



STATE EMPLOYEES ASSOCIATION OF NORTH CAROLINA

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August 1, 2022

Attn: Julie Faenza
Certificate of Need Section
Division of Health Service Regulation
NC Department of Health and Human Services
809 Ruggles Drive
Raleigh, North Carolina 27603
By email to DHRS.CON.Comments@dhhs.nc.gov, Julie.Faenza@dhhs.nc.gov

Re: Comments on MH Mission Hospital, LLLP's Certificate of Need application to add 67 acute care beds at Mission Hospital.

Dear Ms. Faenza:

As the leading advocate for the more than 750,000 state employees, retirees, and their loved ones who make up the State Health Plan, the State Employees Association of North Carolina (SEANC) strongly opposes the Certificate of Need Application submitted by MH Mission Hospital, LLLP, in Asheville, N.C. State employee and retiree families comprise one of the largest groups of health care consumers in North Carolina and are impacted as purchasers and patients. It is our duty to preserve affordable, high quality health care for our members in the western part of the state who would be negatively affected by this application from Mission Health and its parent company HCA Healthcare, Inc. (HCA), the largest health system in the country.

We believe that the Applicant's proposed project fails to meet many of the crucial Certificate of Need criteria essential to the delivery of low-cost, high-quality healthcare in North Carolina. This cover letter summarizes our concerns, and the attached memorandum and exhibits contain our analyses in greater detail. In particular, the Applicant fails to meet the following review criteria established under North Carolina General Statutes, §131E-183 (2020):

- **CRITERION (3)—Bed Need and Utilization**
 - We have serious concerns that the Applicant and its parent company HCA, in its capacity as the monopoly provider in the proposed service area, may be artificially creating bed need. These concerns are heightened given the evidence indicating over-admitting practices at other HCA hospitals, as well as Mission's sharp increases in ED admission volumes and rates following HCA's acquisition of Mission Health.
- **CRITERION (7)—Staffing and Resources**
 - We have serious concerns that HCA's profit-driven approach to care extends to its staffing decisions and that the Applicant will not have the necessary staffing resources to accommodate its proposed bed expansion. Because labor is the largest cost driver for hospitals, lowering staffing levels boosts profitability. HCA's profits are astonishingly

strong—with \$6.96 billion in profits in 2021 alone,¹ despite the pandemic; and since 2010, the company has paid out more than \$29 billion to investors in dividends and share repurchases.² Thus, HCA has more than enough resources to properly staff its facilities for the sake of patient care and worker safety. Yet, time and again the company fails to do so, as illustrated by analyses of Mission Health and HCA staffing trends, staff and community testimonials about understaffing at Mission Health following HCA’s takeover, and a cascade of disturbing examples of unsafe staffing at HCA hospitals. If anything, the Applicant’s proposed expansion may exacerbate ongoing staffing problems at Mission Hospital.

- **CRITERION (13)—Access to Care for the Medically Underserved**

- *§ 131E-183 (a) (13) (a)*—We have serious concerns that the Applicant’s proposed project will fail to adequately serve medically underserved populations. An analysis of community health need index data raises serious questions about whether the Applicant’s proposal would sufficiently address where the “need” for medical services actually resides in the proposed service area.
- *§ 131E-183 (a) (13) (b)*—We have serious doubts about HCA’s commitment to our communities, given HCA’s track record with reneging on charity care and other community commitments following acquisitions, as well as its timeline of settlements with the U.S. Department of Justice (DOJ) over the past two decades.
- *§ 131E-183 (a) (13) (d)*—HCA’s track record of shuttering community clinics and safety net services (including at Mission Health), coupled with the mass exodus of physicians following the company’s takeover of Mission Health and nonprofits in other HCA markets is highly concerning. We have concerns that these actions indicate HCA places a greater emphasis on profit over the healthcare needs of community and we do not believe the Applicant’s proposal will provide the proposed service area with adequate access to care, particularly primary and preventative care.

- **CRITERION (14)—Health Professional Training Programs**

- Given the size and scope of HCA’s clinical/medical education operations, and its influence on clinical/medical training in western North Carolina, we have serious concerns about how HCA’s egregious track record on understaffing will impact health professional training in the region. In particular, ‘chronic understaffing at HCA hospitals creates concerns that nursing and physician resident trainees will receive inadequate supervision or might be required to perform tasks outside their scope of practice due to the lack of sufficient support staff. Additionally, HCA’s questionable track record with ensuring proper competencies and training of its physician and nursing staff raises further questions about the quality of clinical and medical education provided by HCA hospitals.

- **CRITERION (18a) – Proposed Services’ Impact on Competition and Consumers**

- Allowing Mission Health, a monopoly provider, to expand beds will further reduce competition in the proposed service area. The lack of healthcare competition in this service area has already led to serious price and quality of care concerns in the region following HCA’s takeover of Mission. Granting additional beds to HCA will only allow the company to

¹ HCA 2021 10K, p. 75, (See: Net Income attributable to HCA Healthcare, Inc.) Accessible at <https://www.sec.gov/ix?doc=/Archives/edgar/data/860730/000119312522046707/d32297d10k.htm>

² Based on an analysis of HCA’s filings, press releases, investor presentations and an article by Pitchbook.

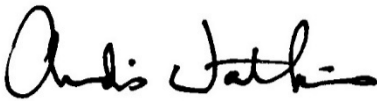
further expand its market share and extend its power to price gouge North Carolinians on vital care, as well as further exacerbate its dire staffing shortage. An alternative provider would increase competition in the area and impose some checks on Mission's harmful pricing and operational behaviors.

- **CRITERION (20)—Quality of Care Record**

- Since HCA's acquisition of Mission Health, community members, patients, staff, and local and state leaders have consistently voiced concerns over the quality of care provided by the health system, including at the Applicant's Mission Hospital. For example, lapses in care following HCA's takeover prompted the Centers for Medicare and Medicaid Services (CMS) to threaten Mission Hospital with termination from the Medicare program. According to CMS, this drastic measure of terminating a provider agreement is "generally a last resort after all other attempts to remedy the deficiencies at a facility have been exhausted."³ In other words, threats of contract termination from CMS are rare and are in response to serious breakdowns in care. Notably, these quality issues are not unique to Mission Health; HCA appears to have a pattern of quality of care and patient safety breakdowns. Thus, we have serious concerns that Mission Health will be unable to maintain a level of quality care that is necessary to accommodate the addition of new beds.

For these reasons, the Applicant does not meet the required criteria and high standard of care that North Carolinians deserve. Therefore, we urge the Agency to deny MH Mission Hospital, LLLP's Certificate of Need application. Thank you for your consideration.

Sincerely,



Ardis Watkins
Executive Director
State Employees Association of North Carolina

³ Rebecca Carballo, <https://www.houstonchronicle.com/business/article/houston-hospital-medicare-feds-violations-16688960.php>

SEANC Memorandum of Opposition to MH Mission Hospital, LLLP’s Certificate of Need Application

REVIEW CRITERION (3)

Criterion § 131E-183 (a)(3)—The applicant shall identify the population to be served by the proposed project, and shall demonstrate the need that this population has for the services proposed, and the extent to which all residents of the area, and, in particular, low income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups are likely to have access to the services proposed.⁴

Dominance as Sole Provider Drives Bed Need

The Applicant is the only acute care provider in the proposed service area of Buncombe, Graham, Madison, and Yancey counties, per the Agency’s 2022 State Medical Facility’s Plan:⁵

Fig. 1. Acute Care Beds by County

County	Facility	# Acute Care Beds
Buncombe	Mission Hospital	733
Graham	None	N/A
Madison	None	N/A
Yancey	None	N/A

As a monopoly acute care provider in the proposed service area, bed need will indubitably be driven by Mission Hospital. The Applicant even explicitly states as much in its Certificate of Need (CoN) application:

“Because Mission Hospital is the only acute care provider in the Buncombe/Graham/Madison/Yancey County service area, the published need was driven solely by the utilization of Mission Hospital.”⁶

“Mission Hospital’s intensive care beds have the highest occupancy rates and are driving the need for more beds in the service area.”⁷

The Applicant cites several factors justifying Mission Hospital’s need for bed expansion. Namely, that Mission Hospital is “the largest provider of tertiary and emergency services in Health Service Area (‘HSA’) I” and is “the only Trauma Center ... located in western North Carolina.”⁸ The Applicant further states in its CoN application that “Mission has the busiest emergency department (‘ED’) in the HSA and a high percentage of patients admitted to acute care beds originate from the ED, also known as ED admissions.”⁹ Thus, the Applicant claims that expansion is necessary to keep pace with utilization.

⁴ Article 9. Certificate of Need, § 131E-183(a)(3)

https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_131E/Article_9.html

⁵ NC DHHS Div. of Health Service Regulation- Certificate of Need Section’s 2022 State Medical Facility’s Plan, Table 5A: Acute Care Bed Need Projections, p39

⁶ Certificate of Need Application for acute care beds submitted by MH Mission Hospital, LLLP. June 15, 2022, p40.

⁷ Certificate of Need Application for acute care beds submitted by MH Mission Hospital, LLLP. June 15, 2022, p83

⁸ Certificate of Need Application for acute care beds submitted by MH Mission Hospital, LLLP. June 15, 2022, p40.

⁹ Certificate of Need Application for acute care beds submitted by MH Mission Hospital, LLLP. June 15, 2022, p40.

However, we take issue with the Applicant's reasoning behind Mission Hospital's high utilization, especially its ED utilization. In fact, we have serious concerns that HCA, Mission Hospital's parent company, is engaging in practices that maximize profits at the expense of patient care, working conditions, and responsible corporate behavior.

HCA May Be Over-admitting Patients Without Medical Need

The Applicant's parent company, HCA, is astonishingly profitable. In the last year alone, they made \$6.96 billion in profits,¹⁰ despite the ongoing pandemic. However, based upon a recent research report (which is enclosed as an exhibit to this comment) released by the Service Employees International Union (SEIU),¹¹ the nation's largest healthcare workers' union, we have concerns that these high profits may originate, in part, from possible fraud.¹² SEIU's report found that HCA appears to admit patients for inpatient hospital stays seemingly regardless of medical need.

The SEIU report found that HCA executives repeatedly cite their high occupancy levels of both inpatient beds and ED beds to explain their investments in expanding licensed beds. For example, HCA CEO Sam Hazen has stated:

"In the face of all of these new beds that we've added over the years, our occupancy levels continue to go up. And so that's really encouraging that our planning and the execution underneath it is occurring at the levels that we had hoped."¹³

The SEIU report also details analyses of Medicare data and lawsuits filed against HCA, the highlights of which are discussed below:

Medicare Data Analysis Shows Troubling ED Admission Trends

SEIU's multi-year analysis of Medicare data shows that the average emergency department ("ED") admission rate among HCA hospitals has been substantially above the national average rate in recent years.¹⁴ Specifically, SEIU's Medicare claims analysis found that:

- "HCA hospitals commonly show ED admission rates that are well above the rates one might expect them to have, given the patients they are seeing."¹⁵

¹⁰ HCA 2021 10K, p. 75, (See: Net Income attributable to HCA Healthcare, Inc.) Accessible at <https://www.sec.gov/ix?doc=/Archives/edgar/data/860730/000119312522046707/d32297d10k.htm>

¹¹ SEANC is an affiliate of SEIU, recognized as full status local union under the SEIU Constitution. https://www.seanc.org/assets/Affiliation_Agreement_Contract.pdf, p. 6.

¹² SEIU Report: "HCA: Higher Healthcare Costs for America," p.3

¹³ Sam Hazen, CEO for HCA, HCA Q4 2019 Earnings Call – January 28, 2020

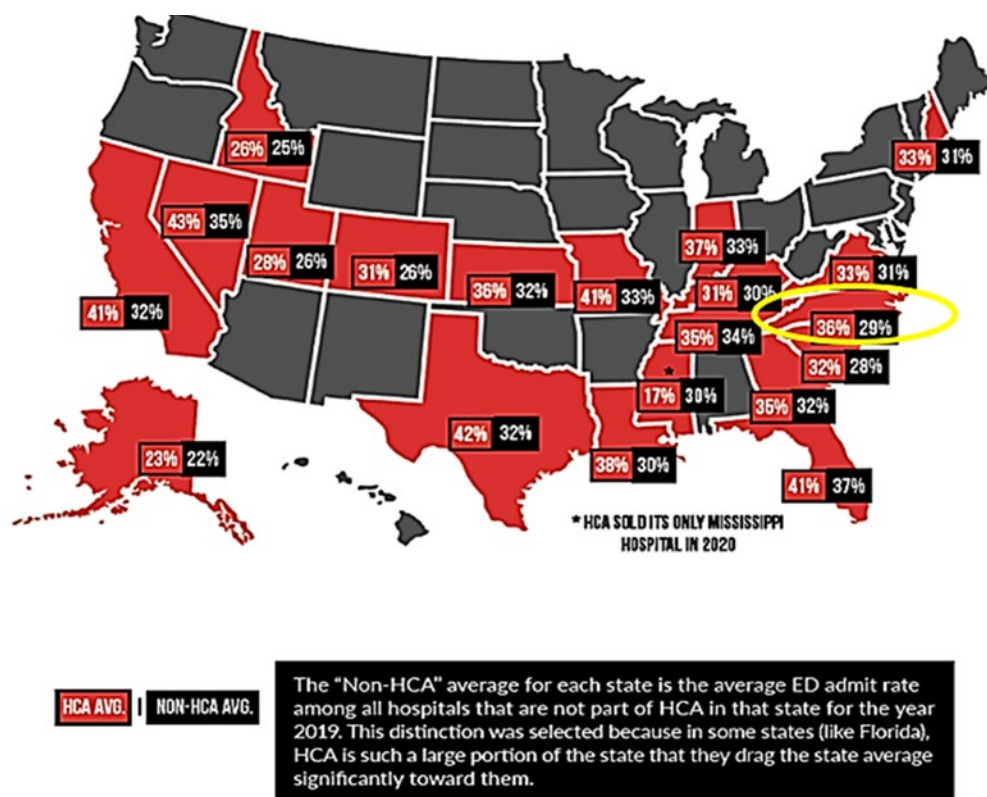
¹⁴ From SEIU Report: "HCA: Higher Healthcare Costs for America," p.43, Endnote #18 - "SEIU analyzed claims data for short-term general acute care hospitals from the annual Medicare Inpatient and Outpatient Standard Analytic Files ("SAF"). Emergency department claims were identified through revenue center codes and Healthcare Common Procedure Coding System ("HCPCS") codes. Hospitals with too few claims in a given year were excluded from analysis."

¹⁵ From SEIU Report: "HCA: Higher Healthcare Costs for America," p.43, Endnote #24 – "To calculate hospitals' expected ED admission rates, we first calculate a national average ED admission rate by Federal Fiscal Year for each combination of the following patient- and hospital-based characteristics: patient age, patient sex, patient principal diagnosis, and hospital rural/urban designation. Upon finding these national rates, we then multiply them by the corresponding number of ED encounters at each qualifying hospital within that given characteristic combination group; this provides the hospital's expected number of ED admissions for that group. To determine the overall number of expected ED admissions at a hospital, we aggregate the expected ED admissions totals for all applicable groups for the given FFY. We then calculate a hospital's total number of potentially excess ED admissions by subtracting the "expected" ED admissions total for that hospital from the actual number of inpatient ED admissions reported for that hospital."

- “HCA’s average one-day stay rates among their ED admissions have increased in recent years, and many of their hospitals stand out as outliers nationally and in their states. One-day stay rates have been a key hospital industry metric in detecting unnecessary admissions for decades.”¹⁶
- “HCA hospitals show remarkably low rates of ED outpatient observation services, suggesting that they may be shifting high-acuity outpatient discharges to low-acuity (and more lucrative) inpatient admissions.”¹⁷

The SEIU report found that in 2019 alone, HCA’s Medicare emergency department admission rates exceeded state averages in 19 of the 20 states in which they operated, including North Carolina.¹⁸ In North Carolina, HCA’s ED admission rate was 36%, far exceeding the non-HCA hospital average in the state of 29%, as illustrated by the map below. This is highly concerning since HCA’s acute care hospital operations in North Carolina are limited to monopoly acute care provider Mission Health System.¹⁹

Fig. 2. HCA’s Medicare Emergency Department Admission Rates vs. State Averages, 2019



Source: SEIU Report: “HCA: Higher Healthcare Costs for America,” p.7

Mission Hospital’s High ED Admission Rates

¹⁶ From SEIU Report: “HCA: Higher Healthcare Costs for America,” p.43, Endnote #27 – “One-day hospital admissions have been flagged as potentially unnecessary since at least the 1980s. See: “National DRG Validation Study: Short Hospitalizations.” Office of Inspector General, U.S. Department of Health and Human Services. May 1989.”

¹⁷ From SEIU Report: “HCA: Higher Healthcare Costs for America,” p.44, Endnote #31 – “Outpatient observation service claims were identified through revenue center codes.”

¹⁸ SEIU Report: “HCA: Higher Healthcare Costs for America,” p.7

¹⁹ <https://hcahealthcare.com/locations/?tag=north-carolina>; <https://missionhealth.org/>

SEIU's recent report was based on Medicare fee-for-service data through 2019. By the Applicant's own account, the facility has elevated ED admissions rates (across all payers, not just Medicare as documented in SEIU's report) and through 2021. Its Certificate of Need (CoN) application states, "ED admissions have grown at a higher rate than ED visits"²⁰ while displaying admissions trends between 2015 and 2021 (as detailed in the figure below).

Fig. 3. FY 2015-FY 2021 Mission Hospital ED Admission Trends

Source: MH Mission Hospital, LLLP CON App, p83

	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	2015-2021 % Growth
ED Visits	96,208	96,127	101,629	102,245	104,401	95,085	98,818	2.7%
ED Admission	22,155	20,083	21,000	21,443	23,280	28,476	32,060	44.7%
Total Admissions	38,084	38,391	39,243	39,720	43,020	40,327	41,492	8.9%
% of ED Patients Admitted	23.0%	20.9%	20.7%	21.0%	22.3%	29.9%	32.4%	40.9%
% of Admission from the ED	58.2%	52.3%	53.5%	54.0%	54.1%	70.6%	77.3%	32.8%

Source: Mission 2016-2022 LRAs

FY = October -September

Note: percentages may be higher because they include Psych services

The Applicant attributes these high ED admission rates to the high acuity of its patients, and that it is the only Level II Trauma Provider in the area. They state, "This high rate of admission through the ED emphasizes the emergent nature and high acuity of Mission's patients and its role as the regional tertiary and trauma provider in western North Carolina and surrounding area."²¹ However, upon closer examination, we have concerns with the Applicant's attestations.

The Applicant repeatedly touts its status as a Level II Trauma Center throughout its CoN application, but Mission Hospital has held this Level II designation since 1995,²² decades before HCA acquired it. In the several years prior to HCA's acquisition, Mission Hospital's ED admission growth rates year-over-year were either negative, or never crossed into double digits. Yet, there was a dramatic increase in ED admission rate growth following HCA's takeover in 2019. The Applicant even states in its CoN application that "ED admissions grew by 12.6 percent, from 28,476 ED admissions in FY 2020 to 32,060 ED admissions in FY 2021." The table below details the Applicant's ED admit growth rates pre and post-HCA's takeover in 2019.²³

Fig. 4. FY 2015-2021 Mission Hospital ED Admission Year-Over-Year Growth

% Change 2015-2016	% Change 2016-2017	% Change 2017 -2018	% Change 2018-2019	% Change 2019-2020	% Change 2020-2021
-9.4%	4.6%	2.1%	8.6%	22.3%	12.6%

²⁰ Certificate of Need Application for acute care beds submitted by MH Mission Hospital, LLLP. June 15, 2022, p. 82

²¹ Certificate of Need Application for acute care beds submitted by MH Mission Hospital, LLLP. June 15, 2022, p82

²² NC Division of Health Service Regulation, "Designated Trauma Centers." <https://info.ncdhhs.gov/dhsr/ems/trauma/traumacenter.html>

²³ ED admit growth rates calculated using the Applicant's ED admission figures from its CoN Application, p83

What's more, the Applicant's percentage of ED patients admitted jumped dramatically following HCA's takeover. The percentage of ED patients admitted held steady in the low 20's prior to the takeover, but jumped to 29.9% in 2020 and 32.4% in 2021. Its percentage of admissions from the ED also jumped dramatically. Prior to the takeover, this percentage was in the range of 54-58%, but jumped to 70-77% following HCA's takeover.

Fig. 5. FY 2015-FY 2021 Mission Hospital ED Admission Trends

	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	2015-2021 % Growth
ED Visits	96,208	96,127	101,629	102,245	104,401	95,085	98,818	2.7%
ED Admission	22,155	20,083	21,000	21,443	23,280	28,476	32,060	44.7%
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% of Admission from the ED	58.2%	52.3%	53.5%	54.0%	54.1%	70.6%	77.3%	32.8%

Source: Mission 2016-2022 LRAs
FY = October -September
Note: percentages may be higher because they include Psych services

Source: MH Mission Hospital, LLLP CON App, p83

We acknowledge that the COVID pandemic likely impacted the volume of ED visits and admissions in 2020 and 2021. However, given the track record shown at other HCA hospitals and HCA's strategy of bringing in more patients via bed additions, Mission's sharp increases in ED admission volumes and ED admission rates following acquisition should raise questions about whether they were influenced by potential HCA corporate efforts to increase admissions.

Over-admittance and Corporate Pressure Allegations

These concerns are further heightened, given similar concerns raised in lawsuits. A recently unsealed whistleblower lawsuit, filed by a physician who provided hospitalist services to an HCA hospital in Florida, contained a data analysis similar to SEIU's report.²⁴ More importantly, this physician's allegations also include detailed descriptions of how HCA pressures physicians to admit patients from the ED regardless of medical need. This includes alleged threats of losing admitting privileges if physicians do not meet certain admissions targets, as well as communications from HCA to physicians warning about noncompliance with Medicare regulations unless they admitted specific patients.²⁵

Other lawsuits suggest that HCA's corporate pressure on their emergency departments is widespread, with allegations including: admitting patients without regard to medical necessity to maximize profits,²⁶ falsely billing for patients as inpatient while they are merely boarded in their EDs or kept in hallways,²⁷ icing out community physicians on medical staff by only allowing contracted hospitalists and its medical residents to

²⁴ See: *United States of America et al ex rel. Ruiz v. Hospital Corporation of America et al* (Case no:3:2017cv01280, M.D. Tenn., filed 9/19/2017).

²⁵ See: *United States of America et al ex rel. Ruiz v. Hospital Corporation of America et al* (Case no:3:2017cv01280, M.D. Tenn., filed 9/19/2017). First Amended Complaint, Paragraphs 134, 142-145.

²⁶ In addition to Ruiz, please see: *United States of America et al ex rel. Lazard v. HCA Healthcare, Inc. et al* (Case no: 5:17cv134, N.D. Cal., filed 1/11/2017). See also: *Hospital Internists of Austin, P.A. et al v. Quantum Plus, LLC et al* (Case no: 1:18cv466, W.D. Tex., filed 5/31/2018).

²⁷ *United States of America et al ex rel. Lazard v. HCA Healthcare, Inc. et al* (Case no: 5:17cv134, N.D. Cal., filed 1/11/2017).

admit and treat unassigned ED patients,²⁸ and retaliating against and silencing emergency department physicians or other staff for reporting safety, understaffing, or compliance issues.²⁹

HCA executives have also repeatedly emphasized to investors the strategic importance of the hospital system's emergency departments, regularly referencing the proportion of its hospitals' inpatient admissions coming from emergency departments³⁰ (also reflected in the Applicant's CoN application). HCA executives have outlined strategic profit-making efforts in earnings calls, including seeking to put physicians in competition with each other³¹ and aggressive operational and communications campaigns.³² Taken together, we have reason to believe that these questionable admissions practices are the result of HCA corporate executives' encouragement or possible coercion, of its hospitals' medical decision-makers at the expense of our communities.³³

Impact of Over-admittance Practices on Our Communities

Over-admitting without medical justification may unnecessarily put tens of thousands of HCA hospital patients at increased risk of hospital-acquired infections every year—including exposure to COVID-19 and its ever-evolving variants. This practice also takes beds away from COVID patients or those with other emergent conditions who urgently need them. Taken together, these practices overburden workers and put patients in harm's way, all while leeching funds from the taxpayer-supported Medicare program. SEIU's analyses indicate that HCA's conduct may have enabled the company to collect nearly \$2 billion in excess Medicare payments since 2008.³⁴

Because HCA is the dominant provider in the proposed service area, ' any practices of over-admitting patients would artificially create bed need. Such an inflated demand for beds would, in turn, drive up healthcare costs (which will be discussed further in the section under Criterion 18a). If HCA is permitted to expand beds at Mission Hospital, we expect that they will engage in these unethical operational practices at the expense of patient care, all while subjecting taxpayers and consumers to costly unnecessary procedures and services in order to pad their pockets.

²⁸ See *Blake Medical Staff v. HCA Health Services of FL* (Case no: 2021CA003096AX, Fla. Cir. Ct. -Manatee County, filed 7/30/21).

²⁹ See: *Brovont v. KS-I Med. Servs., P.A.* (Mo. App. 2020). See also: *Espinoza-Cruz vs Florida EM-I Medical Services PA*, case no: 15-CA-001112, Fla. Cir. Ct -Hillsborough, filed 2/4/15.

