).

“Hospitals with a dominant position in their markets . . . are a major (perhaps *the* major) driver of cost in healthcare.” Thomas L. Greaney and Barak D. Richman, *Am. Antitrust Inst., Consolidation in Provider and Insurer Markets: Enforcement Issues and Priorities* at 3 (2019). For many patients, health care costs are the product of negotiations between the patient’s commercial insurer and health care providers. *See* Cong. Budget Off., *The Prices That Commercial Health Insurers and Medicare Pay for Hospitals and Physicians Services* at 3 (2022), *available at* www.cbo.gov/publication/57422. When a single health care provider dominates a region, it can charge commercial insurers higher rates, which the insurer passes on to patients and employers in the form of higher premiums. Greaney and Richman, *supra* at 3. The absence of choice, meanwhile, allows providers to charge higher rates even while offering lower quality care. *See* Heather Boushey and Helen Knudsen, White House Council of Economic Advisers, *The Importance of Competition for the American Economy* (July 9, 2021), *available at* <https://www.whitehouse.gov/cea/written-materials/2021/07/09/the-importance-of-competition-for-the-american-economy/>. Lack of competition and inordinate market power can also provide a health care provider with countless other ways to increase costs and harm consumers, especially in light of the complex, byzantine nature of our health care system.

The statutory criteria by which the Department reviews Certificate of Need applications recognizes the importance of competition. Applicants for a Certificate of Need must “demonstrate the expected effects of the proposed services on competition in the proposed service area, including how any enhanced competition will have a positive impact upon the cost effectiveness, quality, and access to the services proposed.” N.C. Gen. Stat. § 131E-183(a)(18a).

Mission’s application cannot demonstrate that it will enhance competition, lower costs, or improve quality. Mission has almost no competition for acute care services in Buncombe County, and has not for nearly three decades. In 1996, Mission merged with its only competitor, St. Joseph’s Hospital, leaving Mission as the only provider of inpatient general acute care hospital services in Buncombe and Madison Counties. The State sanctioned this arrangement until 2016 by granting Mission a Certificate of Public Advantage (“COPA”). The COPA immunized Mission from State and Federal antitrust liability, while subjecting Mission Hospital to enhanced state oversight.³

In 2016, the General Assembly repealed the COPA. Although that repeal ended Mission’s statutory immunity from antitrust suit, it also eliminated the State’s enhanced oversight over Mission. And the elimination of the COPA did nothing to introduce competition into western North Carolina’s health care market. In 2019, HCA Healthcare, Inc., an out-of-state, for-profit health care company, purchased Mission with full awareness of Mission’s preexisting dominance of the health care market in western North Carolina.

The continued lack of competition has predictably led to increased health care costs in western North Carolina. One lawsuit brought by individual health care consumers in western North Carolina alleges that premiums in western North Carolina are more than 50% higher than in the State’s metropolitan areas. *See* Compl. ¶ 235, *Davis v. HCA Healthcare, Inc.*, No. 21-

³ *See* Hospital Cooperation Act of 1993, N.C. Sess. L. 1993-529, § 5.2 (*codified at* N.C. Gen Stat. §§ 131E-192.1 through 131E-192.13 (repealed)).

CVS-3276 (N.C. Super. Ct. Aug. 10, 2021). The Attorney General, meanwhile, has received numerous complaints about the cost and quality of Mission's care.

The Certificate of Need application process for 67 acute care beds in Buncombe Graham, Madison, and Yancey Counties provides a much-needed opportunity to introduce competition into western North Carolina's health care market. The Department should seize that opportunity, as required by N.C. Gen. Stat. § 131E-183(a)(18a), by denying Mission's application.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Anderson", is centered on a light gray rectangular background.

Kevin Anderson
Senior Deputy Attorney General
Director, Consumer Protection Division