³⁰ For some examples, see: HCA at Lazard Capital Markets Healthcare Conference. November 16, 2011. P.3 of transcript. See also: HCA at Citi Global Healthcare Conference. December 6, 2017. P.8 of transcript

³¹ See: HCA at Wells Fargo Healthcare Conference. June 18, 2014. P.5-6 of transcript.

³² See: HCA Q2 2020 Earnings Call. July 22, 2020. P.17 of transcript.

³³ SEIU Report: "HCA: Higher Healthcare Costs for America," p.13

³⁴ Based upon SEIU analysis of claims data from the Medicare Inpatient and Outpatient Standard Analytic Files.

REVIEW CRITERION (7)

§ 131E-183(a) (7)—The applicant shall show evidence of the availability of resources, including health manpower and management personnel, for the provision of the services proposed to be provided.³⁵

HCA's Pattern of Chronic Understaffing

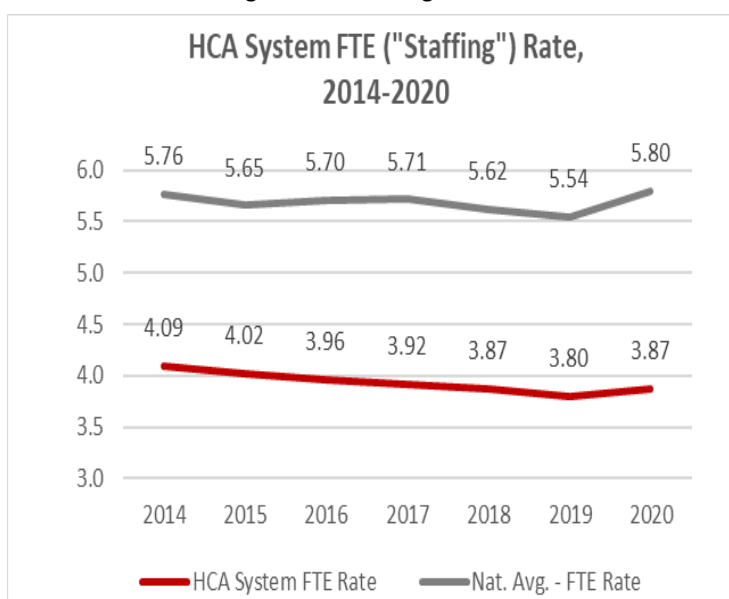
In response to Certificate of Need (CoN) Review Criterion (7), the Applicant claims that Mission Health “has historically been able to recruit and retain clinical and non-clinical personnel for all related healthcare facilities,” and “has not experienced challenges retaining and, as necessary, recruiting nursing or other clinical and non-clinical staff.” The Applicant goes on to attribute its current staffing shortages and challenges to the COVID pandemic.³⁶ However, we remain unconvinced that the pandemic is the sole reason for the Applicant’s staffing issues.

It is our belief that Mission Health “historically” had fewer staffing issues until the system was acquired by HCA in 2019. SEIU’s analysis of Medicare cost reports, lawsuits, and news reports suggest that HCA’s profit-driven approach extends to its staffing decisions as well. Higher staffing levels are associated with better patient care.³⁷ However, labor is the largest cost driver for hospitals, representing over half of hospital industry expenses,³⁸ so lowering staffing levels boosts profitability.

SEIU’s analysis of cost report data from the Centers for Medicare and Medicaid Services (“CMS”) shows a pattern of lower than average staffing ratios at HCA’s facilities nationwide.³⁹ In 2020, HCA hospitals had about 33% fewer full-time equivalent (“FTE”) staff per adjusted occupied bed (“FTE rate”, or “staffing rate”) than the national average for acute care and critical access hospitals.⁴⁰ This ratio measures the total number of staff at a facility compared to the total volume of patients in a year.

The trend of lower FTE rates at HCA hospitals is consistent over time. Between 2014 and 2020, the HCA system’s staffing rate was

Fig. 6. HCA's Staffing Rates



³⁵ Article 9. Certificate of Need, § 131E-183(a)(7),

https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_131E/Article_9.html

³⁶ Certificate of Need Application for acute care beds submitted by MH Mission Hospital, LLLP. June 15, 2022, p131

³⁷ Kane, Shamliyan, Mueller, Duval, and Wilt, “Nurse Staffing and Quality of Patient Care,” Research Prepared for the U.S. Agency for Healthcare Research and Quality, 2007, p. v.

³⁸ HFMA, “Hospitals innovate to control labor costs,” Oct. 1, 2019, <https://www.hfma.org/topics/hfm/2019/october/hospitals-innovate-to-control-labor-costs.html>

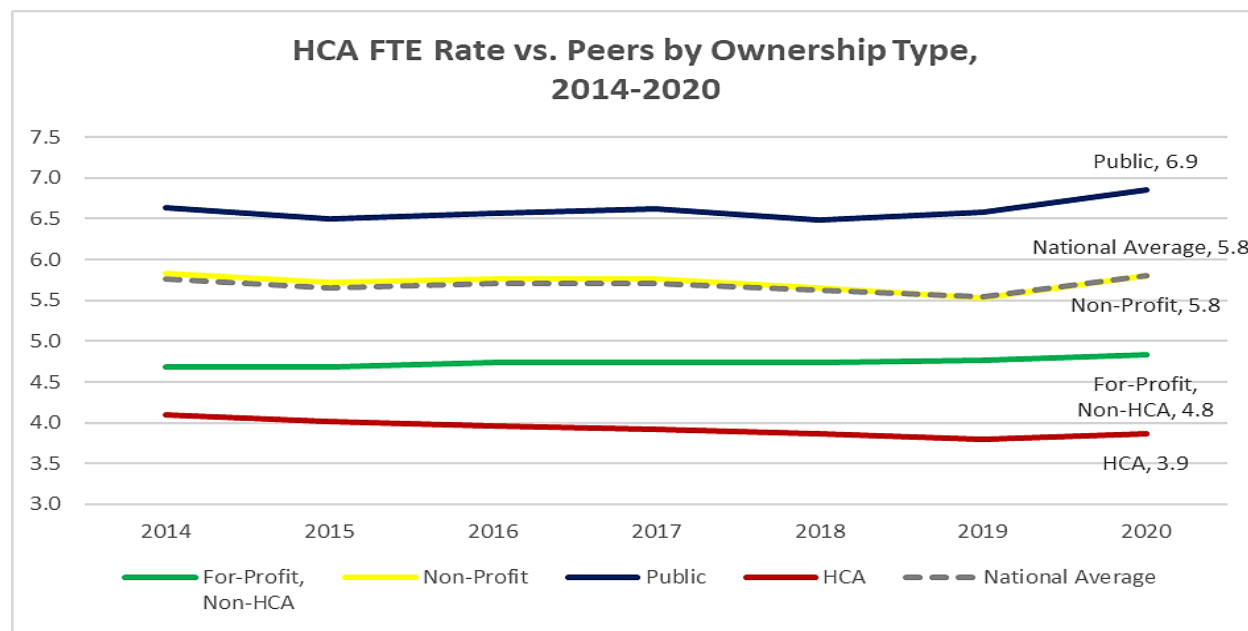
³⁹ Based upon SEIU analysis of Medicare Cost Report data for short-term general acute care hospitals and critical access hospitals. FTE Rate compares the number of staff (full time equivalents) to the volume of patients. The formula is: Full time equivalents/ (Adjusted inpatient days/ Days in period). The adjustment to inpatient days accounts for outpatient utilization at the facilities

⁴⁰ Based upon SEIU analysis of Medicare Cost Report data for short-term general acute care hospitals and critical access hospitals. FTE Rate compares the number of staff (full time equivalents) to the volume of patients. The formula is: Full time equivalents/ (Adjusted inpatient days/ Days in period). The adjustment to inpatient days accounts for outpatient utilization at the facilities. These averages are weighted averages.

between 29% and 33% below the national average.

HCA's understaffing is even more apparent when compared to its for-profit, non-profit, and public hospital peers nationwide. As shown in the figure below, HCA's low FTE rates have been consistently lower than even other for-profit hospitals. ⁴¹

Fig. 7. HCA's Avg. Staffing Rates Compared to Peers



Source: SEIU Analysis of Medicare Cost Reports

Given these eye-opening trends, it is no surprise that HCA extends its low staffing practices to its newly-acquired facilities. One need look no further than the state of Georgia, another HCA market in the southeast, where HCA took over hospitals with previously higher staffing levels and markedly lowered them.

Several years before HCA took over Mission Health, HCA acquired two Georgia Hospitals—Memorial Satilla Health (Waycross, GA) in 2017⁴² and Memorial Health University Medical Center (Savannah, GA) in 2018.⁴³ Staffing levels at both Georgia facilities declined after HCA took over. Between 2017 and 2020, these and other HCA hospitals in Georgia had, on average, 15-27% less staff per bed than the state average.⁴⁴ In 2020, both Memorial Satilla Health and Memorial Health University Medical Center had significantly lower FTE/Staffing rates than the Georgia and national averages.⁴⁵

⁴¹ SEIU analysis of Medicare cost report data.

⁴² Saunders, Jessica, "Hospital giant HCA acquires 231-bed hospital in Waycross, Ga.," *Atlanta Business Chronicle*, May 3, 2017, <https://www.bizjournals.com/atlanta/news/2017/05/03/hospital-giant-hca-acquires-231-bed-hospital-in.html>

⁴³ Skutch, Jan, "HCA completes \$456 million purchase of Memorial Health," *Savannah Morning News*, Feb. 1, 2018, <https://www.savannahnow.com/story/news/2018/02/01/hca-completes-456-million-purchase-memorial-health/13839711007/>

⁴⁴ SEIU analysis of Medicare cost report data.

⁴⁵ SEIU analysis of Medicare cost report data.

Fig. 8. Memorial Health Univ. Med Ctr & Memorial Satilla Health Staffing Rates, FY 2020

Facility Name	FTE Rate	Nat. Avg. FTE Rate	GA Avg. FTE Rate
Memorial Health University Medical Center	3.42	5.80	4.84
Memorial Satilla Health	3.24	5.80	4.84

Source: SEIU Analysis of Medicare Cost Reports

Thus, it is unsurprising that staffing level decreases have been raised as one of the major reasons for concern after HCA acquired Mission Health system in 2019.⁴⁶

Indeed, cost report data for Mission Health hospitals shows that from 2018 to 2020, there was a 26% drop in the total number of full-time equivalent employees on the payroll (“FTE’s”)⁴⁷ employed in the Mission Health hospitals. That’s approximately 1,950 fewer staff. The table below illustrates that between 2019 and 2020 the FTE/Staffing rates of facilities within the Mission Health System fell significantly lower than state and national averages.⁴⁸

Fig. 9. Mission Health System’s Staffing Rates, FY 2019-2020

Year	Mission Sys. FTE Rate	Nat. Avg. FTE Rate	NC Avg. FTE Rate
2019	3.83	5.54	5.04
2020	4.00	5.80	5.16

Source: SEIU Analysis of Medicare Cost Reports

The drop in FTE rates following HCA’s takeover of Mission Health is even starker when we take a closer look at the Applicant hospital, Mission Hospital. In the several years prior to HCA’s takeover, or between 2014 and 2018, the Hospital’s FTE rates were equal to or exceeded 6 FTEs per adjusted occupied bed, exceeding the North Carolina and national averages. Yet following HCA’s takeover, the Hospital’s FTE/staffing rates began trending downward, falling to 3.7-4.7 FTEs per adjusted occupied bed between 2019 and 2021, way below state and national averages.⁴⁹

Fig. 10. Mission Hospital’s Staffing Rates, FY 2014-2021

Year	Mission Hosp. FTE Rate	Nat. Avg. FTE Rate	NC Avg. FTE Rate
2014	6.3	5.8	5.5
2015	6.2	5.7	5.2
2016	6.2	5.7	5.2
2017	6.0	5.7	5.2
2018	6.0	5.6	5.1
2019	4.7	5.5	5.0
2020	4.7	5.8	5.2
2021	3.7	5.4	5.1

Source: SEIU Analysis of Medicare Cost Reports

North Carolina Communities Continually Sound Alarm on HCA’s Unsafe Staffing

⁴⁶ “Concerns mount as doctors leave HCA; Physicians citing more work, less pay,” The Asheville Citizen-Times (North Carolina), May 16, 2021

⁴⁷ Form CMS-2552-10, Worksheet S-3 Part I, Row 27, Column 10. Note that one FTE could be one person working full time or more than one person working part time.

⁴⁸ SEIU analysis of Medicare cost report data.

⁴⁹ SEIU analysis of Medicare cost report data.

Due to HCA's influence as a healthcare provider and employer in the proposed service area,⁵⁰ its profit-driven practices of over-admitting while understaffing have serious implications for patient care and working conditions in the region. As such, many concerns have been raised about Mission Health since HCA acquired the system.

Back in February 2020, approximately one year following HCA's takeover of Mission,⁵¹ local and state officials signed an open letter to the independent monitor overseeing HCA's compliance with the Mission Health sale terms because "[c]oncerns have been pouring in from distressed patients, practitioners and HCA employees." The open letter goes on to say:

"With HCA heavily focused on the bottom line, there have been numerous, aggressive staff cuts over the past year, putting patient safety at risk. Certified nurse assistants and unit secretaries have been cut dramatically or eliminated, putting new pressure on nurses. Patient to nursing staff ratios have also increased and some departments have seen an exodus of nurses, further stressing the remaining nurses."⁵²

Thirty-year nurse veteran Amy Waters saw support staff being cut after HCA took over Mission Health,⁵³ including certified nursing assistants (CNAs), housekeeping, and food service staff. Nurses also departed, often replaced by part-time or traveling nurses, if at all.⁵⁴ But as the pandemic has raged on since March 2020, HCA's continued practice of understaffing has only exacerbated the strain and burden placed on our nation's frontline healthcare workers. As *NPR* reported, "During the pandemic, [Waters] fears only worsened. At times, nurses cared for seven patients at once, despite research indicating four is a reasonable number."⁵⁵ Mission nurses also note that "short staffing has become a daily occurrence," with RNs being asked to do more with less and to work with no meal or rest breaks.⁵⁶ For example, nurses have taken on other tasks as HCA cut back on support staff, including housekeeping and blood draws because of a phlebotomist shortage.⁵⁷

It appears that things have not improved several years on. A cursory search of HCA's job search site found that, as of 6/28/22, Mission Health had posted 871 job openings in the Asheville-Area.⁵⁸

⁵⁰ Asheville Chamber of Commerce, "Healthcare," <https://www.ashevillechamber.org/economic-development-strategy/avl-5x5-strategy/healthcare/>

⁵¹ Commins, John, "HCA Completes \$1.5B Mission Health Acquisition," Feb. 1, 2019, *HealthLeaders* <https://www.healthleadersmedia.com/strategy/hca-completes-15b-mission-health-acquisition>

⁵² Barbara Durr, "Quality of Care Concerns Rise at Mission Hospital," *Asheville Watchdog*, May 20, 2021, <https://avlwatchdog.org/quality-of-care-concerns-rise-at-mission-hospital/>

⁵³ Aneri Pattani, "For Health Care Workers, The Pandemic Is Fueling Renewed Interest In Unions." *NPR Shots*. January 11, 2021, <https://www.npr.org/sections/health-shots/2021/01/11/955128562/for-health-care-workers-the-pandemic-is-fueling-renewed-interest-in-unions>

⁵⁴ Barbara Durr, "Mission nurses overburdened, patients suffer", *Blue Ridge Public Radio*, Apr. 4, 2022, <https://www.bpr.org/bpr-news/2022-04-04/mission-nurses-overburdened-patients-suffer>

⁵⁵ Aneri Pattani, "For Health Care Workers, The Pandemic Is Fueling Renewed Interest In Unions." *NPR Shots*. January 11, 2021, <https://www.npr.org/sections/health-shots/2021/01/11/955128562/for-health-care-workers-the-pandemic-is-fueling-renewed-interest-in-unions>

⁵⁶ Kristy Kepley-Steward, "Mission Hospital nurses rally again, alleging short-staffing causing patient care concerns," *WLOS*, Oct. 21, 2021, <https://wlos.com/news/local/mission-hospital-nurses-alleged-short-staffing-causing-patient-care-concerns>

⁵⁷ Barbara Durr, "Mission nurses overburdened, patients suffer", *Blue Ridge Public Radio*, Apr. 4, 2022, <https://www.bpr.org/bpr-news/2022-04-04/mission-nurses-overburdened-patients-suffer>

⁵⁸ Job Search Results, HCA, https://careers.hcahealthcare.com/search/jobs?location=Asheville+&ns_from_search=1&q=Mission+health - Accessed on 6/28/22

Fig. 11. HCA's Job Postings for the Asheville-area, 6/28/22

The screenshot shows the HCA Healthcare Careers website. At the top, there's a navigation bar with links like 'Join Talent Network', 'Current Employees', and 'HCAHealthcare.com'. Below this is a search bar with 'Mission health' entered and a location filter set to 'Asheville'. A 'Search' button is visible. The results section shows '871 Mission health jobs in Asheville found'. There are filter buttons for Category, State, City, Facility, Status, and Shift. Below the filters, it says 'Showing 1-25 of 871 results'. On the right, there are links for 'Set up job alerts' and 'Saved'.

Of those 871 job openings, 594 were at the Applicant hospital, Mission Hospital.⁵⁹

Fig. 12. HCA's Job Postings for Mission Hospital, 6/28/22

This screenshot is similar to Fig. 11 but shows the results after filtering by 'Mission Hospital'. The search bar still has 'Mission health' and 'Asheville'. The filter buttons are the same, but the 'Facility' button is highlighted with a red circle. Below the filters, a pill-shaped button shows 'Mission Hospital' with an 'x' to clear it, and a 'Clear all filters' link. The results section now shows '594 Mission health jobs in Asheville found'. It says 'Showing 1-25 of 594 results'. The job listing for 'Registered Nurse NICU FT Nights' is visible, showing details like 'Mission Hospital, Asheville, NC, United States', 'Full-time', 'Nights > 10 Hrs/Wkends Rotate', and 'New'. A 'View Job' button is present.

According to National Nurses United (NNU), the nurses' union that represents nurses at Mission Health, more than 400 of those open positions at the Applicant Hospital are for RNs.⁶⁰

Kelley Tyler, a 37-year Mission employee, testified earlier this year at a joint FTC/DOJ hearing to shed light on how this short staffing impacts her day-to-day work and to "share the devastation our community has experienced since HCA Healthcare, the world's largest and wealthiest health care system, bought Mission." Tyler notes that prior to the sale, her trauma care unit had 13 RNs and 5 CNAs to care for 36 patients. Now that unit has 44 patients but only 9 RNs and 4 CNAs, with "a one-to-five ratio on a good day." She adds, "The reality is more than often a one-to-seven ratio," and "This only allows eight minutes per patient each

⁵⁹ Job Search Results, HCA, https://careers.hcahealthcare.com/search/jobs?location=Asheville+&ns_from_search=1&q=Mission+health - Accessed on 6/28/22

⁶⁰ National Nurses United, "Mission Hospital nurses to rally for recruitment [sic], retention, and patient safety in Asheville," May 31, 2022, <https://www.nationalnursesunited.org/press/mission-hospital-nurses-to-rally-for-recruitment-retention-and-patient-safety>

hour with little to no assistance. We're not able to give the best quality care in the situation. Nursing under these circumstances is more like factory work."⁶¹

HCA's Unsafe Staffing Practices in Other Markets

The unsafe staffing and patient care concerns raised above are echoed by staff from all levels of care at HCA hospitals across the country. Some of these concerns are detailed below:

- A former ED Medical Director in Overland, Kansas, alleged that he was fired and "blacklisted" after reporting concerns about skeletal staffing in his HCA hospital. The "financially motivated" staffing decisions were so dire that after the hospital underwent a \$120M expansion project that added 105 hospital beds, no additional ED physicians were added. This meant that ED physicians were required to provide coverage in three units, or physically be in three places at once -- the main ED, the pediatric ED, or in other parts of the 343-bed hospital responding to "Code Blues" (urgent distress calls). As a result, the main ED (which was a Level II trauma center), was often left unstaffed by a physician to respond to emergencies.⁶²
- A former ICU nurse at HCA's Westside Regional Medical Center in Plantation, Florida, alleges she was retaliated against and fired for reporting staffing issues. She alleges that the monitors in the critical care patient rooms were incapable of keeping nurses apprised of more than two patients at a time. Yet, the hospital assigned three patients as standard practice, despite their critical conditions requiring continuous treatment and monitoring. The Hospital also never staffed the ICU such that the central monitoring station could be continuously manned. On such occasions, patient alarms notifying nurses of irregular vital signs would sound with such frequency that they would go unnoticed by nursing staff. During the course of her employment at the Hospital, she alleges these practices resulted in delayed response times with regard to at least two critical patients causing their deaths.⁶³
- A certified nursing assistant (CNA) at Los Robles Medical Center in Thousand Oaks, California, told *The Guardian* that, "Patient safety is not there due to the lack of staffing." CNAs don't have mandated staffing ratios, and so she is expected to cover up to 30 patients throughout the day. She adds, "They've [HCA] received billions of dollars in federal stimulus relief and they're still cutting staffing. Managers are doing our work and they're sending people home, cutting our hours."⁶⁴

Given this unbridled pursuit of profit above all else, it should be no surprise that HCA's profits are astonishingly strong—they made \$3.75 billion in profit in 2020⁶⁵ and \$6.96 billion in 2021,⁶⁶ despite the pandemic. And since 2010, the company has paid out more than \$29 billion to investors in dividends and

⁶¹ Andrew Jones, "Mission nurse on HCA fallout during merger hearing: Shocked and horrified," *Asheville Citizen Times*, Apr. 16, 2022, <https://www.citizen-times.com/story/news/2022/04/15/mission-nurse-talks-hca-purchase-fallout-ftc-doj-merger-hearing/7323161001/>

⁶² *Brovant v. KS-I Med. Servs., P.A.* (Mo. App. 2020). Opinion of the Missouri Court of Appeals, Western District. P.5-9-,42 Accessible at <https://www.courts.mo.gov/file.jsp?id=167435>.

⁶³ See *Julie Griffin vs. Columbia Hospital Corporation of South Broward* (Case no: CACE18007220, Fla. Cir. Ct.- Broward, filed 3/27/18).

⁶⁴ Michael Sainato, "US Nurses At For-Profit Hospital Chain To Strike Over Cuts And PPE Shortages," *KHN*, June 23, 2020, <https://khn.org/news/us-nurses-at-for-profit-hospital-chain-to-strike-over-cuts-and-ppe-shortages/amp/>

⁶⁵ HCA 2020 10K, p. 71, (See: Net Income attributable to HCA Healthcare, Inc.) Accessible at <https://www.sec.gov/ix?doc=/Archives/edgar/data/860730/000119312521048994/d37951d10k.htm>

⁶⁶ HCA 2021 10K, p. 75, (See: Net Income attributable to HCA Healthcare, Inc.) Accessible at <https://www.sec.gov/ix?doc=/Archives/edgar/data/860730/000119312522046707/d32297d10k.htm>

share repurchases.⁶⁷ In other words, HCA has more than enough resources to invest in its workforce and to properly staff its facilities for the sake of patient care and worker safety, but time and again the company chooses not to.

HCA Failure to Address Workplace Safety Issues Raises Concerns about Their Ability to Retain Staff

Having a safe, welcoming workplace environment is one of the key tenets of successful staff retention.⁶⁸ Yet workers at HCA facilities across the country, including workers at Mission Health, have repeatedly raised concerns about safety issues affecting patient care. Examples include:

- In April 2022, the *Asheville Watchdog* reported that nurses at Mission have filed more than 200 Assignment Despite Objection (ADO) forms since July 2021. ADOs are a formal complaint system that documents unsafe assignments that, in their professional judgment, put patients at risk. The forms are completed only after the nurses have informed their supervisors with no resolution.⁶⁹
- In 2020, National Nurses United, the country's largest nurses' union,⁷⁰ filed a complaint with the Occupational Health and Safety Administration (OSHA) alleging workplace safety hazards at 17 HCA hospitals, including facilities in North Carolina.⁷¹
- Also in 2020, SEIU, the nation's largest union of healthcare workers, filed nearly 500 complaints with Nevada hospital regulators alleging unsafe or potentially unsafe patient care assignments at five HCA hospitals in Las Vegas, Nevada.⁷²

One such safety issue that impacts patient care is understaffing.⁷³ Mission Health System staff have said that following HCA's takeover, staffing reductions and turnover have impacted nurse-to-patient ratios and diminished quality of care.⁷⁴ According to one nurse at the Applicant Hospital,

"Our nurses are being forced to care for too many sick patients at one time, without adequate support staff. This lack of staff means that patients are forced to wait to get care, to get pain medications, or to get help walking to the restroom. These delays can lead to infections, bed sores, falls, and other negative outcomes."⁷⁵

⁶⁷ Based on an analysis of HCA's filings, press releases, investor presentations and an article by Pitchbook.

⁶⁸ John Niemoller, "Staying Safe: How Safety Affects Employee Retention," Perillon: EHS MANAGEMENT BLOG, Nov. 30, 2021, <https://www.perillon.com/blog/staying-safe-how-safety-affects-employee-retention>

⁶⁹ Hailey Mensik, "Nurses union seeks OSHA inspections, fines at 17 HCA hospitals," *Healthcare Dive*, Aug. 27, 2020, <https://www.healthcarediver.com/news/nurses-union-seeks-OSHA-inspections-at-17-HCA-hospitals/584069/>; Barbara Durr, "Mission nurses overburdened, patients suffer," *Blue Ridge Public Radio*, Apr. 4, 2022, <https://www.bpr.org/bpr-news/2022-04-04/mission-nurses-overburdened-patients-suffer>

⁷⁰ Ivan Pereira, "Largest nurses union applauds possible OSHA action against 3 states over PPE," *ABC News*, Oct. 20, 2021, <https://abcnews.go.com/Health/largest-nurses-union-applauds-osh-a-action-states-ppe/story?id=80690489>

⁷¹ Hailey Mensik, "Nurses union seeks OSHA inspections, fines at 17 HCA hospitals," *Healthcare Dive*, Aug. 27, 2020, <https://www.healthcarediver.com/news/nurses-union-seeks-OSHA-inspections-at-17-HCA-hospitals/584069/>

⁷² Hailey Mensik, "Nurses union seeks OSHA inspections, fines at 17 HCA hospitals," *Healthcare Dive*, Aug. 27, 2020, <https://www.healthcarediver.com/news/nurses-union-seeks-OSHA-inspections-at-17-HCA-hospitals/584069/>

⁷³ National Nurses United, "Mission Hospital nurses to rally for recruitment [sic], retention, and patient safety in Asheville," May 31, 2022, <https://www.nationalnursesunited.org/press/mission-hospital-nurses-to-rally-for-recruitment-retention-and-patient-safety>

⁷⁴ Barbara Durr and Sally Kestin, "How Many Doctors Have Left Mission? HCA Won't Say," *Asheville Watchdog*, March 23, 2022, <https://avlwatchdog.org/how-many-doctors-have-left-mission-hca-wont-say/>

⁷⁵ National Nurses United, "RNs at Mission Hospital in Asheville, NC demand safe staffing to ensure optimal patient care," Apr. 20, 2022, <https://www.nationalnursesunited.org/press/mission-hospital-rns-to-demand-safe-staffing>

Despite these concerns, the Applicant and HCA have failed to do what's actually needed to address them: increasing staff. According to National Nurses United (NNU), the nurses' union representing RNs at Mission Hospitals, HCA has refused to increase core staffing.⁷⁶ Instead, HCA is "exploring new delivery models through our care transformation initiatives," which are "focused on supporting our care teams and easing some of the current labor pressures"⁷⁷ and "give them relief because we're running at a fairly productive level."⁷⁸ As such, the Applicant states in its Certificate of Need (CoN) application that it is indeed undertaking "innovative" efforts to fill its shortage of healthcare staff.⁷⁹

These "innovative" efforts "could be undermining" RNs' scope of practice.⁸⁰ HCA is demanding that nurses work in units without the experience, support, or competencies needed to provide the care that is essential to specific patient populations.⁸¹ Upon closer examination, these "new models of care" may also undermine the scope of practice of other staff positions. For example, HCA's CFO, William B. Rutherford, made the following statement:

"And then looking at new models of care, can we support our nurses with patient care techs? Can we utilize paramedics in the emergency room? Can we utilize other service lines to take the burden off the nurses? So that helps ease the dynamic and even the cost burden that may occur over time."⁸²

In practice, these workers may not be properly equipped to do the work and may be exposed to certain liabilities or hazards as a result. One such example is a paramedic who was terminated after assisting in the ED of Ocala Regional Medical Center (FL). He alleges in his employment retaliation suit that workers at the facility felt unsafe because security was "extremely lax" and "there is rarely any police or security presence." Thus, "male staff, particularly paramedics ... are often forced to deal with violent and unruly patients."⁸³ He alleges that in one such incident, he assisted one of the ER nurses with bringing a patient experiencing a psychotic episode to a more secure room, during which the patient became irate and threatening. He alleges he put the patient in physical hold because he feared for his life and it took several other ER staff, including another paramedic, to subdue the patient. He alleges that he was terminated after he reported to the facility's HR department that the facility violated, among other rules and regulations, OSHA's General Duty Clause,⁸⁴ that all employers provide a work environment "free from recognized hazards that are causing or are likely to cause death or serious physical harm."⁸⁵

⁷⁶ National Nurses United, "RNs at Mission Hospital in Asheville, NC demand safe staffing to ensure optimal patient care," Apr. 20, 2022, <https://www.nationalnursesunited.org/press/mission-hospital-rns-to-demand-safe-staffing>

⁷⁷ HCA Healthcare, Inc. (HCA) CEO Sam Hazen on Q1 2022 Results - Earnings Call Transcript. P.5-6.

⁷⁸ Conference Presentation. HCA Presents at 11th SVB Leerink Annual Global Healthcare Conference 2022. February 16, 2022. p. 8.

⁷⁹ Certificate of Need Application for acute care beds submitted by MH Mission Hospital, LLLP. June 15, 2022, p131

⁸⁰ National Nurses United, "Mission Hospital nurses to rally for recruitment [sic], retention, and patient safety in Asheville," May 31, 2022, <https://www.nationalnursesunited.org/press/mission-hospital-nurses-to-rally-for-recruitment-retention-and-patient-safety>

⁸¹ National Nurses United, "RNs at Mission Hospital in Asheville, NC demand safe staffing to ensure optimal patient care," Apr. 20, 2022, <https://www.nationalnursesunited.org/press/mission-hospital-rns-to-demand-safe-staffing>

⁸² Conference Presentation. HCA Presents at 42nd Annual Cowen Health Care Conference. March 9, 2022. p. 12.

⁸³ Amended Complaint, *Dunn v. Marion Community Hospital*, (Case no: 21CA001165A. Cir Ct. Fla. –Marion, filed 6/24/2021), ¶11-13. The case is ongoing as of May 2022

⁸⁴ Amended Complaint, *Dunn v. Marion Community Hospital*, (Case no: 21CA001165A. Cir Ct. Fla. –Marion, filed 6/24/2021). ¶29-32. The case is ongoing as of May 2022.

⁸⁵ CDC, "OSHA's General Duty Clause", https://www.cdc.gov/WPVHC/Nurses/Course/Slide/Unit5_4#:~:text=The%20General%20Duty%20Clause%20from,a%20recognized%20hazard%20within%20the

Since HCA took over the system, Mission employees have said that the company is creating conditions that overburden workers,⁸⁶ requiring them to complete tasks outside their scope of practice, making caregiving feel like “factory work,”⁸⁷ and degenerating its facilities into “a punishing workplace.”⁸⁸ Thus, workers are leaving because of the “poor working conditions created by HCA management’s decisions,” which “lead to moral injury and moral distress, and have created a crisis in retention and recruitment at the hospital.”⁸⁹ Taken together, HCA’s unresponsiveness to worker concerns about troubling working conditions indicates that HCA and the Applicant cannot successfully retain adequate and sufficient staff to ensure the safety and wellbeing of its workers, patients, and communities at large.⁹⁰

HCA’s Failure to Address Concerns Raises Questions about Its Ability to Retain Physician Staff

The Applicant’s Certificate of Need (CoN) application centers on the recruitment of physicians and states that it has “robust resources for recruitment of physicians and advanced practitioners.”⁹¹ This focus on recruitment, rather than retention, raises concerns about HCA’s treatment of physicians, especially given the reported mass departure of physicians from the Mission Health System following HCA’s takeover.⁹²

According to the *Asheville Watchdog*, more than 200 physicians have left the Mission Health System following HCA’s takeover in 2019.⁹³ Mission physicians reportedly departed the system for a range of reasons, including frustrations with declining patient care, understaffing, the imposition of HCA’s corporate metrics, and HCA’s focus on profits above all else.⁹⁴ Here is what some current and former Mission doctors had to say about HCA’s approach to physician relationships and patient care:

- “Unfortunately, the change in ownership has shifted this system’s priority away from the health of Western North Carolina to the health of the stockholders.”⁹⁵ HCA was “Restructuring physician contracts to where it’s fully based on how many patients you see and how high of a level you bill them versus focusing some on quality outcomes and some on productivity ... the portion of pay that was for quality metrics and things like that was significantly decreased and the focus on how many patients you were seeing was increased.”⁹⁶ — Dr. Kate Rasche, Family Medicine

⁸⁶ Barbara Durr and Sally Kestin, “How Many Doctors Have Left Mission? HCA Won’t Say,” *Asheville Watchdog*, March 23, 2022,

<https://avlwatchdog.org/how-many-doctors-have-left-mission-hca-wont-say/>;

Barbara Durr, “Mission nurses overburdened, patients suffer”, *Blue Ridge Public Radio*, Apr. 4, 2022, <https://www.bpr.org/bpr-news/2022-04-04/mission-nurses-overburdened-patients-suffer>

⁸⁷ Andrew Jones, “Mission nurse on HCA fallout during merger hearing: Shocked and horrified,” *Asheville Citizen Times*, Apr. 16, 2022,

<https://www.citizen-times.com/story/news/2022/04/15/mission-nurse-talks-hca-purchase-fallout-ftc-doj-merger-hearing/7323161001/>

⁸⁸ Barbara Durr, “Mission nurses overburdened, patients suffer”, *Blue Ridge Public Radio*, Apr. 4, 2022, - <https://www.bpr.org/bpr-news/2022-04-04/mission-nurses-overburdened-patients-suffer>

⁸⁹ National Nurses United, “RNs at Mission Hospital in Asheville, NC demand safe staffing to ensure optimal patient care,” Apr. 20, 2022,

<https://www.nationalnursesunited.org/press/mission-hospital-rns-to-demand-safe-staffing>

⁹⁰ Barbara Durr, “Mission nurses overburdened, patients suffer”, *Blue Ridge Public Radio*, Apr. 4, 2022, - <https://www.bpr.org/bpr-news/2022-04-04/mission-nurses-overburdened-patients-suffer>

⁹¹ Certificate of Need Application for acute care beds submitted by MH Mission Hospital, LLLP. June 15, 2022, p132

⁹² Barbara Durr and Sally Kestin, “How Many Doctors Have Left Mission? HCA Won’t Say,” *Asheville Watchdog*, March 23, 2022,

<https://avlwatchdog.org/how-many-doctors-have-left-mission-hca-wont-say/fgcdx>

⁹³ Barbara Durr and Sally Kestin, “How Many Doctors Have Left Mission? HCA Won’t Say,” *Asheville Watchdog*, March 23, 2022,

<https://avlwatchdog.org/how-many-doctors-have-left-mission-hca-wont-say/>

⁹⁴ Barbara Durr and Sally Kestin, “How Many Doctors Have Left Mission? HCA Won’t Say,” *Asheville Watchdog*, March 23, 2022,

<https://avlwatchdog.org/how-many-doctors-have-left-mission-hca-wont-say/>

⁹⁵ Karen Zatkulak, “Clinics closed, dozens of doctors leave Mission Health since HCA takeover.” *WLOS ABC-13 News*. Feb 23, 2021. -

<https://wlos.com/news/local/clinics-closed-dozens-of-doctors-leave-mission-health-since-hca-takeover>

⁹⁶ Karen Zatkulak, “Clinics closed, dozens of doctors leave Mission Health since HCA takeover.” *WLOS ABC-13 News*. Feb 23, 2021. -

<https://wlos.com/news/local/clinics-closed-dozens-of-doctors-leave-mission-health-since-hca-takeover>

- “HCA “was run primarily by doctors and nurses and now it’s being run by businessmen.” And, “Patient suffering is off their (HCA management’s) radar.”⁹⁷ — Dr. Martin Palmeri, Oncology
- Many patients are skeptical “that HCA has their best interests in mind as a for-profit company.”⁹⁸ — Dr. Ben Aiken, Primary Care
- An anonymous doctor told the Asheville Watchdog that nurses in the emergency room are caring for more patients while management concentrates on meeting minimum standards and “metrics.” “When HCA came in, there were so many emails on metrics,” he said. “We’ve gone from providing amazing care to mediocre care.”⁹⁹

Many of these same sentiments and frustrations with HCA, particularly its understaffing and profit and metric-driven approach to care, are echoed by physicians at HCA hospitals across the country. These physicians also shed light on HCA’s apparent interference with physician autonomy and clinical judgment, as well as its “punishing workplace” culture.

- Dr. Camilo Ruiz, a hospitalist who worked at HCA’s Aventura Hospital and Medical Center in Florida, filed a whistleblower lawsuit alleging HCA and 41 of its hospitals across the country¹⁰⁰ engaged in a systematic practice of maximizing revenues by pressuring hospitalists and other primary care physicians to increase inpatient admissions, regardless of medical need. The lawsuit alleged that HCA adopted many troubling policies and practices to exert their control including threats of terminating admitting privileges or employment, creating competition between physicians (e.g. sending monitoring reports of inpatient and observation cases with peer comparisons), and communications to physicians about non-compliance with Medicare regulations unless they admitted specific patients.¹⁰¹
- Dr. Raymond Brovont – a former ED Director at HCA’s Overland Park Regional Medical Center in Kansas – won a \$26M judgment¹⁰² in 2021 in a wrongful termination case (*Brovont v. KS-I Med. Servs., P.A.*).¹⁰³ Brovont alleged that hospital policies dictated that a single ED physician was to respond to “Code Blues,” or urgent patient distress calls, within the entire hospital while also covering an 18-hour shift in the main ED (a Level II trauma center).¹⁰⁴ Brovont alleged he was fired and then blacklisted after he and other ED physicians repeatedly raised understaffing and other

⁹⁷Barbara Durr and Sally Kestin, “How Many Doctors Have Left Mission? HCA Won’t Say,” Asheville Watchdog, March 23, 2022, <https://avlwatchdog.org/how-many-doctors-have-left-mission-hca-wont-say/>

⁹⁸Barbara Durr and Sally Kestin, “How Many Doctors Have Left Mission? HCA Won’t Say,” Asheville Watchdog, March 23, 2022, <https://avlwatchdog.org/how-many-doctors-have-left-mission-hca-wont-say/>

⁹⁹ Barbara Durr and Sally Kestin, “How Many Doctors Have Left Mission? HCA Won’t Say,” Asheville Watchdog, March 23, 2022, <https://avlwatchdog.org/how-many-doctors-have-left-mission-hca-wont-say/>

¹⁰⁰ Including at HCA facilities in the states of Florida, Texas, California, Virginia, and Nevada. See: *United States of America et al ex rel. Ruiz v. Hospital Corporation of America et al* (Case no:3:2017cv01280, M.D. Tenn., filed 9/19/2017). First Amended Complaint: Paragraph 298

¹⁰¹ See: *United States of America et al ex rel. Ruiz v. Hospital Corporation of America et al* (Case no:3:2017cv01280, M.D. Tenn., filed 9/19/2017). First Amended Complaint

¹⁰² Dr. Brovont won a jury verdict for \$29M in 2018, trial judge reduced award. Dr. Brovont appealed reduction and appellate court reinstated original jury judgment, state supreme court refused to hear further appeal.

See: Dan Margolies. April 13, 2021. “Physician Collects \$26 Million After Litigation Over Inadequate E.R. Staffing Finally Ends.” KCUR 89.3. Accessible at <https://www.kcur.org/>; Fiore, Kristina, *MedPage Today*, “Emergency Physician Wins \$26M in Wrongful Termination Suit,” April 15, 2021, <https://www.medpagetoday.com/special-reports/exclusives/92111>

¹⁰³ The case was filed against subsidiaries of the physician staffing company EmCare, which contracted with HCA’s Overland Park Regional Medical Center in Kansas to provide emergency medical services. EmCare has a joint venture with HCA.

¹⁰⁴ *Brovont v. KS-I Med. Servs., P.A.* (Mo. App. 2020). Opinion of the Missouri Court of Appeals, Western District. P.42. Accessible at <https://www.courts.mo.gov/file.jsp?id=167435>

concerns to both the hospital administration and EmCare,¹⁰⁵ a physician staffing company partially owned by HCA, which contracted for emergency services.¹⁰⁶ After Brovont's termination, the remaining physicians felt like they worked within "a weird cult of coercion" where if you did not go along with it you would be terminated.¹⁰⁷

- Similar allegations appear in litigation brought by the physician group practice Hospital Internists of Austin P.A. (HIA) against TeamHealth, the physician staffing company contracted by HCA to provide physician services in its St. David's Healthcare hospitals in Austin, Texas.¹⁰⁸ Among HIA's many allegations was that HIA physicians were pressured to provide diagnoses that they deemed improper, and that this "pressure necessarily infringed on HIA physician's medical judgment."¹⁰⁹ Yet, conforming to that pressure was, in effect, a condition of employment, HIA claimed. HIA alleged, moreover, that their physicians were pressured to quickly discharge patients, where "a St. David's data/administrative employee would routinely email to [TeamHealth subsidiary] Quantum, a list of patients that he had determined were ready for discharge."¹¹⁰
- In 2021, the Medical Staff of HCA's Blake Medical Center in Florida filed a lawsuit against the facility alleging the hospital board unilaterally and illegally changed its medical staff bylaws without staff consent.¹¹¹ Specifically, the Medical Staff alleges that the bylaws were non-compliant with CMS and JCAHO standards, which deeply affected their day-to-day medical decisions and resulted in risky and substandard care delivered to patients.¹¹² For example, the Hospital allegedly instructed its Chief Medical Officer (CMO) to transform the process for performing lab procedures, where the decision-making for performing certain labs no longer resides with the Blake Medical Staff/attending physicians. Instead, the CMO and the Chief Nursing Officer (neither of whom allegedly have clinical privileges to practice medicine, surgery, consult, or attend any patient at the hospital) decide whether to allow physician-ordered cultures and testing. If the Hospital decides not to perform the tests as ordered within 48 hours, these important tests are automatically canceled by the Hospital.¹¹³

HCA's CEO Sam Hazen has stated that the organization has "resiliency programs," many of which are aimed to advance efficiencies including "a consolidation and alignment of laboratory operations," among other areas.¹¹⁴ And earlier this year, HCA's Chief Laboratory Officer, Heather Signorelli, was featured in Modern

¹⁰⁵ *Brovont v. KS-I Med. Servs., P.A.* (Mo. App. 2020). Opinion of the Missouri Court of Appeals, Western District. p. 9-12. Accessible at <https://www.courts.mo.gov/file.jsp?id=167435>

¹⁰⁶ HCA entered into its JV with EmCare in 2011, and the JV began providing services to HCA hospitals in the first quarter of 2012. -Envision Healthcare, SEC Form 10-K for the year ended December 31, 2013. Filed March 14, 2014. P. F-57.; Though details of the JV agreement are not available, *Modern Healthcare* reported that the JV established a 50-50 profit sharing model between HCA and EmCare once its margins reach about a 13% threshold. - *Modern Healthcare*. June 12, 2019. Accessible at <https://www.modernhealthcare.com/physicians/battle-oversurprise-bills-senate-ponders-requiring-network-rates>.

¹⁰⁷ *Brovont v. KS-I Med. Servs., P.A.* (Mo. App. 2020). Opinion of the Missouri Court of Appeals, Western District. P.12. Accessible at <https://www.courts.mo.gov/file.jsp?id=167435>

¹⁰⁸ Plaintiffs originally filed in federal court. The federal case was dismissed in 2019 for lack of subject matter jurisdiction. The case was re-filed in state court and is currently ongoing. See: *Hospital Internists of Austin, P.A. et al v. Quantum Plus, LLC et al* (Case no: 1:18cv466, W.D. Tex., filed 5/31/2018). See also: *Hospital Internists of Austin, P.A. et al v. Lonestar et al*, (Case no: D-1-GN-19-007224, Travis County Distr. Ct., filed 10/16/19).

¹⁰⁹ *Hospital Internists of Austin, P.A. et al v. Quantum Plus, LLC et al* (Case no: 1:18cv466, W.D. Tex., filed 5/31/2018). Second Amended Complaint: Paragraph 28.

¹¹⁰ *Hospital Internists of Austin, P.A. et al v. Quantum Plus, LLC et al* (Case no: 1:18cv466, W.D. Tex., filed 5/31/2018). First Amended Complaint: Paragraph 30.

¹¹¹ *Blake Medical Staff v. HCA Health Services of FL* (Case no: 2021CA003096AX, Fla. Cir. Ct. -Manatee County, filed 7/30/21), p.5, ¶21-22.

¹¹² *Blake Medical Staff v. HCA Health Services of FL* (Case no: 2021CA003096AX, Fla. Cir. Ct. -Manatee County, filed 7/30/21), p.11-14, ¶41-57.

¹¹³ See *Blake Medical Staff v. HCA Health Services of FL* (Case no: 2021CA003096AX, Fla. Cir. Ct. -Manatee County, filed 7/30/21), p.9-10, ¶38.

¹¹⁴ HCA Healthcare, Inc. (HCA) CEO Sam Hazen on Q1 2022 Results - Earnings Call Transcript. P.5-6.

Healthcare’s annual list of the “Top 25 Emerging Leaders,” which noted that Signorelli created HCA’s first national laboratory service line and “released a laboratory utilization program that has saved the system \$50 million.”¹¹⁵ Given the timing of the Blake Medical Staff’s allegations and the reported “cost-savings” from HCA’s lab utilization program, one has to wonder whether HCA is, again, prioritizing profits at the expense of patient needs.

HCA boasts that it is a “very physician-friendly” organization¹¹⁶ and is “advancing specific agendas to satisfy the larger audience of physicians.”¹¹⁷ In its communications to investors, HCA’s CEO, Sam Hazen, even acknowledges that physicians “want to have voice and what goes on in our facilities,”¹¹⁸ and “the second thing they [physicians] want is clinical capabilities, good nursing.”¹¹⁹ But the cascade of lawsuits discussed above shows that despite knowing what physicians need, HCA has failed to take any meaningful actions on it. The lawsuits all contain eerily similar allegations and themes, suggesting that HCA attempts to exert control over its physicians and interfere with their medical judgment for financial gain without regard for patients’ actual clinical needs. In fact, given the experiences of the physicians mentioned above, this quote from CEO Sam Hazen is quite telling: “The third thing they [physicians] want is, I call it capacity. And so how can we create a more efficient offering for them in how we manage their patients, how we manage their time and so forth.”¹²⁰

HCA’s Unresponsiveness to Community Outcry

In spite of the serious concerns repeatedly raised by its direct care and clinical staff, the Applicant’s parent, HCA, has failed to provide any reasonable assurances that it is willing to address the concerns. For example, when community members, patients, and staff began sounding the alarm about inadequate staffing and working conditions and poor service at Mission Health in 2020, HCA responded with ads. Instead of addressing the public directly, or making substantive changes to its practices, HCA placed newspaper ads in Asheville and Hendersonville to “answer” its critics.¹²¹

Even when addressing their critics directly, HCA and Mission Health’s answers are often vague, veiled in corporate self-praise, or dismissive. For example, when Mission Health’s former Chief Medical Officer, Dr. William Hathaway, sat down with WLOS ABC-News 13 late last year to address quality of care and other concerns, he responded with the following:

- On Quality of Care Concerns: “The quality of care has never been as high as evidenced by the awards we’re delivering,” and “Well, I think the objective data is that quality of care has not gone down.”¹²²

¹¹⁵ “Top 25 Emerging Leaders – 2022.” Modern Healthcare. - <https://www.modernhealthcare.com/awards/top-25-emerging-leaders-2022>; <https://www.advisory.com/daily-briefing/2022/03/22/emerging-leaders>

¹¹⁶ HCA Q4 2020 Earnings Call, 02/02/21

¹¹⁷ HCA Presents at 11th SVB Leerink Annual Global Healthcare Conference 2022, 02/16/22

¹¹⁸ HCA Presents at 11th SVB Leerink Annual Global Healthcare Conference 2022, 02/16/22

¹¹⁹ HCA Presents at 11th SVB Leerink Annual Global Healthcare Conference 2022, 02/16/22

¹²⁰ HCA Presents at 11th SVB Leerink Annual Global Healthcare Conference 2022, 02/16/22

¹²¹ “HCA rejects complaints about staffing and services as nurses seek union.” Carolina Public Press. March 10, 2020. - <https://www.northcarolinahealthnews.org/2020/03/10/hca-rejects-complaints-nurses-seek-union/>

¹²² Karen Zatkulak. “Mission Health responds to quality of care complaints under HCA.” *My40*, December 14th 2021. - <https://my40.tv/mission-health-responds-to-quality-of-care-complaints-under-hca>

- On Staffing Concerns: “[W]e have an opportunity to improve our experience, there’s no ifs ands or buts about that,” he said. “But we are working on that each and every day and part of that is improving the staffing.”¹²³
- On Physician Departures: “If you look at our physician numbers we are essentially net neutral,” he said. “It looks like we have about the same numbers as we did previously. There have been a great number of people, or a fair number of people who have chosen to transition, a natural opportunity in their life to take a new job, but we’ve replaced those and hired more and we will continue to do so.”¹²⁴
- On Turnover and its Impact on Care: “It hasn’t impacted, in some places it’s improved patient care,” Dr. Hathaway replied. “Transition, we always have to be attentive to how new people and new processes affect our team but overall, no, I don’t think it’s impacted patient care negatively at all.”¹²⁵

HCA’s past failures in acknowledging, let alone addressing, ongoing problems fails to inspire confidence the company will take appropriate and meaningful action to address community concerns, especially about understaffing, should Mission Hospital be allowed to expand its capacity. If anything, the proposed expansion may exacerbate ongoing staffing problems at Mission Hospital.

¹²³ Karen Zatkulak. “Mission Health responds to quality of care complaints under HCA.” WLOS ABC-13 News. December 14th 2021. - <https://wlos.com/news/local/mission-health-responds-to-quality-of-care-complaints-under-hca>

¹²⁴ Karen Zatkulak. “Mission Health responds to quality of care complaints under HCA.” WLOS ABC-13 News. December 14th 2021. - <https://wlos.com/news/local/mission-health-responds-to-quality-of-care-complaints-under-hca>

¹²⁵ Karen Zatkulak. “Mission Health responds to quality of care complaints under HCA.” WLOS ABC-13 News. December 14th 2021. - <https://wlos.com/news/local/mission-health-responds-to-quality-of-care-complaints-under-hca>

REVIEW CRITERION (13)

Criterion § 131E-183 (a) (13)—The applicant shall demonstrate the contribution of the proposed service in meeting the health-related needs of the elderly and of members of medically underserved groups, such as medically indigent or low income persons, Medicaid and Medicare recipients, racial and ethnic minorities, women, and handicapped persons, which have traditionally experienced difficulties in obtaining equal access to the proposed services, particularly those needs identified in the State Health Plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the applicant shall show:

- a. Criterion § 131E-183 (a) (13) (a)—The extent to which medically underserved populations currently use the applicant’s existing services in comparison to the percentage of the population in the applicant’s service area which is medically underserved.¹²⁶*

We have serious concerns that the Applicant’s proposed project would fail to adequately serve medically underserved populations in the proposed service area, as evidenced by community health need index data, namely the Lown Institute Hospital and the Dignity Health/IBM Watson Community Need indexes.

Lown Institute Hospital Index

According to the Lown Institute Hospital Index—which evaluates hospitals not only on their patient outcomes but also their civic leadership and avoidance of overuse¹²⁷—the Applicant, Mission Hospital, scored a “C” grade, and ranked 2,837 out of 3,301 nationally, and 70 out of 82 statewide, on its “inclusivity” metric.¹²⁸ This metric reflects how well hospitals serve medically underserved communities including people of color, people with lower incomes, and people with lower levels of education.¹²⁹

Community Need Index Scores

The “Community Need Index” (CNI) is a tool¹³⁰ based on demographic and economic statistics that helps to assess demand for healthcare services and to identify health disparities of a given community. The CNI score is an average of five different barrier scores that measure various socio-economic indicators of each community, including barriers in income, culture (language), education, insurance, and housing. The CNI provides a score for every populated ZIP code in the United States on a scale of 1.0 to 5.0. A score of 1.0 indicates a ZIP code with the least need, while a score of 5.0 represents a ZIP code with the most need compared to the US national average (score of 3.0).¹³¹

When taking a closer look at the Applicant’s bed expansion proposal, we see that the county in which the Applicant facility is located has the lowest CNI score among the counties in the proposed service area.¹³²

¹²⁶ Article 9. Certificate of Need, § 131E-183(a)(13)

https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_131E/Article_9.html

¹²⁷ <https://lowninstitute.org/projects/lown-institute-hospitals-index/>

¹²⁸ <https://lownhospitalsindex.org/hospital/memorial-mission-hospital-and-asheville-surgery-center/>

¹²⁹ <https://lownhospitalsindex.org/hospital/memorial-mission-hospital-and-asheville-surgery-center/>

¹³⁰ Developed by Dignity Health and IBM Watson Health, <http://cni.dignityhealth.org/index.asp>

¹³¹ <http://cni.dignityhealth.org/Watson-Health-2021-Community-Need-Index-Source-Notes.pdf>

¹³² CNI Index Scores from Dignity Health and IBM Watson Health, <http://cni.dignityhealth.org/index.asp>

Fig. 13. CNI Scores by Proposed Service Area County

County	Facility	# Acute Care Beds	Median CNI Score	Mean CNI Score
Buncombe	Mission Hospital	733	3	3.2
Graham	None	N/A	4	3.8
Madison	None	N/A	3.8	3.4
Yancey	None	N/A	3.3	3.7

Source: CNI Index Scores from Dignity Health and IBM Watson Health, <http://cni.dignityhealth.org/index.asp>

The CNI scores indicate that residents outside of Buncombe County have more severe health disparities and barriers to care. For example, the patient populations from these higher need counties may need to travel a longer distance in order to access care, as noted by the Applicant’s own drive time analysis to the Applicant’s Mission Hospital facility.

Fig. 14. Travel Times to Applicant Facility

Major City	County	Drive Time (Mins.)	Miles
Asheville	Buncombe	6-10	1.5
Marshall	Madison	26-40	21
Burnsville	Yancy	40-55	37
Robbinsville	Graham	90-120	94

Source: MH Mission Hospital, LLLP CON App, p86-87

Taken together, these indexes raise serious questions about whether the Applicant’s proposal would adequately serve medically underserved populations and sufficiently address where the “need” for medical services actually resides. By expanding its existing facility, it appears that the Applicant would just be doing more of the same.

- b. Criterion § 131E-183 (a) (13) (b)—[T]he applicant shall show . . . [i]ts past performance in meeting its obligation, if any, under any applicable regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal assistance, including the existence of any civil rights access complaints against the applicant.¹³³*

Mission’s Charity Care Policy Under HCA Ownership

A significant focus of concern around HCA’s ownership and operation of Mission Health is the health system’s charity care policy. Among the 15 commitments HCA accepted as a condition of acquiring Mission Health was that it would maintain “at least”¹³⁴ the agreed upon Uninsured and Charity Care policy as set forth in the asset purchase agreement until the year 2029.¹³⁵ Per the asset purchase agreement, HCA’s charity care policies were to be adopted and implemented at Mission because the “HCA policy was considered to be more favorable.”¹³⁶ However, since the acquisition, many have taken issue with Mission’s new policy. One lawsuit alleges that HCA has “a) reduced coverage for non-emergency services, b) implemented a threshold such that out-of-pocket expenses must exceed \$1,500 to qualify for charity care

¹³⁴ Stein Letter to HCA, February 25, 2020. <https://ncdoj.gov/wp-content/uploads/2020/02/Stein-Letter-to-HCA-02252020.pdf>

¹³⁴ Stein Letter to HCA, February 25, 2020. <https://ncdoj.gov/wp-content/uploads/2020/02/Stein-Letter-to-HCA-02252020.pdf>

¹³⁵ “HCA’s 15 Commitments that fall under the scope of the Independent Monitor,” Commitment #12, https://01efa8da-a61e-41d7-a18e-2e7ea3b2f7c7.filesusr.com/ugd/9da497_c9a315d54aca4c068b1e0a7779f2191f.pdf; “As part of its 15 commitments in the Asset Purchase Agreement (“APA”), HCA is required to implement and maintain the policy for uninsured and charity care that is attached as Exhibit C to the APA.” Gibbins Advisors, “Top 20 Frequently Asked Questions,” May 7, 2021, https://6953d107-2bae-4c3d-a042-af970d2bcb1e.usrfiles.com/ugd/6953d1_fa3deecb21bf4e56b43db44a1c7d273d.pdf, p. 9

¹³⁶ Gibbins Advisors, “Top 20 Frequently Asked Questions,” May 7, 2021, https://6953d107-2bae-4c3d-a042-af970d2bcb1e.usrfiles.com/ugd/6953d1_fa3deecb21bf4e56b43db44a1c7d273d.pdf, p. 8

coverage, and c) ended pre-approval for charity care coverage such that patients are forced to risk taking on substantial debt or forgo needed care.”¹³⁷ Community members, patients that rely on charity care assistance, and local leaders, have therefore seriously questioned Mission’s ability to meet its obligations to its low-income patients. In fact, HCA’s charity care policy was a major concern voiced by community members at listening sessions with the HCA/Mission transaction independent advisor. Gibbons Advisors, the firm appointed to serve as the independent monitor, acknowledged that it “heard numerous concerns from the community” regarding the policy.¹³⁸

First, when HCA took over operation of Mission, it reportedly changed the “conditions covered by the policy for those under 200% of the Federal Poverty Level from non-emergent to only emergent conditions” thereby narrowing the type of care for which patients can receive assistance.¹³⁹ In February of 2020, Attorney General Stein (AG Stein) wrote a letter to Greg Lowe, president of HCA’s North Carolina Division, demanding an explanation for the numerous complaints Stein’s office had received about Mission since HCA’s acquisition. AG Stein specifically inquired about HCA’s charity care policy, as a number of complaints focused on dissatisfaction with how it had changed after the sale. AG Stein noted that the charity care policy set forth in the APA “provides that the patient may be eligible if she ‘incurred emergent, non-elective services,’” but “[t]he working understanding of this policy at HCA seems to eliminate the word “non-elective” from the sentence.”¹⁴⁰

Moreover, not only did HCA reportedly shrink what is covered under the policy, but Mission’s new policy is unclear as to what services actually qualify within this category. There is no consistent definition for what falls under “emergent care” across hospitals—every provider interprets this term slightly differently, and HCA does not make available a list of diagnoses, procedures, or circumstances that it interprets to meet this criterion.¹⁴¹ As AG Stein wrote in his letter:

“The charity care policy is not transparent about what services are covered. We understand that HCA interprets the policy as covering only emergent care. HCA also extends the policy on an ad hoc basis to certain necessary care outside the emergency room. There is no list available of what procedures meet these criteria, and we have heard from patients and physicians that they are confused about whether particular treatments are eligible under the policies.”¹⁴²

However, HCA’s response to the AG did not clarify much. Instead, Greg Lowe simply replied that whether or not non-emergency department services are covered is left to the discretion of “team members.”¹⁴³ While Lowe claims that this allows for “clinical flexibility,” it is clear from AG Stein’s concern surrounding the policy that it instead results in ambiguity and a lack of consistency, and harms patients. As AG Stein explained, “it is not easy for physicians or patients to learn how the charity care policy will be applied to their specific circumstances.”¹⁴⁴

¹³⁷ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21), p. 21.

¹³⁸ “Top 20 Frequently Asked Questions,” Gibbons Advisors, May 7, 2021. https://6953d107-2bae-4c3d-a042-af970d2bcb1.usrfiles.com/ugd/6953d1_fa3deecb21bf4e56b43db44a1c7d273d.pdf

¹³⁹ *Citizen Times*, “Patient care to staff safety: Concerns over HCA’s management of Mission run deep | OPINION,” February 11, 2020. <https://www.citizen-times.com/story/opinion/2020/02/11/hcas-management-mission-health-hospital-cause-deep-concern/4721205002/>

¹⁴⁰ Stein Letter to HCA, February 25, 2020. <https://ncdoj.gov/wp-content/uploads/2020/02/Stein-Letter-to-HCA-02252020.pdf> at 3.

¹⁴¹ Brian Gordon, “Patient criticisms and HCA’s response: What to know about Mission charity care,” *Citizen Times*, <https://www.citizen-times.com/story/news/local/2020/05/24/hca-missions-charity-care-letter-stein-has-info-asheville-wnc/3107646001/>

¹⁴² Stein Letter to HCA, February 25, 2020. <https://ncdoj.gov/wp-content/uploads/2020/02/Stein-Letter-to-HCA-02252020.pdf> at 3.

¹⁴³ Brian Gordon, “Patient criticisms and HCA’s response: What to know about Mission charity care,” *Citizen Times*, <https://www.citizen-times.com/story/news/local/2020/05/24/hca-missions-charity-care-letter-stein-has-info-asheville-wnc/3107646001/>

¹⁴⁴ Stein Letter to HCA, February 25, 2020. <https://ncdoj.gov/wp-content/uploads/2020/02/Stein-Letter-to-HCA-02252020.pdf>

On top of this, Mission's policy is now only applied retroactively.¹⁴⁵ Prior to HCA's acquisition of Mission, patients were pre-approved to receive charity care benefits for up to a year,¹⁴⁶ during which all of their medical bills were automatically covered by the policy.¹⁴⁷ Under HCA's ownership, charity care is "episodic"—patients must re-apply for coverage with each new bill. Of course, the sheer administrative burden that this places on the patient is discouraging in and of itself.

A group of local political leaders and lawmakers¹⁴⁸ explained in an open letter to the HCA/Mission independent monitor, read aloud to a listening session with the firm, noted:

"[P]atients know whether their services are covered only after they receive them" . . . "This has resulted in patients being billed for services that they thought would be covered and now cannot afford. Some of these patients are now the target of collection agencies."¹⁴⁹

Harmony Owen, a resident of West Asheville, mother of two, and patient of Mission, explained to the Asheville Citizens Times that her family has now relied on charity care pre- and post-acquisition, and prefers the old policy. "We used charity care prior to the switchover several times, both myself and my husband," Ms. Owen said. "Before, it was definitely more accessible and easier to apply."¹⁵⁰ Owen explained that it had been "difficult to get connected with the proper department to address her application questions."¹⁵¹ Ms. Owen specifically told the Asheville Citizen Times that having to reapply for each bill "[has] been a very huge strain on our family because of our finances."¹⁵²

'Patients are too often left in the dark about HCA's charity care policy. At one point, a complete "copy [of HCA's policy was] only [available] through an Open Records Act request to the Attorney General's office."¹⁵³ The policy is now available through Mission's website, but it appears that HCA made it accessible to their patients only after the group of local lawmakers mentioned above publicly spoke to the HCA/Mission transaction independent monitor about their struggle to obtain a full copy of the policy.

Furthermore, HCA's policy requires that a patient's bill exceeds \$1,500 to qualify for coverage. "We were told that if we didn't have a bill that was \$1,500 or more specifically with Mission, then we weren't going to get approved," Ms. Owen said¹⁵⁴. The idea that an individual or family earning 200% of the federal

¹⁴⁵ *Citizen Times*, "Patient care to staff safety: Concerns over HCA's management of Mission run deep | OPINION," February 11, 2020. <https://www.citizen-times.com/story/opinion/2020/02/11/hcas-management-mission-health-hospital-cause-deep-concern/4721205002/>

¹⁴⁶ *Citizen Times*, "Patient care to staff safety: Concerns over HCA's management of Mission run deep | OPINION," February 11, 2020. <https://www.citizen-times.com/story/opinion/2020/02/11/hcas-management-mission-health-hospital-cause-deep-concern/4721205002/>

¹⁴⁷ Brian Gordon, "Patient criticisms and HCA's response: What to know about Mission charity care," *Citizen Times*, <https://www.citizen-times.com/story/news/local/2020/05/24/hca-missions-charity-care-letter-stein-has-info-asheville-wnc/3107646001/>

¹⁴⁸ The letter was from Sen. Terry Van Duyn and Reps. John Ager, Susan Fisher and Brian Turner; Buncombe County Commission Chair Brownie Newman and Asheville Mayor Esther Manheimer; *Citizen Times*, "Patient care to staff safety: Concerns over HCA's management of Mission run deep | OPINION," February 11, 2020. <https://www.citizen-times.com/story/opinion/2020/02/11/hcas-management-mission-health-hospital-cause-deep-concern/4721205002/>

¹⁴⁹ Neil Cotiaux, "Elected officials blast HCA for first year's performance at Mission," *Carolina Public Press*, Feb 11, 2020. <https://carolinapublicpress.org/29819/elected-officials-blast-hca-for-first-years-performance-at-mission/>

¹⁵⁰ Brian Gordon, "Patient criticisms and HCA's response: What to know about Mission charity care," *Citizen Times*, <https://www.citizen-times.com/story/news/local/2020/05/24/hca-missions-charity-care-letter-stein-has-info-asheville-wnc/3107646001/>

¹⁵¹ Brian Gordon, "Patient criticisms and HCA's response: What to know about Mission charity care," *Citizen Times*, <https://www.citizen-times.com/story/news/local/2020/05/24/hca-missions-charity-care-letter-stein-has-info-asheville-wnc/3107646001/>

¹⁵² Brian Gordon, "Patient criticisms and HCA's response: What to know about Mission charity care," *Citizen Times*, <https://www.citizen-times.com/story/news/local/2020/05/24/hca-missions-charity-care-letter-stein-has-info-asheville-wnc/3107646001/>

¹⁵³ *Citizen Times*, "Patient care to staff safety: Concerns over HCA's management of Mission run deep | OPINION," February 11, 2020. <https://www.citizen-times.com/story/opinion/2020/02/11/hcas-management-mission-health-hospital-cause-deep-concern/4721205002/>

¹⁵⁴ Brian Gordon, "Patient criticisms and HCA's response: What to know about Mission charity care," *Citizen Times*, <https://www.citizen-times.com/story/news/local/2020/05/24/hca-missions-charity-care-letter-stein-has-info-asheville-wnc/3107646001/>

poverty level (Mission’s income eligibility threshold for a full write-off—e.g. \$33,975 for an individual or \$55,500 for a family of four) or less can afford to pay a \$1,400 medical bill, or even a \$500 medical bill, is completely ludicrous. An analysis conducted by Urban Institute reveals that the median medical debt currently in collections is \$667 in Buncombe County, \$687 in Madison County, and \$533 in Yancey County.¹⁵⁵ A survey released in January 2021 revealed that only “39% of Americans [surveyed] can afford a \$1,000 unexpected expense.”¹⁵⁶ And, “for households making less than \$30,000, just 21[%] have a rainy-day fund to cover \$1,000.”¹⁵⁷ Clearly healthcare consumers in the multicounty service area in question struggle paying medical bills that are less than \$1,500. Mission states that it may provide charity care to applicants with bills under this minimum only under “extenuating circumstances,” however, this is also determined on a case-by-case basis.¹⁵⁸

Despite the serious financial implications of Mission’s charity care bill minimum, this information is not made explicit on Mission’s own website. Mission’s website states, “The Charity Care Policy provides a 100% write-off related to emergent, non-elective services for qualifying patients who are not eligible for state or federal assistance. Generally, patients with annual household incomes of less than 200% of FPG qualify for this program,” with no mention of this bill minimum.¹⁵⁹ A patient is required to click on the full charity care policy and read through to understand that HCA even has a bill minimum in place. This means that patients may seek out emergent care—care that often requires quick decisions and does not grant much time for extra-diligent research beforehand—under the assumption that they will qualify for charity care based on the policy’s income requirements, and not realize that they may be disqualified from coverage depending on their bill size. Moreover, in a state that has yet to expand Medicaid, low-income patients have few alternatives for financial assistance.¹⁶⁰

The implications of the case-by-case nature of the policy and bill minimum are exacerbated by the fact that HCA has failed to make its prices easily accessible to consumers. In January of 2021, hospital price transparency rule took effect, requiring all US hospitals to “provide clear, accessible pricing information online about the items and services.”¹⁶¹ Specifically, the rule requires hospitals to post standard charges in two ways:

- 1) “Single machine-readable digital file containing the following standard charges for all items and services provided by the hospital: gross charges, discounted cash prices, payer-specific negotiated charges, and de-identified minimum and maximum negotiated charges.”¹⁶²
- 2) “Display of at least 300 “shoppable services” (or as many as the hospital provides if less than 300) that a health care consumer can schedule in advance. Must contain plain language descriptions of the services and group them with ancillary services, and provide the discounted

¹⁵⁵ Urban Institute, “Debt in America: County-Level Medical Debt,” 2022. <https://datacatalog.urban.org/dataset/debt-america-2022>. A median was not available for Graham County.

¹⁵⁶ Lorie Konish, “Just 39% of Americans could pay for a \$1,000 emergency expense,” *CNBC*, January 11, 2021.

¹⁵⁷ Jeff Ostrowski, “Survey: Fewer than 4 in 10 Americans could pay a surprise \$1,000 bill from savings,” *Bankrate*, January 11, 2021. <https://www.bankrate.com/banking/savings/financial-security-january-2021/>

¹⁵⁸ “Charity Financial Assistance Policy for Uninsured and Underinsured Patients,” MISSION HEALTH, <https://missionhealth.org/wp-content/uploads/2021/04/Charity-care-update-Oct-2020-recd-April-2021.pdf>, Item 9(A):

“Patients with more than a \$1,500 patient liability that fall within 0-200% of the FPL will have the entire patient balance processed as charity write-off. Upon request by a patient and, if there are extenuating circumstances, accounts with out-of-pocket responsibility balances of less than \$1,500 may be reviewed and a charity write-off applied.”

¹⁵⁹ *Patient Financial Support*, MISSION HEALTH, <https://missionhealth.org/financial-services/financial-support/> (last visited July 28, 2022).

¹⁶⁰ Louise Norris, “North Carolina and the ACA’s Medicaid expansion,” *HealthInsurance.org*, January 24, 2022. <https://www.healthinsurance.org/medicaid/north-carolina/>

¹⁶¹ CMS, “Hospital Price Transparency,” <https://www.cms.gov/hospital-price-transparency>

¹⁶² CMS, *Hospitals: Hospital Price Transparency*, <https://www.cms.gov/hospital-price-transparency/hospitals> (last visited July 28, 2022).

cash prices, payer-specific negotiated charges, and de-identified minimum and maximum negotiated charges.”¹⁶³

The rule is, of course, meant to improve care accessibility by allowing consumers to shop around for services and understand the cost of care *before* receiving services. Unfortunately, a February 2022 report by PatientRightsAdvocate.Org revealed that HCA is still not meeting these standards. In fact, the researchers found that 0% of HCA’s hospitals were in compliance.¹⁶⁴ This means that patients are not able to adequately make financial considerations before choosing care. And because Mission’ is the dominant healthcare provider in the region, patients like the Owens do not have alternative options for care. Patients are forced to rely on Mission’s hard to navigate policy.

It must be noted that, HCA has claimed that it provides more charity care (in dollar amounts) than was provided prior to its acquisition of Mission.¹⁶⁵ However, this comparison is misleading because HCA’s prices are significantly higher than those under the system’s previous non-profit ownership. For example, “for the four years before HCA took over, Mission had increased medical service charges by approximately 6.8% a year. In October 2019, Mission Health increased medical service charges by 10%.”¹⁶⁶

Ultimately, while Gibbons Advisors has not found HCA to be in violation of the APA,¹⁶⁷ the above concerns highlight the policy’s shortcomings in terms of the community’s needs when it comes to charity care. The change in policy following HCA’s acquisition has provided important insight into what type of policy members of the community actually prefer—how a provider’s policy must be structured to best serve patients. We can see that HCA’s policy does not meet patients’ needs.

However, under this Certificate of Need process, there is an opportunity to provide Western North Carolina with an alternative. The other applicants in this process, Novant and AdventHealth, have charity care policies that more closely align with the community’s stated needs and preferences. First, neither system’s charity care policy includes a bill minimum like Mission’s does.¹⁶⁸ Second, and perhaps even more importantly, both applicant’s policies include eligibility periods. Novant maintains an eligibility period of six months,¹⁶⁹ and AdventHealth provides that “[a] financial assistance application will not need to be repeated for dates of service incurred up to three (3) months after the last date of application approval.”¹⁷⁰

¹⁶³ CMS, *Hospitals: Hospital Price Transparency*, <https://www.cms.gov/hospital-price-transparency/hospitals> (last visited July 28, 2022).

¹⁶⁴ PatientRightsAdvocate.org, “Semi-Annual Hospital Price Transparency Compliance Report,” February 2022. <https://www.patientrightsvocadvocate.org/semi-annual-compliance-report-2022> at 3.

¹⁶⁵ Neil Cotiaux, “Stein gives HCA until month’s end to answer questions,” *Carolina Public Press*, March 12, 2020. <https://carolinapublicpress.org/29942/stein-gives-hca-until-months-end-to-answer-questions/>; Brian Gordon, “Patient criticisms and HCA’s response: What to know about Mission charity care,” *Citizen Times*, <https://www.citizen-times.com/story/news/local/2020/05/24/hca-missions-charity-care-letter-stein-has-info-asheville-wnc/3107646001/>

¹⁶⁶ Brian Gordon, “Patient criticisms and HCA’s response: What to know about Mission charity care,” *Citizen Times*, <https://www.citizen-times.com/story/news/local/2020/05/24/hca-missions-charity-care-letter-stein-has-info-asheville-wnc/3107646001/>

¹⁶⁷ “Top 20 Frequently Asked Questions,” Gibbons Advisors, May 7, 2021. https://6953d107-2bae-4c3d-a042-af970d2bcbe1.usrfiles.com/ugd/6953d1_fa3deecb21bf4e56b43db44a1c7d273d.pdf

¹⁶⁸ Novant Health, “Charity Care”. https://www.novanthealth.org/Portals/92/novant_health/documents/about_us/financial/2021/Charity%20Care%20Policy%202021.pdf; Advent Health, Financial Assistance, https://www.adventhealth.com/sites/default/files/assets/22-copfs-01285_-_federal_poverty_guidelines_updates_poverty_levels_flyer_english_-_p2.pdf

¹⁶⁹ Novant Health, “Charity Care”. https://www.novanthealth.org/Portals/92/novant_health/documents/about_us/financial/2021/Charity%20Care%20Policy%202021.pdf

¹⁷⁰ AdventHealth, “Financial Assistance: Getting Help to Pay Your Bill”: 3. Eligibility Criteria, Item J https://www.adventhealth.com/sites/default/files/assets/22-copfs-01285_-_federal_poverty_guidelines_updates_poverty_levels_flyer_english_-_p2.pdf, p. 10.

It is clear that many of Mission Hospital's patients, as well as local leaders, and even the Attorney General, have taken issue with Mission's charity care policy under HCA ownership. From the above information—including on HCA's policy's lack of standardization, lack of an eligibility period, as well as its bill minimum—we can see that an alternative provider may be better suited to meet the needs of those individuals who rely on charity care for access to medical care.

HCA's Track Record Casts Doubt on its Promises to Communities

Record of Reneging on Acquisition Commitments Raises Concerns about HCA's Trustworthiness

When HCA first acquired Mission Health in 2019, major concerns were expressed about the company. *Modern Healthcare* reports that, "The deal wasn't an easy sell for locals currently served by six-hospital Mission, based in Asheville, N.C., many of whom feared the Nashville-based hospital giant would raise prices and shutter rural hospitals or services. To ease concerns, HCA agreed to a number of promises."¹⁷¹ These promises include 15 commitments, to be overseen by an Independent Monitor, that fall under four categories: "Retaining Services and Hospitals," "Investing in Community Health and Wellbeing," "Investing Facilities," and "Other Commitments."¹⁷² Several years on, these "fears" appear to be justified as "the communities of Western North Carolina have, to a degree, reached a boiling point over patient complaints, substandard care concerns, mass physician exoduses and nurse shortages at for-profit HCA-owned Mission Hospital and partner hospitals."¹⁷³

Yet, the Western North Carolina community's experience with HCA, Mission's parent company, is not unique. HCA has a questionable record when it comes to meeting obligations to provide charity care or other community benefits per their acquisitions of non-profit health systems. One such example is HCA's \$1 billion purchase of three Missouri hospitals¹⁷⁴ from the nonprofit Health Midwest in 2003. Several years following the acquisition, the Health Care Foundation of Greater Kansas City (Foundation)—the foundation created from the proceeds of the sale—took legal action against HCA for reneging on its commitments. In 2015, a Jackson County judge awarded nearly \$434 million to the Foundation following the multi-year litigation. Circuit Judge John Torrence had found that HCA was liable to the Foundation for failing to make capital and charitable contributions it undertook after its acquisition of Health Midwest.¹⁷⁵ In January 2017—a mere six months before acquisition discussions with Mission Health leadership began—¹⁷⁶ HCA had to pay \$188 million to settle the litigation.¹⁷⁷

HCA's pattern of conduct, particularly its reneging on community promises and possibly unethical ED admissions discussed earlier, calls into question HCA's trustworthiness and profit-driven focus, especially given the company's history of fraud.

¹⁷¹ Tara Bannow. "HCA finalizes Mission Health purchase." *Modern Healthcare*. February 01, 2019. Retrieved from- <https://www.modernhealthcare.com/article/20190201/NEWS/190209999/hca-finalizes-mission-health-purchase>

¹⁷² HCA'S Commitments, per its Purchase Agreement with Mission Health- <https://www.independentmonitormhs.com/hca-commitments>

¹⁷³ Kimberly King. "Community leaders, members air Mission/HCA complaints during roundtable hosted by AG Stein." *WLOS ABC-13 News*. April 29th 2022 - <https://wlos.com/news/local/buncombe-health-human-services-symposium-tackles-mission-hospital-concerns-josh-stein-roundtable-asheville-north-carolina-hca-esther-manheimer-maureen-copelof-julie-mayfield-asheville-watchdog-janice-brumit>

¹⁷⁴ Menorah Medical Center, Overland Park Regional Medical Center and Research Medical Center.

¹⁷⁵ Dan Margolies. "Judge Orders HCA To Pay \$434 Million To Health Care Foundation Of Greater Kansas City." *KCUR*. December 9, 2015- <https://www.kcur.org/health/2015-12-09/judge-orders-hca-to-pay-434-million-to-health-care-foundation-of-greater-kansas-city>

¹⁷⁶ "Attorney General's office had 'great concerns' Mission-HCA deal was rigged 'from the beginning.'" *Asheville Watchdog*. March 20, 2022. - <https://www.northcarolinahealthnews.org/2022/03/20/hca-deal-was-rigged-ag-office-concerned/>

¹⁷⁷ *Health Care Foundation of Greater Kansas City v. HM Acquisition LLC HCA, Inc.*, 507 S.W.3d 646, 2017 Mo. App - <https://caselaw.findlaw.com/mo-court-of-appeals/1765847.html>

HCA's History of Fraud Calls into Question the Company's Trustworthiness

The questionable conduct exhibited by HCA is not occurring in a vacuum. The activities mentioned above are just the latest in a series of HCA improprieties that trace back to the company's inception, which calls into question not only HCA's trustworthiness to follow through on its community commitments, but to abide by the law.

HCA's numerous fraud investigations and settlements dating back to the late 1990s demonstrate that the company has a history of engaging in alleged fraudulent activities to maximize profits. Over the past two decades, HCA and its affiliated entities have had at least nine settlements to resolve fraud allegations with the U.S. Department of Justice (DOJ) and other regulatory enforcement authorities.¹⁷⁸ HCA's track record of falling through on acquisition commitments, as well as its timeline of DOJ settlements and associated Corporate Integrity Agreements (CIAs),¹⁷⁹ suggests the company only curbs its questionable behavior when it is bound by legally enforceable agreements. But even these agreements have their limitations, as they're time-limited and are only as strong as their negotiated terms and enforceability. Even when HCA is subject to an asset purchase agreement (APA), it may renege on its stipulated obligations as in the Kansas City case.¹⁸⁰

In the case of Mission Health's APA, an Independent Monitor was hired to oversee HCA's compliance with the agreement's terms,¹⁸¹ which deal mainly with capital expenditures and a prohibition on closing or selling hospitals for a period of 10 years.¹⁸² The monitoring requirement also only lasts 10 years and expires in 2029.¹⁸³ After 2029, however, HCA could unilaterally sell or close hospitals "if a contingency occurs that can't be feasibly resolved." Contingencies may include: financial insolvency, having inadequate qualified staff, significant decreases in patient volume, certain law changes, changes in community needs, and failure to maintain certain quality levels, just to name a few.¹⁸⁴ What's more, nothing in Mission's APA prevents

¹⁷⁸ 1) \$1.7B, multi-phase settlement in 2000 & 2003, respectively: <https://www.justice.gov/archive/opa/pr/2000/December/696civcrim.htm>
https://www.justice.gov/archive/opa/pr/2002/December/02_civ_731.htm

2) \$30K settlement in 2004: <https://www.justice.gov/sites/default/files/civil/legacy/2014/04/18/HCA%20Inc.%202004.pdf>

3) \$16.5M settlement in 2012: <https://www.justice.gov/archive/usao/tne/news/2012/September/091912A%20HCA%20Settlement.html>

4) \$7.15M settlement in 2013: <https://www.justice.gov/usao-wdny/pr/fifty-five-hospitals-pay-us-more-34-million-resolve-false-claims-act-allegations>

5) \$1.02M settlement in 2013: <https://www.justice.gov/usao-sdga/pr/doctors-hospital-augusta-and-radiation-oncology-practice-pay-more-1-million-resolve>

6) \$2M settlement in 2015: <https://www.justice.gov/usao-sc/pr/hca-settles-allegations-billing-unnecessary-labtests-and-double-billing-fetal-testing-0>

7) \$2.4M settlement in 2015: <https://www.justice.gov/usao-mdfl/pr/us-attorney-s-office-collects-more-136-million-us-taxpayers-fiscal-year-2015>, <https://www.justice.gov/usao-mdfl/pr/united-states-settles-false-claims-act-allegations-against-multiple-jacksonville>

8) \$15.8M settlement in 2015: <https://www.justice.gov/opa/pr/nearly-500-hospitals-pay-united-states-more-250-million-resolve-false-claims-act-allegations>; <https://www.justice.gov/opa/file/789656/download>, p. 5-6

9) \$8.6M settlement in 2017: <https://www.justice.gov/usao-sdtx/pr/four-area-hospitals-pay-millions-resolve-ambulance-swapping-allegations>

¹⁷⁹ A Corporate Integrity Agmt (CIA) is a document that outlines the obligations to which an individual practitioner, small group practice, or small provider agree as part of a civil settlement. - <https://oig.hhs.gov/faqs/corporate-integrity-agreements-faq.asp>

¹⁸⁰ Dan Margolies. "Judge Orders HCA To Pay \$434 Million To Health Care Foundation Of Greater Kansas City." KCUR. December 9, 2015- <https://www.kcur.org/health/2015-12-09/judge-orders-hca-to-pay-434-million-to-health-care-foundation-of-greater-kansas-city>

¹⁸¹ "Attorney General's office had 'great concerns' Mission-HCA deal was rigged 'from the beginning.'" Asheville Watchdog. March 20, 2022. - <https://www.northcarolinahealthnews.org/2022/03/20/hca-deal-was-rigged-ag-office-concerned/>

¹⁸² Unless the advisory board and the independent monitor consents

¹⁸³ Mission Health's Independent Monitor's Top 20 Frequently Asked Questions - https://6953d107-2bae-4c3d-a042-af970d2bcbe1.usrfiles.com/ugd/6953d1_fa3deecb21bf4e56b43db44a1c7d273d.pdf, p9-10

¹⁸⁴ Mission Health's Independent Monitor's Top 20 Frequently Asked Questions - https://6953d107-2bae-4c3d-a042-af970d2bcbe1.usrfiles.com/ugd/6953d1_fa3deecb21bf4e56b43db44a1c7d273d.pdf, p9-10

HCA from closing clinics, or forces HCA to address issues like staffing or physician retention,¹⁸⁵ all of which are essential in ensuring quality patient care. As a result, we have serious doubts about HCA's commitment to our communities, or that its proposed project is in the public's best interest.

*d. Criterion § 131E-183 (a) (13) (d)—[T]he applicant shall show . . . [t]hat the applicant offers a range of means by which a person will have access to its services. Examples of a range of means are outpatient services, admission by house staff, and admission by personal physicians.*¹⁸⁶

The shuttering of community clinics and mass exodus of physicians following HCA's takeover of Mission Health—neither of which are direct violations of HCA's purchase agreement¹⁸⁷—have adversely impacted the community's access to care, particularly primary and preventative care, within the region.

Community Clinic and Service Closures

Since the HCA takeover, Mission Health has shuttered at least two of its primary care outpatient clinics—one in Biltmore Park, and one in Candler.¹⁸⁸ These clinics played a vital role in providing care access. According to Dr. Josh Short, a former Mission Health physician and patron of Mission's Candler clinic, the closure impacted his own family's access to care. He told the *Citizen-Times* that after the closure, Mission provided a list of other doctors "which was largely not helpful because none of them are around here." He adds,

"There's almost 8,000 patients that have six weeks to find a new physician," said Short. "Many of them are (insured through) Medicare and Medicaid, which local physicians aren't accepting. On average, it takes several months to get an appointment with a new doctor. These patients also will not be able to get a flu shot from their primary care physician in the middle of a pandemic which disproportionately affects the elderly, who are most at risk because they have the most difficulty getting transportation to other places to get flu shots and the care they need."¹⁸⁹

Dr. Tim Plaut, a former physician with the Mission Candler clinic, shares Dr. Short's sentiments and adds that the closure of a safety net clinic such as Candler has "created a lot of hardship for our patients." Dr. Plaut "estimates that more than 7,000 patients total, many uninsured or underinsured, were treated at the two clinics."¹⁹⁰ He worries that some patients "fell through the cracks" in the transition to other providers because when physician offices shutter, patients may have trouble accessing transportation to travel to another clinic further away. He states, "Our practice in Candler was one of the original safety nets through Mission and we took care of a lot of Medicaid and Medicare; we had homeless folks and severe mental illness."¹⁹¹

¹⁸⁵¹⁸⁵ Mission Health's Independent Monitor's Top 20 Frequently Asked Questions - https://6953d107-2bae-4c3d-a042-af970d2bcbe1.usrfiles.com/ugd/6953d1_fa3deecb21bf4e56b43db44a1c7d273d.pdf#page4

¹⁸⁶ Article 9. Certificate of Need, § 131E-183(a)(13)

https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_131E/Article_9.html

¹⁸⁷ <https://www.independentmonitormhs.com/webinar-faq>;

Mission Health's Independent Monitor's Top 20 Frequently Asked Questions - https://6953d107-2bae-4c3d-a042-af970d2bcbe1.usrfiles.com/ugd/6953d1_fa3deecb21bf4e56b43db44a1c7d273d.pdf, p5-6

¹⁸⁸ Mackenzie Wicker. "Mission Health to stop primary care services in Biltmore Park, Candler." Asheville Citizen Times. Sept. 16, 2020. -

<https://www.citizen-times.com/story/news/local/2020/09/16/mission-health-stop-primary-care-services-biltmore-park-candler/5818247002/>

¹⁸⁹ Mackenzie Wicker. "Mission Health: What has changed under HCA Healthcare and why?" Asheville Citizen Times. Sept. 27, 2020. -

<https://www.citizen-times.com/story/news/local/2020/09/27/mission-health-and-hca-what-has-changed-and-why/5852325002/>

¹⁹⁰ Karen Zatkulak. "Clinics closed, dozens of doctors leave Mission Health since HCA takeover." WLOS ABC-13 News. Feb 23, 2021. -

<https://wlos.com/news/local/clinics-closed-dozens-of-doctors-leave-mission-health-since-hca-takeover>

¹⁹¹ Karen Zatkulak. "Clinics closed, dozens of doctors leave Mission Health since HCA takeover." WLOS ABC-13 News. Feb 23, 2021. -

<https://wlos.com/news/local/clinics-closed-dozens-of-doctors-leave-mission-health-since-hca-takeover>

Dr. Ben Aiken, a primary care physician employed by Mission until January 2020, stated that Mission's former leadership used to employ more primary care doctors even though the specialty is less profitable. "Primary care generally is not an emphasis in HCA," Dr. Aiken said.¹⁹² Dr. Kate Rasche, a former family medicine physician with Mission echoes Dr. Aiken's assessment and adds, "HCA was more focused on seeing financial data from the clinics rather than seeing it as part of the big picture of keeping the region healthy."¹⁹³

Kelley Tyler, a 37-year nurse with Mission, adds that clinics weren't the only community services being shuttered by HCA, "Services like rural cancer care, wheelchair and seating clinics have been completely cut," Ms. Tyler said. She added,

"HCA has shuttered primary clinics around [the area and has] driven out doctors and nurses. Service has suffered especially our seniors. Many of the physicians we have lost have yet to be permanently replaced. Travel and temporary providers fill a hole, but they're not always familiar with system protocols. Providers and nurses living in an area are vested in a community." Though she said medical workers are trying their best to "care" for and "love" the community, HCA is "taking the hatchet" to charity care, geriatric services and even hospital chaplains.¹⁹⁴

Perhaps HCA's questionable conduct is best summed up by Geoff Noblitt, a patient at the former Candler clinic:

"The closing of this office with no notice to the community, the staff that works there or the patients they serve, show that HCA cares nothing about their patients or the community," said Noblitt. "The little people get crushed under big corporate greed again. It's messed up."¹⁹⁵

Given the concerns mentioned above, coupled with the estimated 200 physicians that have reportedly left the Mission Health System following HCA's takeover in 2019,¹⁹⁶ we have serious doubts about the Applicant's ability to provide easily accessible medical, especially outpatient and primary care, services to our communities.

Physician Departures and Community Outcry to Service/Facility Closures in Other HCA Markets

Physician departures and HCA's shuttering of facilities that once served as community safety nets is not unique to Mission Health.

Physicians have also reportedly left other HCA hospitals for similar reasons. Frisbee Memorial Hospital in Rochester, New Hampshire—a nonprofit community hospital acquired by HCA in 2020—is one notable example. At Frisbee, 12 of the 14 primary care doctors at the hospital left within 15 months after HCA's acquisition. Some of the physicians cited a lack of support for medical staff and a focus on profits rather

¹⁹² Barbara Durr and Sally Kestin, "How Many Doctors Have Left Mission? HCA Won't Say," *Asheville Watchdog*, March 23, 2022, <https://avlwatdog.org/how-many-doctors-have-left-mission-hca-wont-say/>

¹⁹³ Karen Zatkulak, "Clinics closed, dozens of doctors leave Mission Health since HCA takeover," WLOS ABC-13 News. Feb 23, 2021. - <https://wlos.com/news/local/clinics-closed-dozens-of-doctors-leave-mission-health-since-hca-takeover>

¹⁹⁴ Andrew Jones, "Mission nurse on HCA fallout during merger hearing: Shocked and horrified," *Asheville Citizen Times*, Apr. 16, 2022, <https://www.citizen-times.com/story/news/2022/04/15/mission-nurse-talks-hca-purchase-fallout-ftc-doi-merger-hearing/7323161001/>

¹⁹⁵ Mackenzie Wicker, "Mission Health: What has changed under HCA Healthcare and why?" *Asheville Citizen Times*. Sept. 27, 2020. - <https://www.citizen-times.com/story/news/local/2020/09/27/mission-health-and-hca-what-has-changed-and-why/5852325002/>

¹⁹⁶ Barbara Durr and Sally Kestin, "How Many Doctors Have Left Mission? HCA Won't Say," *Asheville Watchdog*, March 23, 2022, <https://avlwatdog.org/how-many-doctors-have-left-mission-hca-wont-say/>

than patients.¹⁹⁷ Deborah Harrigan, MD, one of the departing physicians, told local press that the departing physicians made the decision “based on what they were seeing.” She adds,

“HCA is a ‘for-profit [operator], and I respect that they have to make money,’ she told the Daily Democrat. ‘However, what I see is that they are working to serve their shareholders, and that that is more important to them than what is good for our communities.’”¹⁹⁸

HCA’s pursuit of profits affected its decision to shutter facilities and services in other markets as well. One such example is Plantation General Hospital in Florida. In 2016, HCA received Certificate of Need (CON) approval to relocate the license of Plantation General Hospital to a new, \$440M¹⁹⁹ hospital to be built next to the campus of Nova Southeastern University (NSU) in Davie.²⁰⁰ Prior to this, HCA and NSU tried several times to win state CON approval to build the Davie hospital but failed,²⁰¹ so HCA ultimately pursued a license transfer instead.

During public hearings on the relocation and license transfer, competing hospitals in the area spoke out in opposition. Their argument centered on the demographics saying the new location would now serve “a richer community, a less diverse community, a community with less needs.”²⁰²

As noted below, the new hospital is located in a very wealthy area with a large private pay population. The table and map below show the stark differences in socio-economic and demographic factors between the two facilities located in the same metro area:

Fig. 15. Socio-economic and CNI data for Plantation General and HCA Florida University Hospital-Davie

Facility Name	Metro Area (MSA)	City	Zip	% Pop. Private Pay (ZIP)	% Pop Private Pay (MSA)	% Pop. “White-alone” (ZIP)	% Pop. “White-alone” (ZIP)	Median Household Income (Zip)	Median Household Income (MSA)	CNI Score
HCA Florida University Hospital	Miami-Fort Lauderdale-Pompano Beach, FL	Davie	33328	79.2%	59.4%	77.6%	64%	\$101,007	\$59,030	3
Plantation General Hospital	Miami-Fort Lauderdale-Pompano Beach, FL	Plantation	33317	64.1%	59.4%	59.1%	64%	\$72,163	\$59,030	4

Source: U.S. Census American Community Survey (ACS) data & Dignity/IBM Community Need Index (CNI) data

¹⁹⁷ Barbara Durr and Sally Kestin, “How Many Doctors Have Left Mission? HCA Won’t Say,” *Asheville Watchdog*, March 23, 2022, <https://avilwatchdog.org/how-many-doctors-have-left-mission-hca-wont-say/>

¹⁹⁸ Kelly Gooch. “Why physicians decided to leave HCA New Hampshire hospital.” *Becker’s Hospital Review*. July 20th, 2021- <https://www.beckershospitalreview.com/hospital-physician-relationships/why-physicians-decided-to-leave-hca-new-hampshire-hospital.html>

¹⁹⁹ Ayla Ellison. “HCA to cease inpatient care at Florida hospital. *Becker’s Hospital Review*. October 29th, 2021- <https://www.beckershospitalreview.com/patient-flow/hca-to-cease-inpatient-care-at-florida-hospital.html>

²⁰⁰ “Plantation General to close all but adult ER, HCA Healthcare to open new location in Davie, next to Nova Southeastern University campus.” *South Florida Sun-Sentinel*. October 28, 2021; <https://plantationgeneral.com/>;

“HCA reverses plan to close South Florida hospital,” *South Florida Business Journal* (Fort Lauderdale/Miami, Florida), February 24, 2020

²⁰¹ Cindy Krischer Goodman. “Plantation General Hospital will close all but the adult ER. A new Davie hospital will open.” *South Florida Sun-Sentinel*. Oct 27, 2021. Retrieved from <https://www.sun-sentinel.com/news/fl-ne-plantation-general-to-close-20211027-fdcfbz7mgjg3tbbqimqacvqame-story.html>

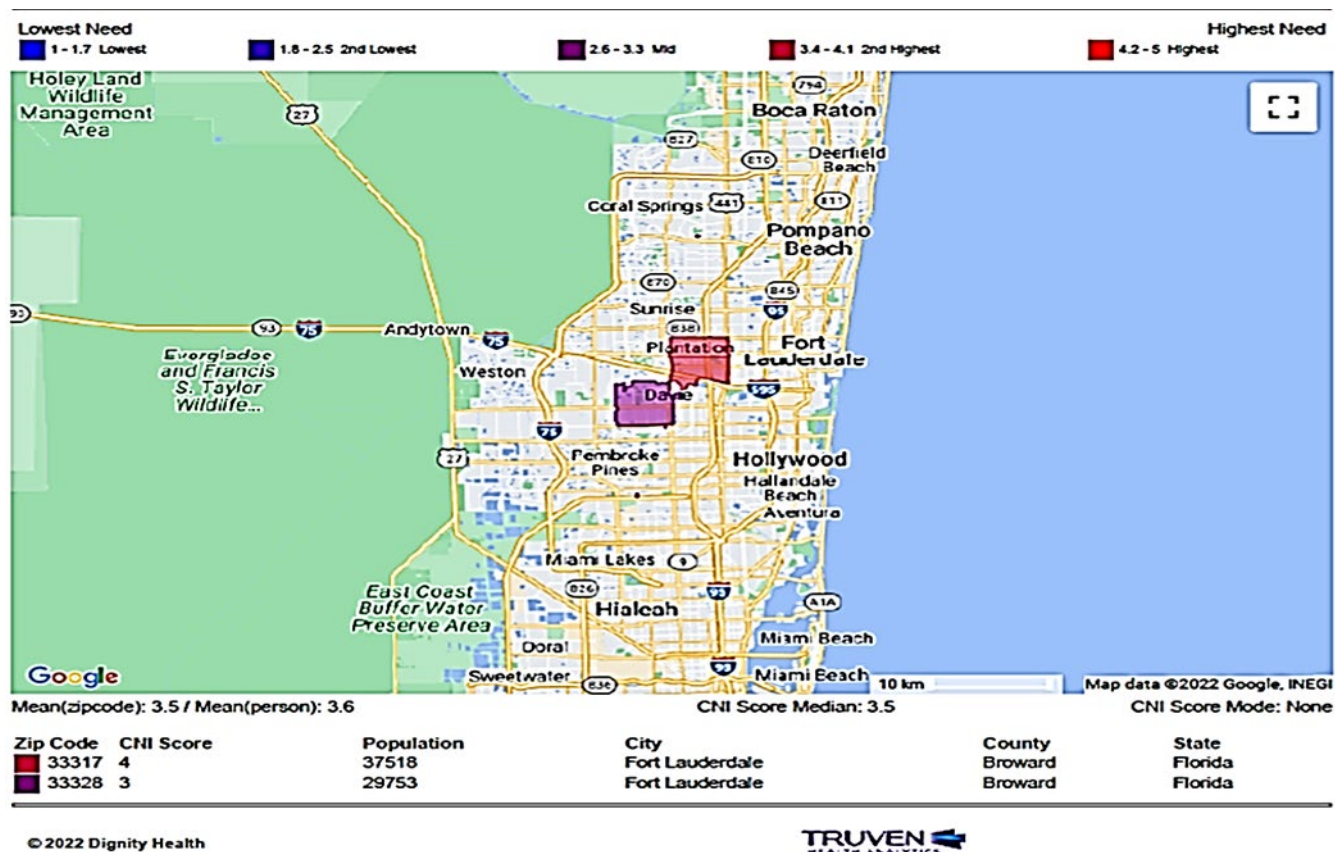
²⁰² Cindy Krischer Goodman. “Plantation General Hospital will close all but the adult ER. A new Davie hospital will open.” *South Florida Sun-Sentinel*. Oct 27, 2021. Retrieved from <https://www.sun-sentinel.com/news/fl-ne-plantation-general-to-close-20211027-fdcfbz7mgjg3tbbqimqacvqame-story.html>

Fig. 16 Map of CNI Scores for Plantation and Davie, FL

Source: Dignity Health/IBM Watson CNI Index Tool: <http://cni.dignityhealth.org/>

Plantation General had catered mostly to women and children and many in the community were not enthused about the hospital's closure, or "relocation":²⁰³

- The city of Plantation spoke against the relocation, raising concerns that the move would create a hardship for its residents who walk or travel by bus to the hospital.²⁰⁴
- O'Neill Chin, president of the Plantation Park East Homeowner's Association, told the *Sun-Sentinel* that the closure "is a setback, not only for Plantation but also for the neighboring communities that benefit from the close proximity of healthcare." He added, "This is not about the community, it's about business."²⁰⁵
- Lauderdale Mayor Ken Thurston told the *Sun-Sentinel* that the closure of Plantation General creates a hardship for residents who live nearby and visit hospitalized family members, including newborns in the NICU and new mothers in the maternity ward. He also added that the city will suffer, too:



[fdcfbz7mgig3tbbqimqacvgame-story.html](https://www.sun-sentinel.com/news/fl-ne-plantation-general-to-close-20211027-fdcfbz7mgig3tbbqimqacvgame-story.html)

²⁰⁵ Cindy Krischer Goodman. "Plantation General Hospital will close all but the adult ER. A new Davie hospital will open." South Florida Sun-Sentinel. Oct 27, 2021. Retrieved from <https://www.sun-sentinel.com/news/fl-ne-plantation-general-to-close-20211027-fdcfbz7mgig3tbbqimqacvgame-story.html>

“Our ambulances will now have to take people on an emergency basis to Broward General and they will be out of the city a lot longer because they have farther to go,” Thurston said. “And, there’s a chance the outcomes might not be as good because patients have to travel farther. I am not happy this is happening. I don’t see my residents going to the new hospital. They would have to ride the bus a lot longer to get there.”²⁰⁶

HCA originally was going to shut down the 264-bed hospital upon completion of their newly constructed, \$440M²⁰⁷ HCA Florida University Hospital in Davie. Now, Plantation General operates as a freestanding ER campus of Westside Regional Medical Center.²⁰⁸ Several studies have found that even though these freestanding ER facilities largely treated patients who did not need emergency care, patients and their insurers were still billed at expensive ER rates.²⁰⁹

Given HCA’s penchant for basing service availability decisions upon business and profit calculations, as opposed to community need, we do not believe the Applicant’s proposal will adequately address community need, or ensure access to primary care and preventative care to ensure community health and wellbeing.

REVIEW CRITERION (14)

*Criterion § 131E-183 (a) (14)—The applicant shall demonstrate that the proposed health services accommodate the clinical needs of health professional training programs in the area, as applicable.*²¹⁰

HCA, the Applicant’s parent company, boasts that it owns one of the nation’s largest private nursing schools²¹¹ and that it is the “largest sponsor of graduate medical education programs in the United States”²¹² and “trains more residents across the country than any other organization.”²¹³ In North Carolina, HCA’s Mission Health hospitals, in partnership with the Mountain Area Health Education Center (MAHEC),²¹⁴ serve as clinical training sites.²¹⁵ According to the Accreditation Council for Graduate Medical Education, MAHEC sponsors 19 Graduate Medical Education programs with about 140 physician

²⁰⁶ Cindy Krischer Goodman. “Plantation General Hospital will close all but the adult ER. A new Davie hospital will open.” South Florida Sun-Sentinel. Oct 27, 2021. Retrieved from <https://www.sun-sentinel.com/news/fl-ne-plantation-general-to-close-20211027-fdcfbz7mgig3tbbqimqacvqame-story.html>

²⁰⁷ Ayla Ellison. “HCA to cease inpatient care at Florida hospital. Becker’s Hospital Review. October 29th, 2021- <https://www.beckershospitalreview.com/patient-flow/hca-to-cease-inpatient-care-at-florida-hospital.html>

²⁰⁸ Ayla Ellison. “HCA to cease inpatient care at Florida hospital. Becker’s Hospital Review. October 29th, 2021- <https://www.beckershospitalreview.com/patient-flow/hca-to-cease-inpatient-care-at-florida-hospital.html>;

Cindy Krischer Goodman. “Plantation General Hospital will close all but the adult ER. A new Davie hospital will open.” South Florida Sun-Sentinel. Oct 27, 2021. - <https://www.sun-sentinel.com/news/fl-ne-plantation-general-to-close-20211027-fdcfbz7mgig3tbbqimqacvqame-story.html>; <https://plantationgeneral.com/>

²⁰⁹ Phil Galewitz. “Colorado Will Pay Hospitals to Close Expensive Free-Standing ERs.” Kaiser Health News. May 21, 2021. - <https://khn.org/news/article/colorado-will-pay-hospitals-to-close-expensive-free-standing-ers/>

²¹⁰ Article 9. Certificate of Need, § 131E-183(a)(14)

https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_131E/Article_9.html

²¹¹ Joel Stinnett. “HCA buys one of the country’s largest private nursing schools.” Nashville Business Journal Mar 14, 2019. – Retrieved from <https://www.bizjournals.com/nashville/news/2019/03/14/hca-buys-one-of-the-countrys-largest.html>

²¹² “HCA Healthcare Expands Graduate Medical Education, Offering Positions to Record Class of 1,982 Residents and Fellows.” Business Wire. Mar 22, 2021. - <https://www.businesswire.com/news/home/20210322005118/en/HCA-Healthcare-Expands-Graduate-Medical-Education-Offering-Positions-to-Record-Class-of-1982-Residents-and-Fellows>

²¹³ Karen Zatkulak. “More doctors now training in the mountains thanks to new residency, fellowship programs.” WLOS ABC-13 News. March 25th 2021- <https://wlos.com/news/local/more-new-doctors-now-training-in-the-mountains-thanks-to-new-residency-fellowship-programs>

²¹⁴ Karen Zatkulak. “More doctors now training in the mountains thanks to new residency, fellowship programs.” WLOS ABC-13 News. March 25th 2021- <https://wlos.com/news/local/more-new-doctors-now-training-in-the-mountains-thanks-to-new-residency-fellowship-programs>

²¹⁵ See training sites for each of the MAHEC GME programs: <https://mahec.net/dental-residency>, <https://mahec.net/fm-asheville-residency>, <https://mahec.net/residents-and-students/family-medicine>, <https://mahec.net/im-residency>, <https://mahec.net/obgyn-residency>, <https://mahec.net/residents-and-students/pharmacy>, <https://mahec.net/residents-and-students/psychiatry>, <https://mahec.net/residents-and-students/surgery>, <https://mahec.net/residents-and-students/elective-rotations>

residents.²¹⁶ What's more, the Galen College of Nursing—the HCA-owned private nursing school—announced that it is opening up a new 16,900 square-foot campus in Asheville, North Carolina.²¹⁷

Given the size and scope of HCA's clinical/medical education operations, and its influence upon the delivery of clinical/medical training in western North Carolina,²¹⁸ we have serious concerns about how HCA's egregious track record on understaffing will impact health professional training in the area. In particular, chronic understaffing at HCA creates concerns that nursing and physician resident trainees at HCA hospitals will receive inadequate supervision or might be required to perform tasks outside their scope of practice due to the lack of sufficient support staff. Additionally, HCA's questionable track record with ensuring proper competencies and training of its physician and nursing staff, raises further questions about the quality of clinical and medical education provided by HCA hospitals.

HCA Buys Nursing School to Churn through Nurses, Rather than Addressing Short-staffing Practices

When HCA acquired the Galen College of nursing in 2019, HCA CEO Sam Hazen stated, "Nurses are the lifeblood of our organization, and we've been intentional about investing in nursing so they can be successful and provide the best possible patient care."²¹⁹ However, we have serious concerns that HCA may not be living up to that promise.

Studies have shown that "patients get the best care when treated in units staffed with nurses who have extensive experience in their current job,"²²⁰ because "[r]elative to novice RNs, experienced RNs are likely to be more adept at identifying complications and unexpected changes in patient conditions sooner and respond appropriately."²²¹ Studies have also found that experience is invaluable in a patient setting because experienced nurses "make clinical assignments that better match the knowledge and skills of nurses with the needs of the patient, serve as role models and mentors, and deal effectively with physicians, administrators, and others to assure the well-being of patients and their families."²²² However, given staffing and other concerns raised by nurses at HCA and Mission Hospitals, as discussed above in Criterion 7, we are concerned that HCA may be driving away its more experienced nurses. As a result, we believe that HCA is not prioritizing quality-nursing education so much as it is using Galen as "a feeder system"²²³ into HCA hospitals, as it alienates its experienced nurses with its questionable staffing and other corporate practices.

²¹⁶ According to the Accreditation Council for Graduate Medical Education (ACGME). - <https://apps.acgme-i.org/ads/Public/Sponsors/Detail?sponsorId=13664&ReturnUrl=https%3A%2F%2Fapps.acgme-i.org%2Fads%2FPublic%2FSponsors%2FSearch>

²¹⁷ "Galen College of Nursing to open new campus in Asheville." Biltmore Beacon.

Jun 16, 2022. - https://www.biltmorebeacon.com/news/galen-college-of-nursing-to-open-new-campus-in-asheville/article_a7a4a83e-eb4d-11ec-bf3f-ff87702e10c9.html

²¹⁸ Karen Zatkulak. "More doctors now training in the mountains thanks to new residency, fellowship programs." WLOS ABC-13 News. March 25th 2021- <https://wlos.com/news/local/more-new-doctors-now-training-in-the-mountains-thanks-to-new-residency-fellowship-programs>

²¹⁹ Jack O'Brien. "With an Eye on Professional Development, HCA Purchases Galen College of Nursing." March 15, 2019. - <https://www.healthleadersmedia.com/finance/eye-professional-development-hca-purchases-galen-college-nursing>

²²⁰ Katie Sullivan. "Experienced nurses shorten length of stay, improve patient outcomes." Fierce Healthcare. Apr 14, 2014- <https://www.fiercehealthcare.com/healthcare/experienced-nurses-shorten-length-stay-improve-patient-outcomes#:~:text=Experienced%20nurses%20shorten%20length%20of%20stay%2C%20improve%20patient%20outcomes,-By%20Katie%20Sullivan&text=More%20experienced%20nurses%20deliver%20better,American%20Economic%20Journal%3A%20Applied%20Economics>

²²¹ "How Should We Prepare For The Wave Of Retiring Baby Boomer Nurses?", Health Affairs Blog, May 3, 2017.

DOI: 10.1377/hblog20170503.059894- <https://www.healthaffairs.org/doi/10.1377/forefront.20170503.059894/full/>

²²² "How Should We Prepare For The Wave Of Retiring Baby Boomer Nurses?", Health Affairs Blog, May 3, 2017.

DOI: 10.1377/hblog20170503.059894- <https://www.healthaffairs.org/doi/10.1377/forefront.20170503.059894/full/>

²²³ Joel Stinnett. "HCA buys one of the country's largest private nursing schools." Nashville Business Journal Mar 14, 2019. - Retrieved from <https://www.bizjournals.com/nashville/news/2019/03/14/hca-buys-one-of-the-countrys-largest.html>

HCA CFO Bill Rutherford has discussed how Galen College of Nursing will operate as a “feeder system” in his communications with investors:

“We continue to be extremely excited about the strategic implications of having that nursing school. Our goal is to develop a Galen College of Nursing in every one of our major markets, and we’ve got expansion plans and sites for that. And if you think about it, it just makes perfect sense. They’re one of the largest educators of nurses. We’re one of the largest employers of nurses. So you can obviously see a natural fit for that...”²²⁴

“...Our vision is to have a Galen School of Nursing presence in every one of our major markets as a really key source of new nurses entering into the industry.”²²⁵

Since HCA acquired Galen, it has opened up, or has announced the opening of, eight (8) new Galen nursing campuses²²⁶—all of which are located in or near HCA markets.²²⁷ In fact, HCA plans on “probably adding anywhere from 6 to 7 campuses a year.”²²⁸

CFO Bill Rutherford also said, “We will have a need to continue to hire nurses to meet our demand in our markets and to fulfill nurses who are leaving the industry.”²²⁹ Essentially new nurses are needed to replace those that leave. However, some nurses may not be leaving by their own volition. In 2021, a former nurse at HCA’s Research Medical Center in Kansas City, Missouri filed a lawsuit alleging that the hospital’s management “had a practice and pattern of hiring and promoting significantly younger, lesser qualified nurses.”²³⁰

What’s more, HCA CEO Sam Hazen has said that the company is utilizing student nurses and externs to help alleviate its labor pressures and staffing shortages:

“We also believe that we have an opportunity to integrate those students into our organization to support current needs as well as hopefully create synergy as they graduate the program and want to come to work for HCA Healthcare. So we’re really encouraged by the prospects. But again, that’s more intermediate run kind of a gain, although there will be some short run with nurse externs and rotations and so forth that we can utilize hopefully effectively to support current day needs.”²³¹

HCA Compels New Nurse Grads to Stay with HCA Through Training Repayment Agreements

While HCA executives acknowledge their general staffing troubles,²³² they do not delve into why the company experiences shortages other than blaming “challenges in the labor market.”²³³ Perhaps that is

²²⁴ HCA Presents at Oppenheimer 31st Annual Healthcare Conference, 03/16/21

²²⁵ HCA Presents at UBS Virtual Global Healthcare Conference, 05/18/20

²²⁶ Hailey Mensik “HCA opening eighth nursing campus.” Healthcare Dive. June 14, 2022 <https://www.healthcaredive.com/news/hca-galen-nursing-school-new-campus-asheville/625465/>

²²⁷ Since HCA’s acquisition, HCA has opened Galen campuses in Pembroke Pines (Near its Davie Hospital), Gainesville, and Sarasota, Florida; Nashville, Tennessee; Myrtle Beach, South Carolina; Richmond, Virginia; and Austin, Texas.

Carol Davis. “Galen College of Nursing to Open 13th Campus This Fall. June 15, 2022. -<https://www.healthleadersmedia.com/nursing/galen-college-nursing-open-13th-campus-fall>
<https://hcahealthcare.com/locations/division-map.dot>

²²⁸ HCA Presents at Oppenheimer’s 32nd Annual Healthcare Conference, 03/15/22

²²⁹ HCA Presents at UBS Virtual Global Healthcare Conference, 05/18/20

²³⁰ *Giles v. Research Medical Center* (case no: 4:2021cv00238, W.D. Mo., 4/8/2021). This case was settled March, 2022.

²³¹ HCA Q1 2022 Earnings Call, 04/22/22

²³² HCA Healthcare, Inc. (HCA) CEO Sam Hazen on Q1 2022 Results - Earnings Call Transcript. p3,5-6.

²³³ HCA Healthcare, Inc. (HCA) CEO Sam Hazen on Q1 2022 Results - Earnings Call Transcript. P.3.

why this quote from Sam Hazen is quite revealing, “We hire a lot of new graduate nurses, and they have a tendency to turn over at a higher pace if they’re not supported properly.”²³⁴

Sam Hazen also goes on to say, “We’ve got 2 or 3 different programs that we’re utilizing to deal with the turnovers that we’re seeing with the new graduate nurses. There’s nurse residency programs that we’re using.”²³⁵ This is quite telling. If HCA is also experiencing turnover with its nurse trainee/graduate staff because they’re not adequately supported, what types of “programs” are being used by the company to address this issue?

A major reason why new nurse graduates stay is that they sign training repayment agreements at the start of their residency program. Training repayment agreements enable employers, like HCA, to turn on-the-job education into a predatory debt trap²³⁶. These agreements contain terms stipulating that employers can demand repayment for the cost of training received during the course of employment when an employee attempts to quit their job.²³⁷ In the case of HCA, the company’s StaRN nurse residency program contract states that residents must accept the employment offer from any nearby HCA facility and that they must remain employed there for two (2) years. If nurse residents leave, or if terminated, then they must repay prorated training costs. Payback of training costs can include interest, late fees, collection costs and legal fees. Their right to trial by jury is also waived.²³⁸

Critics say that these training agreements are even worse than non-compete agreements. According to Sandeep Vaheesan, the legal director at the Open Markets Institute, “In some ways they’re worse because they restrict workers’ ability to leave for any job.” Loyola Law School Professor, Jonathan Harris, adds, “. . . many TRAs can be worse for low-wage workers than noncompetes; that is because preventing workers from working for a competitor may be less onerous to workers than requiring them to pay the employer a substantial sum to quit. TRAs can be especially burdensome for workers in industries accustomed to high turnover, where the average employee would not be expected to stay for the duration of the two-to-three-year TRA repayment period.”²³⁹

In essence, rather than addressing its short staffing and turnover problems, HCA has created a “feeder system” through its Galen nursing school to produce an in-house nurse labor pool from which it can draw. Per CEO Sam Hazen, “We believe our faculty will be supported by HCA nursing leadership, and the externs programs that we’ll use for students in the Galen school will be integrated into HCA procedures, systems and so forth. And we do think that creates some advantage in securing these graduates into our facilities.”²⁴⁰ This pipeline allows HCA to continually produce and churn through a pool of new, inexperienced nurses that HCA can force to stay within its system for a period of time, while the company drives away more experienced nurses due to its chronic understaffing and lack of support.

Cascade of Understaffing CMS Violations Casts Doubt on HCA’s Ability to Provide Quality Nursing Education

The Applicant notes in its Certificate of Need (CoN) application that is Increasing the size of its StaRN nurse residency program in 2022. It states, “This program is designed to precept and support newly graduated RNs as they enter the healthcare field. Each StarRN is paired with one of the 615 preceptors that work at

²³⁴ HCA Q3 2015 Earnings Call. October 27, 2015. p. 10.

²³⁵ HCA Q3 2015 Earnings Call. October 27, 2015. p. 10.

²³⁶ <https://protectborrowers.org/student-debt-in-disguise-how-employers-are-using-predatory-debt-to-hurt-workers-and-hold-back-competition/>

²³⁷ <https://protectborrowers.org/student-debt-in-disguise-how-employers-are-using-predatory-debt-to-hurt-workers-and-hold-back-competition/>

²³⁸ Based on the terms from a sample StaRN contract

²³⁹ <https://protectborrowers.org/student-debt-in-disguise-how-employers-are-using-predatory-debt-to-hurt-workers-and-hold-back-competition/>

²⁴⁰ HCA Q4 2021 Earnings Call, 01/27/22

Mission Health System.”²⁴¹ According to HCA CEO Sam Hazen, “Once a nurse [trainee] is in our system, we can continue to develop their skill sets, their competency, their confidence and hopefully create an environment where nurses feel that they can be even more successful inside of an HCA facility.”²⁴²

What actually happens when nurses step inside these HCA facilities? Recent citations issued by the Centers for Medicare and Medicaid Services (CMS) against HCA hospitals across the country provides some invaluable insight. These included nursing citations so severe that they violated the Conditions of Medicare Participation. Examples include:

- On 6/14/21, Good Samaritan Hospital (CA) was cited by CMS surveyors because “the hospital did not recognize the potential for or track actual negative patient care outcomes that occurred during staffing shortages, did not revise its action plan for staffing shortages despite repeated occurrences, and did not relay staffing shortage occurrences and negative patient care outcomes to the governing body.” CMS found that “[t]hese deficient practices had the potential to jeopardize the health and safety of patients.”²⁴³
- On 6/14/21, Good Samaritan Hospital (CA) was also cited by CMS surveyors for violating the Condition of Medicare Participation for Nursing Services. Among the citations was the facility’s, “Failure to provide nursing staff to meet Nurse-to-Patient ratios at 1:2 or fewer at all times in the intensive care units,” “Failure to provide charge nurses every shift in each unit,” “Failure to designate outpatient nursing staff for outpatient services,” and “Failure to validate nursing staff’s competency prior to providing care.” The surveyors found that “[t]he cumulative effect of these systemic problems resulted in the hospital’s inability to ensure the provision of quality health care in a safe environment.”²⁴⁴
- On 1/20/20, North Suburban Medical Center (CO) was cited by CMS surveyors for violating the Condition of Medicare Participation for Nursing Services. Among the facility’s nursing deficiencies, CMS found that “the facility failed to ensure there was an adequate number of nursing staff to meet the needs of patients.” Nursing staff did not respond to patient call lights in a timely manner (under 5 mins), with one patient attesting that staff wouldn’t respond to her call light requests for “an hour or more.” CMS interviews with staff revealed that this was due to low staffing. For example, RN #6 said that “sometimes the unit would have 29 patients with only one CNA (certified nursing assistant) which left the RNs with a heavier workload.” Nurses also told CMS that they were “overloaded” and “stretched thin.”
- On 9/11/19, Medical City Plano (TX) was cited by CMS surveyors because the “facility failed to ensure nursing service had adequate number of licensed registered nurses and other staff personnel for each department or nursing unit that was immediately available to provide patient care when needed.” The citations were in reference to an incident in which the facility failed to provide an MRI head/brain examination for an ED patient until 14 hours after it was ordered. CMS found that, “This failure placed the patient at an increased risk of harm/potential by not getting prompt diagnosis and treatment/care.”²⁴⁵

²⁴¹ Certificate of Need Application for acute care beds submitted by MH Mission Hospital, LLLP. June 15, 2022, p132

²⁴² HCA Q4 2020 Earnings Call, 02/02/21

²⁴³ Good Samaritan Hospital, CMS Hospital 2567 Survey date 6/14/2021, Event ID: D6M911

²⁴⁴ Good Samaritan Hospital, CMS Hospital 2567 Survey date 6/14/2021, Event ID: D6M911

²⁴⁵ Medical City Plano, CMS Hospital 2567 Survey date 9/11/19, Event ID: 9AUB11

- On 6/11/20, North Suburban Medical Center (CO) was cited by CMS surveyors for violating the Condition of Medicare Participation for Nursing Services. CMS found that “the facility failed to ensure there was an adequate number of nursing staff in order to meet the needs of the patients. Specifically, the facility failed to evaluate and implement process changes to ensure the telemetry unit was properly staffed following an incident in which a patient was detached from her pulse oximeter for 47 minutes and subsequently died. One nurse told CMS that “she had mentioned staffing on the unit as a potential factor contributing to the incident; however, she had not received a response about her concern.” CMS then interviewed the charge nurse, who stated the telemetry unit staffing was based on patient census, and that acuity was determined by the nurse caring for the patient. But according to the nurse, “she had not received any training on how to determine acuity.” The charge nurse further stated “the acuity of the unit had increased due to COVID-19; however, the staffing matrix had not been evaluated or adjusted since the increase began.”²⁴⁶

What are the implications of understaffing for nurse trainees? It means that their education may be adversely impacted. North Carolina law “authorizes only RNs to supervise, teach and evaluate licensed nurses and those unlicensed individuals who assist licensed nurses in their care delivery to clients.”²⁴⁷ Essentially, RNs must manage the delivery of nursing care “through the on-going supervision, teaching and evaluation of nursing personnel.”²⁴⁸ If RN preceptors are understaffed, overworked and overwhelmed, we have concerns that RNs will not have the time or capacity to adequately fulfil these teaching duties, thus impacting the quality of nursing education and experience that nurse trainees receive at HCA hospitals. We’re also concerned that if nurses are not properly supported, they will likely be required to perform tasks outside of their scope of practice. For example, as HCA cut back on support staff, Mission Health nurses have said that they have taken on other tasks, including housekeeping and blood draws because of a phlebotomist shortage.²⁴⁹

In addition to the chronic understaffing concerns mentioned above, we also have serious concerns that HCA is not setting their nurses up for success in their jobs by failing to ensure proper nurse training and competencies, either within or outside of their scope of practice, as evidenced by the following CMS violations incurred by HCA hospitals across the country:

- On 6/14/21, Good Samaritan Hospital (CA) was cited by CMS surveyors for “fail[ing] to ensure nursing staff had proper training prior to providing care to a patient.” A nurse was assigned a patient who had just undergone an external ventricular drain (EVD) procedure—a temporary method that uses gravity to drain cerebrospinal fluid out of brain ventricles via thin tube. After the procedure, an ICU nurse gave her instructions to monitor the patient and left the ED, even though the RN “did not have training to take care of a patient with an EVD and was uncomfortable.” CMS interview with the ED’s nurse manager revealed that the licensed nurses in the ED “did not have competency to take care of a patient who had an EVD.”²⁵⁰

²⁴⁶ North Suburban Medical Center, CMS Hospital 2567 Survey date 6/11/2020, Event ID: 8C8211

²⁴⁷ NC Board of Nursing – “Who’s Your Supervisor or Manager? Nursing Practice: The Management and Supervision of Nursing Services.” Nursing Bulletin. Vol. 11 {NO 2} Ed. 32, Winter 2015 -<https://www.ncbon.com/myfiles/downloads/news-resources/bulletin/2015/winter-2015.pdf>

²⁴⁸ NC Board of Nursing – “Who’s Your Supervisor or Manager? Nursing Practice: The Management and Supervision of Nursing Services.” Nursing Bulletin. Vol. 11 {NO 2} Ed. 32, Winter 2015 -<https://www.ncbon.com/myfiles/downloads/news-resources/bulletin/2015/winter-2015.pdf>

²⁴⁹ Barbara Durr, “Mission nurses overburdened, patients suffer”, *Blue Ridge Public Radio*, Apr. 4, 2022, <https://www.bpr.org/bpr-news/2022-04-04/mission-nurses-overburdened-patients-suffer>

²⁵⁰ Good Samaritan Hospital, CMS Hospital 2567 Survey date 6/14/2021, Event ID: D6M911

- On 12/26/19, Presbyterian St. Luke's (CO) was cited by CMS surveyors because the "facility's quality committee failed to implement process changes and actions identified during analysis of internal safety reports to reduce the risk of future patient harm." The CMS citations were issued in reference to an incident in which a patient coded and expired in the OR following an anesthesia complication (and extubation) and delays in care. According to the CMS surveyor, even though the event occurred more than two months prior to surveyors entering the facility, the facility was unable to provide evidence the action plans created during the review of the event were implemented. A CMS interview with the VP of surgical services revealed that "there was supposed to be staff training on deep extubation and the timeout process was going to be changed." But "the education was not rolled out because the OR director was leaving", and "the lack of follow through fell on her and the ball had been dropped."²⁵¹
- On 7/23/2019, The Medical Center of Aurora (CO) was cited by CMS surveyors because "the facility failed to ensure patient staffing assignments were made based on the patient's needs and the competence of the nursing staff. This failure resulted in patients receiving Continuous Renal Replacement Therapy (CRRT) from staff with no evidence of training or competency in the use of the equipment." When interviewed, a supervisor "stated the manager had contacted the [traveling] nurse prior to the start of the shift, who verbalized he was able to do CRRT." The supervisor "stated the facility 'took his word for it' because there were no other nurses trained in CRRT to care for the patient on that shift."²⁵²
- On 8/25/2020, HCA Florida Blake Hospital (FL) was cited by CMS surveyors after "it was determined the facility failed to ensure the director of nursing service provided for evaluation of agency nursing personnel clinical activities." CMS found that "an agency nurse had provided clinical services at the facility since August 2017," but evaluation of her clinical activities performed was last completed on 10/7/2019 by a separately licensed facility. CMS found "no evidence an evaluation of the nurse's clinical activities was conducted by the facility employee nursing staff."²⁵³
- On 6/14/19, Eastern Idaho Regional Medical Center (ID) was cited by CMS surveyors because "the hospital failed to ensure staff were trained and competent to operate emergency equipment." Specifically, the hospital failed to ensure staff were educated and trained on locating and using emergency equipment (such as a stair-chair) in the event of a fire. When CMS asked the Director of Patient Safety if stair-chairs were included on daily emergency equipment checks by hospital staff, she stated, "no." CMS found that "these issues had the potential for care to be provided in a setting which was unsafe."²⁵⁴
- On 2/28/19, Trident Medical Center (SC) was cited by CMS surveyors after the hospital failed to ensure Registered Nurses assigned to the hospital's hemodialysis unit received the supervision, knowledge, training to demonstrate the necessary competencies to perform the duties and tasks for testing the water quality in the hemodialysis unit for Chlorine and Chloramine testing in the water treatment room.²⁵⁵

²⁵¹ Presbyterian St. Luke's Medical Center, CMS Hospital 2567 Survey date 12/26/2019, Event ID: ZSI411

²⁵² The Medical Center of Aurora, CMS Hospital 2567 Survey date 7/23/2019, Event ID: H9HV11

²⁵³ HCA Florida Blake Hospital, CMS Hospital 2567 Survey date 8/25/2020, Event ID: 40R511

²⁵⁴ Eastern Idaho Regional Medical Center, CMS Hospital 2567 Survey date 6/14/2019, Event ID: JT7U11

²⁵⁵ Trident Medical Center, CMS Hospital 2567 Survey date 2/28/2019, Event ID: CECU11

- On 1/17/19, TriStar Centennial Hospital (TN) was cited by CMS surveyors after the hospital failed to ensure its Registered Nurses (RNs) and Mental Health Associates (MHAs) were adequately educated and trained. CMS surveyors reviewed a sampling RN and MHA employee files and found that “[t]here was no documentation of education, training or competencies provided by the hospital.” When CMS surveyors asked about annual training for the staff of the mental health units, the Director of Nursing for Senior Services stated, “we don’t do annual competencies.” and that “there was no documentation for the training the mental health associates received for the belongings search and rounding.”²⁵⁶
- On 12/29/20, HCA Houston Healthcare (TX) was cited by CMS surveyors after the facility failed to provide effective training to its nursing staff on the use of restraints. CMS surveyors found that 4 of 6 nursing staff interviewed in the ED and SAHA areas failed to verbalize understanding of intramuscular (IM) medication related to managing or controlling patient behaviors and the use of chemical/drug restraints (aka sedatives or antipsychotic meds).²⁵⁷
- On 8/7/19, St. David’s Medical Center (TX) was cited by CMS surveyors after “it was determined that the facility failed to provide adequate training to all of its staff on the proper use of restraint and seclusion.” According to the RN Regulatory Coordinator, “staff were not trained on the application of 4-point restraint.”²⁵⁸
- On 2/13/19, HCA Houston Healthcare (TX) was cited by CMS surveyors after “the facility failed to ensure registered nurses supervised and evaluated the nursing care for each patient as evidenced by inadequate evaluation of patient’s medical needs such as medication reconciliation, continuation of ED-ordered medical therapies, and diet.” When CMS surveyors asked the Patient Safety Director if current staff had received additional training on medication reconciliation, she “stated the ED staff had been notified of the need for re-education related to medication reconciliation review.” However, “there had not been any additional training of current nursing staff as of the date of the [CMS] survey.”²⁵⁹
- On 11/14/19, Medical City Dallas (TX) was cited by CMS surveyors after determining that “the facility’s infection control policies, training, and oversight failed to ensure safe infection control practices throughout the hospital.” CMS found that “this deficient practice placed all patients receiving treatment in the facility at an increased risk of life threatening infections, leading up to and including the possibility of death.”²⁶⁰

Understaffing’s Potential Impact on Resident Physician Supervision

A physician trainee in a clinical rotation at a teaching hospital should expect to receive high-quality guidance and supervision that allows for the provision of safe, high-quality care.²⁶¹ However, we have concerns that this guidance and supervision cannot be adequately provided if a hospital fails to ensure adequate staffing of attending/teaching physicians.

²⁵⁶ TriStar Centennial Medical Center, CMS Hospital 2567 Survey date 1/17/2019, Event ID: F8TN11

²⁵⁷ HCA Houston Healthcare, CMS Hospital 2567 Survey date 12/29/20, Event ID: BQRF11

²⁵⁸ St. David’s Medical Center, CMS Hospital 2567 Survey date 8/7/2019, Event ID: PUHJ11

²⁵⁹ HCA Houston Healthcare, CMS Hospital 2567 Survey date 2/13/2019, Event ID: GI6711

²⁶⁰ Medical City Dallas, CMS Hospital 2567 Survey date 11/14/2019, Event ID: S8C511

²⁶¹ <https://psnet.ahrq.gov/web-mm/supervision-and-entrustment-clinical-training-protecting-patients-protecting-trainees>

Many physicians at HCA hospitals across the country, including physicians at the Applicant Hospital, have spoken out about the ills of HCA’s chronic understaffing (as detailed above in Criterion 7). HCA hospitals have also received regulatory citations for this very issue. For example, on 7/21/21, HCA’s Regional Medical Center of San Jose (CA) was cited by CMS surveyors because “the hospital failed to consistently provide on-call coverage for the emergency department (ED) commensurate with services available at the hospital.”²⁶²

What’s more, understaffing may result in physician residents having to complete tasks outside of their scope of practice which dilutes their medical education experience. It’s been reported that “[t]hese [HCA] hospitals have so few nurses left that the residents are stuck doing all the IV bags, changing the sheets, while any patient with a moderately complex case is going elsewhere,” said one physician familiar with HCA residency programs, who asked to remain anonymous because they live in a state where the company has substantial market power. Now, there’s nothing wrong with doing a few IV bags or doing what needs to be done in a crunch, but a residency is where you’re supposed to learn how to handle the big complex cases. HCA is just destroying the educational experience of a lot of these young docs.”²⁶³

Taken together, we must seriously question the quality of education being provided by the “largest provider of graduate medical education in the country.”²⁶⁴

Failure to Ensure Medical Staff Competencies Raises Questions about HCA’s Residency Programs

The Applicant states in its Certificate of Need (CoN) application that “Mission Hospital requires all clinical employees to complete orientation as well as training specific to their position ... [and] will continue to require clinical staff members to maintain current licensure and certification and to annually provide evidence of continued competency.”²⁶⁵

However, HCA’s ability to provide a proper education to physician residents must be called into question in light of the many medical staff citations issued by CMS against HCA hospitals across the country. If HCA cannot even ensure the proper training, competencies, or credentialing of its existing medical staff, how can we expect that they can do so for trainee physicians. Some of the CMS citations are detailed below:

- On 3/29/19, HCA Florida Pasadena Hospital (FL) cited by CMS surveyors after determining that none of the 466 actively credentialed physicians and allied health professionals’ files included evidence of the quality of care, or the competence to provide quality medical care to patients in the facility. CMS interview with the Director of Physician Services “indicated no evidence of the quality of care, or competence to provide quality medical care, was included in any of the materials provided to the Medical Council to review prior to recommending a physician to the Governing Body for approval of privileges.” HCA’s Assistant Vice President of Quality and Clinical Operations, West Florida Division, confirmed CMS’ findings.²⁶⁶ CMS found that “[t]hese failures resulted in a finding of ongoing Immediate Jeopardy, beginning on 3/14/2019, creating a situation that is likely

²⁶² The CMS surveyor’s interview with the CMO revealed that the physicians who had covered the labor and delivery unit had resigned, and the remaining members of the medical staff did not provide consultations on inpatients. Additionally, the labor & delivery unit at the hospital was closed on 5/3/20. Initially, the OB service supported any pregnant patient, but now on-call OB is only for OB trauma and that “OB helps the ED out of courtesy, but they are not on call.” - Regional Medical Center of San Jose, CMS Hospital 2567 Survey date 7/21/2021, Event ID:NZOV11

²⁶³ Maureen Tkacik. “Private Equity Gloats Over A Doctor Glut.” May 20, 2022- <https://www.levernews.com/private-equity-gloats-over-a-doctor-glut/>

²⁶⁴ “HCA Healthcare Expands Graduate Medical Education, Offering Positions to Record Class of 1,982 Residents and Fellows.” Business Wire. Mar 22, 2021. - <https://www.businesswire.com/news/home/20210322005118/en/HCA-Healthcare-Expands-Graduate-Medical-Education-Offering-Positions-to-Record-Class-of-1982-Residents-and-Fellows>

²⁶⁵ Certificate of Need Application for acute care beds submitted by MH Mission Hospital, LLLP. June 15, 2022, p133

²⁶⁶ HCA Florida Pasadena Hospital, CMS Hospital 2567 Survey date 3/29/2019, Event ID:76K011

to result in serious injury, harm, impairment, or death to patients and requires immediate corrective action on the part of the facility.”²⁶⁷

- On 5/15/19, HCA Northside Hospital (FL) was cited by CMS surveyors for Medical Staff Accountability related deficiencies following an incident in which a patient was administered a fatal dose of heparin. A CMS “review of the facility’s corrective action plan revealed education to all clinical nursing staff facility-wide was completed for utilizing the chain of command when nursing staff needed resolution to clinical patient care or patient safety issues, including dosing concerns for high risk/high alert medications.” However, “the corrective action plan revealed no evidence education was provided to the medical staff regarding the same acceptable standards of care and quality of care for patient safety.” The Director of Quality and Patient Safety confirmed the findings.²⁶⁸
- One 3/21/19, Las Palmas Medical Center (TX) was cited by CMS surveyors for deficiencies related to its contracted providers. A CMS review of credentialing files of seven anesthesia providers found that 3 of the 7 providers performing services at the hospital did not possess the certifications required of their contract.²⁶⁹
- On 2/27/19, Spotsylvania Regional Medical Center (VA) was cited by CMS surveyors after a sampling of employee files was determined that some of its physicians (5 of 5 reviewed) “lacked documentation of acknowledgement of the facility’s restraint policy after the update/revision dated 11/2018.” A CMS surveyor asked a Staff Member responsible for physician credentialing about how physicians received training related to updated policies, and the Staff Member stated, “An email goes out with P&P updates, but there is no confirmation.”²⁷⁰

Physicians with experience with HCA’s medical programs have also reportedly said that the company “is exploiting residents at the expense of their educations and future patients. Doctors familiar with HCA residencies in Florida, for example, say the programs are often run by physicians with flimsy-to-nonexistent academic credentials, and many say they are mystified as to how the programs first gained accreditation.”²⁷¹ Karen Navarra, a former Division Director of GME for HCA West Florida Division’s seven teaching hospitals, echoes these concerns. She alleges she was pushed out of her position due to age and was told by the new Vice President/ DIO for West Florida that, “HCA may be moving in a different direction to hire less experienced directors so they can mold them the way they want.”²⁷²

We reiterate that HCA’s egregious track record on understaffing, as well as its record with ensuring proper training and competencies of its medical and nursing staff, raises serious concerns about the quality of clinical and medical education provided by HCA hospitals. As such, we question HCA’s commitment with setting future nurses and physicians up for success in their respective careers.

²⁶⁷ HCA Florida Pasadena Hospital, CMS Hospital 2567 Survey date 3/29/2019, Event ID:76K011

²⁶⁸ HCA Florida Northside Hospital, CMS Hospital 2567 Survey date 5/15/19, Event ID: XKNP11

²⁶⁹ Las Palmas Medical Center, CMS Hospital 2567 Survey date 3/21/19, Event ID: 8KZR11

²⁷⁰ Spotsylvania Regional Medical Center, CMS Hospital 2567 Survey date 2/27/2019, Event ID: N16011

²⁷¹ Maureen Tkacik. “Private Equity Gloats Over A Doctor Glut.” May 20, 2022-

<https://www.levernews.com/private-equity-gloats-over-a-doctor-glut/>

²⁷² *Navarra v. Tennessee Healthcare Management, Inc. et al* (Case no: 8:2018cv02566, M.D. Fla., 5/31/2019). The case settled in mediation.

REVIEW CRITERION (18a)

*Criterion § 131E-183 (a) (18a)—The applicant shall 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; and in the case of applications for services where competition between providers will not have a favorable impact on cost effectiveness, quality, and access to the services proposed, the applicant shall demonstrate that its application is for a service on which competition will not have a favorable impact.*²⁷³

Allowing Mission Health to provide the beds in question will further reduce competition in the Buncombe/Graham/Madison and Yancey County Acute Care Bed Service Area, when competition is already lacking. The lack of healthcare competition in this service area has led to serious price and quality of care concerns in the region, and approving Mission Health’s application to provide these beds will only exacerbate the current situation.

History of Mission and HCA’s Acquisition of Mission

In 1995, Mission Hospital and St. Joseph’s Hospital, the only two private acute care providers in Asheville, decided to enter into a partnership. While the deal created monopoly market share for the combined systems and would have otherwise led to antitrust challenges, Mission and St. Joseph’s were able to carry out the relationship under a Certificate of Public Advantage (COPA), a law that shields an entity from antitrust accusations while itself imposing some amount of regulation. In 1998, Mission sought to purchase St. Joseph’s and all of its assets, and the COPA was, in turn, amended to permit the acquisition. A class action filed against Mission alleges that Mission, which now dominated the market in Buncombe and Madison Counties,²⁷⁴ could operate as a monopoly under the COPA as long as it agreed to “limit health care costs” and “control prices of healthcare services.”²⁷⁵ Specifically, the complaint alleges “the COPA imposed three purported caps on Mission’s operations: a margin cap, a cost cap, and an employed-physician cap.”²⁷⁶

From 1995 to 2016, Mission expanded its footprint, buying up hospitals in surrounding counties. In 2016, however, the state legislature repealed the COPA, “leaving no meaningful competitive or regulatory constraint on Mission Health’s monopoly market power.”²⁷⁷ HCA, the largest and most profitable hospital chain in the country, saw Mission’s monopoly power and relatively little regulatory constraint as an opportunity. In what many have now questioned as a “rigged” process, Mission sold its assets to HCA in

²⁷³ Article 9. Certificate of Need, § 131E-183(a)(18)

https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_131E/Article_9.html

²⁷⁴ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21), p. 14

²⁷⁵ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21), p. 14.

²⁷⁶ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21), p. 37

²⁷⁷ U.S. Federal Trade Commission, Bureau of Competition, Bureau of Economics, Office of Policy Planning, “Federal Trade Commission Staff Submission to Texas Health and Human Services Commission Regarding the Certificate of Public Advantage Applications of Hendrick Health System and Shannon Health System,” September 11, 2020. https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-texas-health-human-services-commission-regarding-certificate-public-advantage/20100902010119texashscopacomment.pdf

2019.²⁷⁸ The class action complaint alleges that a former HCA executive said the following about the acquisition,

“[I]t is a high growth market where they have no competition and their margins are already strong” and “HCA is parachuting into Asheville and getting the benefit of a COPA without any restrictions.”²⁷⁹

Barak Richman, a law professor at Duke University who specializes in antitrust healthcare law, also asserted of the deal, “I think the value of Mission to HCA increased dramatically after the COPA ended and that’s just simple economics.”²⁸⁰

With the COPA no longer in place, Mission has become an unregulated monopoly—there is nothing stopping HCA from engaging in monopolistic and harmful behavior. Therefore, even more so than ever, competition is crucial in this market.

Mission’s Current Monopolistic Market Share

Mission Health proposes to add 67 beds at its flagship hospital, Mission Hospital - Asheville, to meet the bed need in the Buncombe, Graham, Madison, and Yancey multicounty service area. As stated in Mission’s CoN application, Mission Hospital alone already captures 88.6% of all acute care patients who are Buncombe County residents, and 89.1% of all acute care patients who are Madison County residents. Mission Hospital - Asheville also holds 58.4% market share in Yancey County. Combined with two of Mission Health’s other hospitals, Blue Ridge Regional Hospital and Mission Hospital McDowell, Mission Health hospitals hold a 91.9% acute care market share in Yancey County. Mission Hospital Asheville also maintains itself as the largest provider to Graham County residents (with 35.5% market share) “despite not being geographically proximate.”²⁸¹ Broken down further, according to the Medicare Hospital Market Service Area File for the calendar year ending December 31, 2019, the inpatient origin market share for Mission Hospital Asheville was:

“88.9% for zip code of residence 28806; 86.5% for zip code of residence 28803; and 87% for zip code of residence 28715.”²⁸²

As the only provider of acute care inpatient hospital services in Buncombe and Madison Counties, residents of these counties, as well as its surrounding areas, lack proper choice in healthcare.²⁸³ The present CoN process is an opportunity to finally allow residents some consumer choice. Additional beds at Mission Hospital will increase its market share, furthering its ability to engage in harmful, monopolistic behavior. An alternative provider of the needed beds located in Buncombe would provide residents with improved consumer choice while still offering geographic convenience.

²⁷⁸ *Asheville Watchdog*, “Attorney General’s office had ‘great concerns’ Mission-HCA deal was rigged ‘from the beginning,’” March 20, 2022. - <https://www.northcarolinahealthnews.org/2022/03/20/hca-deal-was-rigged-ag-office-concerned/>

²⁷⁹ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21), p. 39

²⁸⁰ Karen Zatkulak, “Lawsuit against Mission Health ‘could have an impact nationwide,’” *WLOS ABC-13 News*, September 15, 2021. <https://wlos.com/news/local/lawsuit-against-mission-health-could-have-an-impact-nationwide-says-law-professor>

²⁸¹ Certificate of Need Application for acute care beds submitted by MH Mission Hospital, LLLP. June 15, 2022, p. 54-57

²⁸² *City of Brevard, North Carolina v. HCA Healthcare and Mission Health System* (Case No. 1:22-cv-114, United States District Court - Western District of North Carolina, filed 06/03/22), p. 31

²⁸³ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21), p. 56

Furthermore, Mission Hospital is part of a larger system that holds dominant market share outside of these four counties, both through Mission Hospital - Asheville and through its other, smaller hospitals. A class action filed against Mission alleges the following:

- As of 2018, Mission Health holds an 85.4% inpatient market share in Mitchell County, a 78.7% inpatient market share in Transylvania County, a 76.4% inpatient market share in McDowell County, and a 74.7% inpatient market share in Macon County.²⁸⁴
- “According to the Medicare Hospital Market Service Area File for 2019 for inpatient origin, HCA has an 85.3% market share in zip code 28712 in Brevard, NC, the top inpatient zip code for HCA’s Transylvania Regional Hospital in Brevard, Transylvania County. This total HCA market share comes from Transylvania Regional Hospital’s 44.8% market share in the zip code and Mission Hospital-Asheville’s 40.5% market share in the zip code. Pardee UNC Hospital only holds 10.4% market share, despite being about half the driving distance from Brevard and substantially lower cost than Mission Hospital-Asheville.”²⁸⁵
- “According to the Medicare Hospital Market Service Area File for 2019 for inpatient origin, HCA has a 92.4% market share in zip code 28741 in Highlands, NC, the top inpatient zip code for HCA’s Highlands-Cashiers Hospital in Highlands, NC. This total HCA market share comes from Highland-Cashiers Hospital’s 43.8% market share in the zip code and Mission Hospital-Asheville’s 48.7% market share in the zip code. Northeast Georgia Medical Center only holds 7.6% market share, despite being closer driving distance from Highlands and substantially lower cost than Mission Hospital-Asheville.”²⁸⁶

HCA is also potentially in a uniquely lucrative position due to the fact that, not only does HCA hold monopoly power within these relevant counties, but it also holds significant market power in multiple markets in other states. HCA is the largest health system in the U.S.,²⁸⁷ with “186 hospitals and more than 2,000 sites of care located in 21 states and the United Kingdom,” including those located in North Carolina.²⁸⁸ The class action alleges that:

“Prior to the HCA acquisition of the Mission system, HCA owned hospitals in a variety of important markets across the country, but not in North Carolina. Thus, when HCA acquired Mission, it was not the case of one competitor in the same town or region acquiring another. **Rather, a dominant hospital owner in many other markets (HCA) acquired the dominant hospital system in the Western North Carolina market (Mission).**” [emphasis added]²⁸⁹

Mission’s monopoly power in Western North Carolina, coupled with HCA’s market power elsewhere, has led to higher charges and higher premiums for local residents.

How Hospitals Negotiate Prices with Private Insurers in a Market Dominated By One Provider

²⁸⁴ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21), p. 62-63

²⁸⁵ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21), p. 61

²⁸⁶ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21), p. 61

²⁸⁷ Becker’s Hospital Review, “100 of the largest hospitals and health systems in America | 2021,” March 23, 2022.

<https://www.beckershospitalreview.com/100-of-the-largest-hospitals-and-health-systems-in-america-2021.html>

²⁸⁸ HCA Healthcare, Fact Sheet, June 30, 2020. <https://hcahealthcare.com/util/forms/press-kit/2020-healthcare-fact-sheet-a.pdf>

²⁸⁹ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21), p. 40

When a market lacks competition, commercial health plans have no choice but to contract with the dominant (or in Mission Hospital - Asheville's case, only) provider for services. Healthcare consumers in a certain patient service area are unlikely to purchase a health insurance plan if the dominant provider for the region is not included in the plan's network. Understandably, most patients do not want to, nor should they be expected to, travel to other service areas to receive care that is covered by their insurance plan ("in network" care). Easy accessibility is crucial when it comes to healthcare services, and when a market lacks multiple providers, accessibility means being able to use the services provided by the dominant provider. Thus, health plans are forced to negotiate for allowed amounts and contract with the "must have" provider to offer its services to its enrollees. The imbalance in negotiating power between these parties means that the provider can demand exorbitant "allowed amounts" from the health plan. Of course, these rates, in turn, get passed on to consumers in the form of higher premiums and higher out of pocket costs (deductibles, co-insurance, and copays). As a recent Health Affairs article pointedly states, "The evidence is clear that provider consolidation leads to higher prices for people with private insurance with little to no effect on the quality of care."²⁹⁰

Because Mission Hospital is the only acute care provider in both Buncombe and Madison County, and the only tertiary care and trauma care provider in the region, Mission Hospital is a must have provider. Residents currently lack choice when it comes to this type of care, and thus require their health plans to cover Mission Hospital. Unfortunately, this has allowed Mission to charge above average prices for its unavoidable services. Therefore, not only do consumers not have a choice in where they access care, but they are forced to pay excessive rates for that care.

Two Antitrust Suits Have Been Filed Against Mission/HCA

Mission Health/HCA is currently the defendant in two antitrust lawsuits. In August of 2021, a group of Western North Carolina residents filed *Davis et al. v. HCA Healthcare and Mission Health System* ("Davis"), a class action lawsuit against HCA/Mission Health that alleges the system currently operates as a monopoly, and is unlawfully using its monopoly power to extract supracompetitive rates from insurers. Just a few months later, Mission became the defendant in *City of Brevard, North Carolina v. HCA Healthcare and Mission Health System* ("Brevard"), a second antitrust suit filed by North Carolina Municipality Brevard, which operates a self-funded health insurance plan for its employees and their families. Brevard puts forward similar arguments in this suit, specifically arguing that, since the city is the purchaser for its employees' health insurance coverage, Mission's behavior harms the city through its higher-than-average prices that force the city to pay higher premiums. Both suits explain that Mission Hospital has been a monopoly since the merger of Mission and St. Joseph's discussed above. However, since the COPA was repealed, Mission has maintained unregulated monopoly power, and has much more aggressively negotiated with insurers to extract profits in its operating markets. While the complaints allege that, under non-profit ownership, Mission engaged in anti-competitive behavior to raise prices, the suits assert that HCA "has further exploited the system's market dominance by raising prices and cutting costs in ways that have harmed quality of care."²⁹¹ Davis alleges that under HCA's ownership, "prices rose at an even higher rate than the State average, while at the same time HCA cut staffing to dangerously low levels to further increase its profit."²⁹²

²⁹⁰ Erica Socker Mark E. Miller, "Making Employer-Sponsored Insurance More Affordable," Health Affairs, May17, 2021. <https://www.healthaffairs.org/doi/10.1377/forefront.20210512.871455/>

²⁹¹ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21), p. 37

²⁹² *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21), p. 44-45

The lawsuits allege that Mission, both prior to the acquisition and under HCA's ownership, has aggressively negotiated for these price increases by engaging in unlawful, anti-competitive tactics to bolster its power with insurers, extract higher rates, and force health plans to cover a wider range of its services. Specifically, the lawsuits claim that HCA/Mission uses:

- "All or nothing"²⁹³ offers, in which Mission leverages their market power at Mission Hospital - Asheville (its "must have" hospital) to force health plans to include as in-network "(1) outpatient medical care at Mission Hospital-Asheville and the rest of Buncombe and Madison Counties, and (2) inpatient and outpatient care at Mission's and HCA's Outlying Facilities."²⁹⁴ The lawsuits argue that "these "all or nothing" contractual provisions constitute unlawful tying under the antitrust laws."
- Anti-steering and anti-tiering contractual provision. Many insurers utilize steering arrangements that involve encouraging plan enrollees to use lower-cost facilities instead of a higher cost facility or provider through plan language or by making the patient's personal financial responsibility (through out-of-pocket costs or copays) higher for use of the higher cost facility. Mission allegedly requires insurers "not to use steering or tiering language, or to use weaker language or provisions than the insurers would have desired to use, as a condition of obtaining access to Defendants' 'must have' Mission Hospital-Asheville for their commercial health plans."²⁹⁵
- "Gag clauses" in which insurers are prohibited from revealing their Mission contract terms, preventing "competitors, insurers, and consumers from understanding in a transparent manner the pricing and other terms and arrangements being used by Defendants."²⁹⁶

Mission's application fails to mention that the system is a defendant in the above lawsuits. Mission's application also fails to address the very real and very dire effects its monopolistic market share has had on healthcare prices and premiums in the area. Ultimately, while a decision has not yet been rendered for either suit, the plaintiffs outline important information regarding Mission Hospital's significant and harmful market share and prices, and their effects on insurance costs and quality of care.

Mission Hospital's Prices Are Significantly Higher Than State Averages:

Mission's monopoly power in the area has resulted in exorbitant prices. As noted in a Modern Healthcare article following HCA's purchase of Mission: "Mission ... fits with HCA's longstanding strategy of scooping up facilities that dominate their markets, which helps the company negotiate better rates with health insurers."²⁹⁷ HCA has used Mission's unregulated monopoly power to extract supracompetitive prices from insurers. Competition in providing these services could push HCA to reconsider its exorbitant prices, improving accessibility for all residents.

²⁹³ *City of Brevard, North Carolina v. HCA Healthcare and Mission Health System* (Case No. 1:22-cv-114, United States District Court - Western District of North Carolina, filed 06/03/22), p. 34-35 ; "When a hospital system is the only entity in a given region to offer a product or service that health plans must include in their networks to be viable, that hospital system can refuse to sell services to health plans, or sell only with a significant price penalty, unless those health plans also agree to purchase other services from the hospital system, including services that the health plan would otherwise purchase from a different hospital system or set of providers for lower prices. Either orally during negotiations or in the contracts themselves, a hospital system can give the health plan what effectively is an "all-or-nothing" choice: Include everything the hospital system wants to sell at the price the hospital system dictates or pay much higher penalty prices or even get nothing at all."

²⁹⁴ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21), 56

²⁹⁵ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21), p. 64

²⁹⁶ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21), p. 64

²⁹⁷ Tara Bannow, "HCA finalizes Mission Health purchase," *Modern Healthcare*, February 01, 2019.

<https://www.modernhealthcare.com/article/20190201/NEWS/190209999/hca-finalizes-mission-health-purchase>

We can see this monopoly power at work as Mission Hospital's charge-to-cost ratios drastically increased after HCA's acquisition. A hospital's charge-to-cost ratio "is calculated as a hospital's total gross charges divided by its total Medicare-allowable cost."²⁹⁸ Gross charges refer to a hospital's sticker price for each service—the price before private insurers' allowable amounts and pre-determined Medicare and Medicare rates. Medicare-allowable costs include costs associated with providing care to all patients, as reported on the hospital's Medicare cost reports. Therefore, a hospital's charge-to-cost ratio demonstrates how much higher a hospital's charges are compared to what it actually costs to provide that service. A higher ratio signals considerable profit motives.

Based on our analysis of Medicare cost report data, Mission Hospital's charges increased significantly following HCA's acquisition, to the point that:

- 1) Prior to HCA's acquisition, Mission Hospital's charge-to-cost ratio had consistently fallen below the average charge-to-cost ratio across all North Carolina hospitals, but shot up the year of the acquisition (in 2019) to above the state average;
- 2) Mission Hospital's charge-to-cost ratio had been increasing at a rate relatively in line with the state average (in terms of percent change each year) but, following HCA's acquisition, began increasing at a much more rapid rate, one in the double digits;
- 3) Mission Hospital's charge-to-cost ratio previously fell consistently below the national average but, as of 2020, is now significantly above the national average;
- 4) While both the state and national average charge-to-cost ratio decreased from 2019 to 2020, Mission Hospital's increased by 14%, with the hospital now under HCA's ownership.

As of 2021, the most recent data we have, Mission has a charge-to-cost ratio of 539%. In other words, Mission charges approximately 5.4 times what it actually costs to deliver care.²⁹⁹

Fig. 17. Mission Charge to Cost Ratios, 2016-2020

Year	Mission Charge-to-Cost Ratio	% Change from previous year	NC Avg. Charge-to-Cost Ratio	% Change from previous year	Nat. Avg. Charge-to-Cost Ratio
2016	369%	-	396%	-	437%
2017	388%	5%	413%	4%	451%
2018	392%	1%	419%	2%	465%
2019	444%	13%	434%	3%	480%
2020	505%	14%	416%	-4%	460%

Source: SEIU Analysis of Medicare Cost Reports

A hospital's charge-to-cost ratio is relevant because numerous studies find a link between what a hospital charges and its actual prices. *The Quarterly Journal of Economics* published a study in 2019 of claims data from three of the five largest private US insurers. The study found that "23% of hospitals' inpatient cases have prices set as a share of hospitals' charges."³⁰⁰ Moreover, "Prices at monopoly hospitals are 12% higher than those in markets with four or more rivals. Monopoly hospitals also have contracts that load more risk

²⁹⁸ Ge Bai and Gerard F. Anderson, "Extreme Markup: The Fifty US Hospitals With The Highest Charge-To-Cost Ratios, *Health Affairs*, June 2015. <https://www.healthaffairs.org/doi/10.1377/hlthaff.2014.1414#:~:text=The%20charge%2Dto%2Dcost%20ratio%20is%20calculated%20as%20a%20hospital's,its%20total%20Medicare%2Dallowable%20cost.>

²⁹⁹ SEIU Analysis of Medicare cost report data.

³⁰⁰ Zack Cooper et al., "The Price Ain't Right? Hospital Prices and Health Spending on the Privately Insured," *The Quarterly Journal of Economics* 134, no. 1 (February 1, 2019): 51–107. https://healthcarepricingproject.org/sites/default/files/Updated_the_price_aint_right_qje.pdf

on insurers (e.g., they have more cases with prices set as a share of their charges).³⁰¹ A 2016 study published in *Health Affairs* “using 2013 nationally representative hospital data from Medicare” found that, a one-unit increase in the charge-to-cost ratio was associated with a \$64 increase in patient revenue per adjusted discharge, suggesting that “hospitals still consider the chargemaster price to be an important way to enhance revenue.”³⁰²

Additionally, high charges particularly harm uninsured patients, especially uninsured patients who are not covered by a hospital’s charity care policy. Uninsured patients do not have the luxury of having a large company negotiate down a hospital’s prices on their behalf. Therefore, uninsured patients are often forced to take on the entire sticker price, or an only slightly discounted version of it.³⁰³ Of course, the higher a hospital’s sticker price, the more significant the financial burden.

We can also see Mission’s monopoly power at work from a recent RAND Corporation analysis of hospital claims data.³⁰⁴ Specifically, RAND compared the prices negotiated from 2018 to 2020 by hospitals and private health plans—i.e. the total “allowed amounts (amount paid to a health care provider per service, including amounts paid by the health plan and any amounts due from the patient, such as deductibles, copayments, and coinsurance)”³⁰⁵—to the rates set by Medicare.³⁰⁶ As the complaint in *Brevard* alleges:

“According to RAND data, Mission Hospital-Asheville ... charged commercial insurers 305% above the Medicare price, on average, for [General Acute Care] Services, versus the North Carolina average of 211% above Medicare.”³⁰⁷

We can also look at specific procedures for which Mission Hospital’s prices are available. Not only are Mission’s prices for said services significantly higher than the average prices for all other hospitals in North Carolina, but Mission’s prices have also increased at comparatively rapid rates. Mission’s market share, buoyed by the repeal of the COPA, has allowed the hospital to negotiate exorbitant prices for both emergent and elective services. This situation will only worsen if Mission is chosen as the provider of the beds in question.

- **C-section Prices:** The complaint in *Davis* alleges that HCA’s average allowed amount from commercial health plans for C-sections without complications at Mission Hospital-Asheville “is over 2.2 times greater than the rest of North Carolina.” Specifically, Mission Hospital’s price was approximately \$9,764 in 2019 and \$10,077 in 2020, compared to the average allowed amount at all other North Carolina hospitals of \$4,287 in 2019 and \$4,373 in 2020. Furthermore, the price of

³⁰¹ Zack Cooper et al., “The Price Ain’t Right? Hospital Prices and Health Spending on the Privately Insured,” *The Quarterly Journal of Economics* 134, no. 1 (February 1, 2019): 51–107. https://healthcarepricingproject.org/sites/default/files/Updated_the_price_aint_right_qje.pdf

³⁰² Ge Bai and Gerard F. Anderson, “US Hospitals Are Still Using Chargemaster Markups To Maximize Revenues,” *Health Affairs*, September 2016. <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2016.0093>

³⁰³ Melanie Evans, Anna Wilde Mathews, and Tom McGinty, “Hospitals Often Charge Uninsured People the Highest Prices, New Data Show,” *The Wall Street Journal*, July 6, 2021. <https://www.wsj.com/articles/hospitals-often-charge-uninsured-people-the-highest-prices-new-data-show-11625584448>

³⁰⁴ “We gathered claims data, including provider identifiers and allowed amounts, for enrollees in employer-sponsored health plans from three types of data sources: self-insured employers; state-based all-payer claims databases from Arkansas, Colorado, Connecticut, Delaware, Maine, New Hampshire, Oregon, Rhode Island, Utah, and Washington; and health plans that chose to participate. Together, those data sources include claims data for hospital services provided by more than 4,000 hospitals in 49 states and Washington, D.C.” Christopher M. Whaley, Brian Briscoombe, Rose Kerber, Brenna O’Neill, Aaron Kofner, “Prices Paid to Hospitals by Private Health Plans: Findings from Round 4 of an Employer-Led Transparency Initiative”: RAND Supplemental_Material (Excel File – Notes and Background Tab), *RAND Corporation*. 2022. <https://doi.org/10.7249/RR1144-1>

³⁰⁵ Christopher M. Whaley, Brian Briscoombe, Rose Kerber, Brenna O’Neill, Aaron Kofner, “Prices Paid to Hospitals by Private Health Plans: Findings from Round 4 of an Employer-Led Transparency Initiative.” *RAND Corporation*. 2022. <https://doi.org/10.7249/RR1144-1>

³⁰⁶ Synopsis – Christopher M. Whaley, Brian Briscoombe, Rose Kerber, Brenna O’Neill, Aaron Kofner, “Prices Paid to Hospitals by Private Health Plans: Findings from Round 4 of an Employer-Led Transparency Initiative.” *RAND Corporation*. 2022. <https://doi.org/10.7249/RR1144-1>

³⁰⁷ *City of Brevard, North Carolina v. HCA Healthcare and Mission Health System* (Case No. 1:22-cv-114, United States District Court – Western District of North Carolina, filed 06/03/22), p. 43

C-sections at all other North Carolina hospitals stayed relatively stable from 2016 (the last year of the COPA) to 2020 at around \$4,000, while Mission Hospital's rose from \$8,621 to over \$10,000.³⁰⁸ These prices are particularly relevant to the present CoN decision as both other applicants plan to accompany their proposed beds with dedicated C-section ORs.³⁰⁹ Approving one of these alternative providers would provide welcome relief for Asheville residents who require these services.

- **Shoulder Arthroscopy:** *Davis* alleges that Mission's average allowed amount increased from approximately \$1,000 in 2016 (the last year of the COPA) to approximately \$2,400 in 2020, or by almost 150% in four years. In contrast, the rest of North Carolina's hospitals have stayed relatively stable with allowed amounts averaging just under \$1,000 from 2016 to 2020.³¹⁰
- **Knee Replacement:** *Davis* alleges that the average allowed amount paid by most commercial insurers to Mission for a knee replacement in 2020 was over \$20,000. The average across the rest of North Carolina sat below \$15,000.³¹¹
- **Cardiovascular Stress Tests:** *Davis* alleges that, in 2020, the "average allowed amount for this procedure at HCA was roughly double that of the average allowed amount in the rest of North Carolina"—just under \$1,000 vs. just under \$500. From 2016 to 2020, the average allowed amount for this procedure declined slightly across the rest of North Carolina, while the average allowed amount at Mission increased by about 30%.³¹²
- **Trauma Activation Fees:** Mission Hospital - Asheville operates the only state designated trauma center in Western North Carolina. As such, *Davis* alleges that HCA uses this market power to charge particularly high trauma fees. The complaint claims that Mission Hospital's trauma activation fees (fees charged automatically when trauma care is initiated) are almost "twice as high as the North Carolina Average" at over \$9,000.³¹³ HCA has a track record of charging exorbitant trauma activation fees.³¹⁴ In 2021, Kaiser Health News published a piece examining these fees. According to the article, "average HCA trauma activation charges are \$26,000 in states where the company does business—three times higher than those of non-HCA hospitals." Hospitals can attempt to "maximize revenue by charging high trauma fees to all insurers, including those required to pay a percentage of charges, say medical billing consultants."
- **General Charge Increases:** "HCA reported a 10% charge increase in October of 2019, compared with Mission's previous average annual 6.8% increases prior to the sale of the hospital."³¹⁵

³⁰⁸ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court – Buncombe County, filed 08/10/21), p. 46

³⁰⁹ Certificate of Need Application for acute care beds submitted by Novant Health Asheville Medical Center, LLC. June 15, 2022, p. 36; - Certificate of Need Application for acute care beds submitted by AdventHealth Asheville, Inc. June 15, 2022, p. 41; <https://info.ncdhhs.gov/dhstr/coneed/pdf/ApplicationLogs/2022/ApplicationLog-July12022Reviews.pdf>

³¹⁰ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court – Buncombe County, filed 08/10/21), p. 43

³¹¹ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court – Buncombe County, filed 08/10/21), p. 43

³¹² *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court – Buncombe County, filed 08/10/21), 47

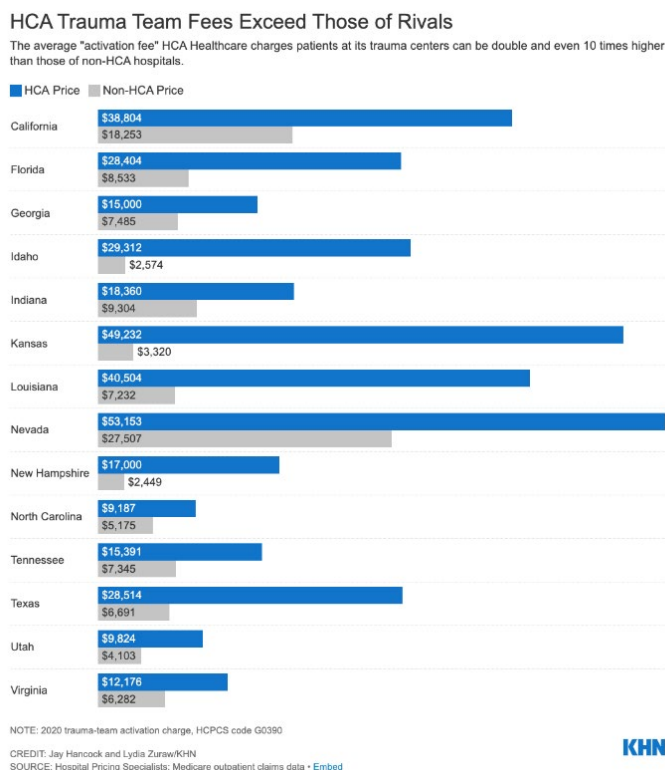
³¹³ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court – Buncombe County, filed 08/10/21), 53-54

³¹⁴ Jay Hancock, "In Alleged Health Care 'Money Grab,' Nation's Largest Hospital Chain Cashes In on Trauma Centers," *Kaiser Health News*, June 14, 2021. <https://khn.org/news/article/in-alleged-health-care-money-grab-nations-largest-hospital-chain-cashes-in-on-trauma-centers/>

³¹⁵ Jennifer Emert, "Two years after sale to HCA, care and cost concerns raised with Mission Hospital," *WLOS ABC-News 13*, February 24th 2021. <https://wlos.com/news/local/two-years-after-sale-to-hca-care-and-cost-concerns-raised-with-mission-hospital>

Fig. 18. HCA's Average Trauma Activation Fee in Each State It Operates Trauma Centers Compared to the State Average

Reports from insurers show that HCA uses its market power to demand supracompetitive pricing from insurers at the expense of individual consumers. The complaint in *Davis* alleges that, in 2019, during HCA/Mission's contract negotiations with Cigna, the insurer reported that HCA/Mission's demand for "excessively high rates" would "put affordable healthcare at risk."³¹⁶ According to a recent article from *The Wall Street Journal*, HCA is planning to engage in exactly this behavior in upcoming contract negotiations with insurers. Namely, HCA is among the health plans looking to increase prices by up to 15%.³¹⁷ If insurers feel like the prices that Mission hospital demands are unrealistic, Western North Carolinians could risk "losing access to the only hospital in their area."³¹⁸



Source: Jay Hancock, "In Alleged Health Care 'Money Grab,' Nation's Largest Hospital Chain Cashes In on Trauma Centers," *Kaiser Health News*, June 14, 2021.

This has happened before, and now with higher prices, it very well could happen again. In 2017, immediately following repeal of the COPA,³¹⁹ Mission (still under non-profit ownership) entered negotiations with Blue Cross Blue Shield. The complaint in *Brevard* alleges that when Blue Cross would not agree to Mission's significant price increases or Mission's demand that the insurer also cover inpatient and outpatient services in all of Mission's other geographic markets, Mission took itself (including Mission Hospital – Asheville and all of its other hospitals, clinics, and providers) out of the plan's network.³²⁰ With Mission's services no longer covered by Blue Cross's plans, *Brevard* alleges "tens of thousands of Blue Cross members [were forced] to switch doctors, forgo medical care, or drive long distances to receive care at a

³¹⁶ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21), p. 46

³¹⁷ Melanie Evans, "Hospitals Look to Raise Treatment Costs as Nurses' Salaries Increase," *The Wall Street Journal*, May 8, 2022. <https://www.wsj.com/articles/hospitals-look-to-raise-treatment-costs-as-nurses-salaries-increase-11652007602>

³¹⁸ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21), p. 46

³¹⁹ U.S. Federal Trade Commission, Bureau of Competition, Bureau of Economics, Office of Policy Planning, "Federal Trade Commission Staff Submission to Texas Health and Human Services Commission Regarding the Certificate of Public Advantage Applications of Hendrick Health System and Shannon Health System," September 11, 2020. https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-texas-health-human-services-commission-regarding-certificate-public-advantage/20100902010119texashhscopacomment.pdf

³²⁰ *City of Brevard, North Carolina v. HCA Healthcare and Mission Health System* (Case No. 1:22-cv-114, United States District Court - Western District of North Carolina, filed 06/03/22), p. 36

non-Mission facility.”³²¹ This “fight over rates left Blue Cross patients out of network with Mission for about two months,”³²² until Blue Cross eventually gave in and agreed to Mission’s price and network demands.³²³ Since prices have increased at an even more rapid rate since HCA took ownership of Mission, there is a very real concern that this could happen again, and residents would once again be left unable to access the largest provider in the region.

Health Insurance Premiums Are Much Higher in Mission’s Self-Defined Service Area

When hospitals can charge private insurers supracompetitive rates due to a lack of competition in the market, these prices are passed onto individual patients in the form of higher premiums. This is what we are seeing happen in Western North Carolina. Mission’s primary service area, as defined in its CoN application, includes Buncombe, Henderson, Haywood, McDowell, Madison, Macon, Transylvania, Yancey, Jackson, and Swain. Its secondary service area includes Rutherford, Mitchell, Burke, Cherokee, Polk, Graham, Caldwell, Avery, and Clay.³²⁴ Due to Mission’s alleged monopoly power, “insurance premiums within Mission Health’s service area are 30% higher than premiums in nearby counties, and over 50% higher than premiums in the State’s other large metropolitan areas.”³²⁵ Specifically, compared to North Carolina’s other metropolitan areas, the complaint in *Davis* alleges:

*“Individual insurance premiums are now approximately 50% higher in Mission’s self-defined service area than Winston-Salem; about 55% higher in Mission’s service area than Durham, Raleigh, or Charlotte; and about 60% higher than Greensboro.”*³²⁶

Davis pointedly explains how this affects residents of Mission’s service area:

*“For example, crossing the county line from Rutherford County (in Mission’s self-defined service area) to Cleveland County (outside of Mission’s service area), an individual would see premiums drop immediately by 29%. Similarly, driving East from Cherokee County or South from Macon County (in Mission’s self-defined service area) into Tennessee or Georgia, an individual would see an immediate premium decline of over 20%.”*³²⁷

Fig. 19. Private Health Insurance Premiums by County in Western North Carolina

³²¹ *City of Brevard, North Carolina v. HCA Healthcare and Mission Health System* (Case No. 1:22-cv-114, United States District Court - Western District of North Carolina, filed 06/03/22), p. 36

³²² Karen Zatkulak, “Healthcare in WNC is more expensive because of Mission Health, lawsuit claims,” *WLOS ABC-News 13*, September 16, 2021, <https://wlos.com/news/local/mission-health-lawsuit-healthcare-costs-wnc>

³²³ *City of Brevard, North Carolina v. HCA Healthcare and Mission Health System* (Case No. 1:22-cv-114, United States District Court - Western District of North Carolina, filed 06/03/22), p. 36

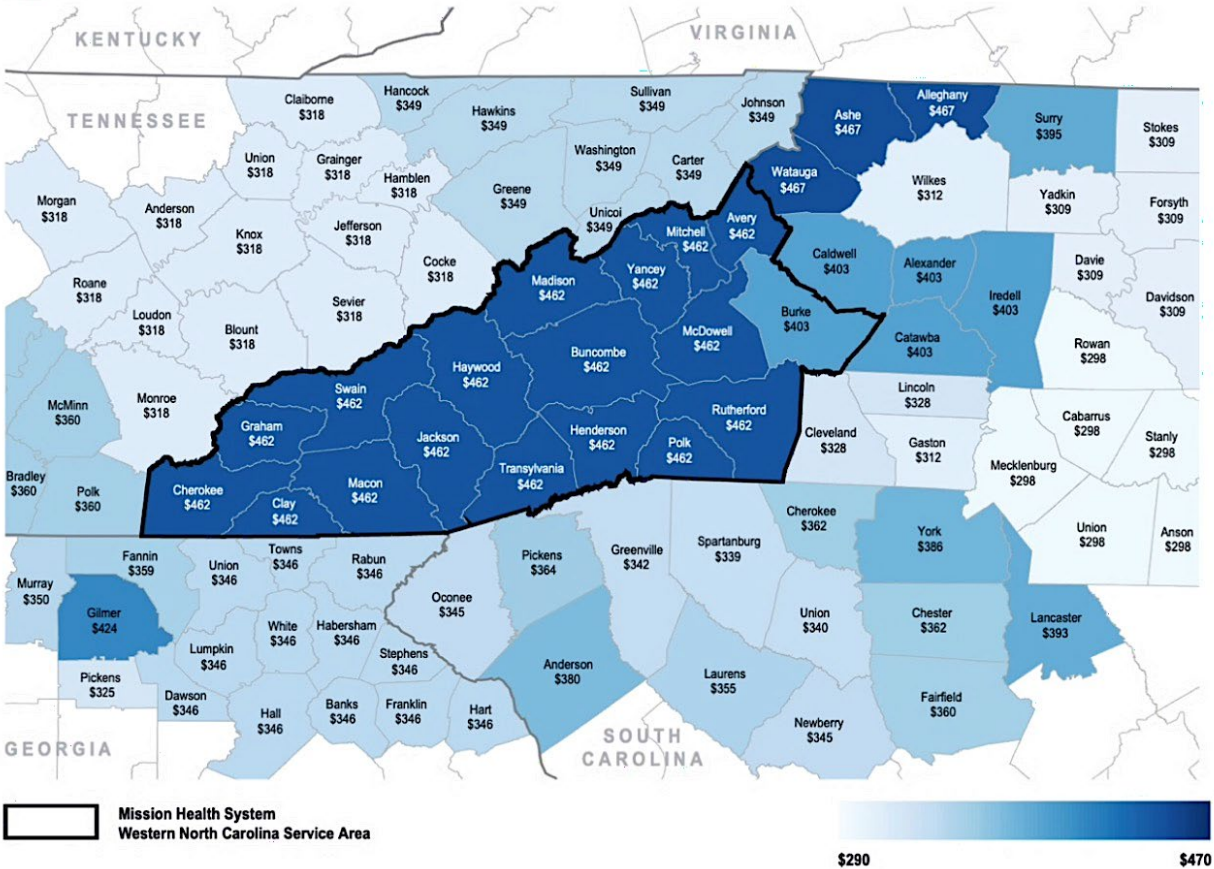
³²⁴ Certificate of Need Application for acute care beds submitted by MH Mission Hospital, LLLP. June 15, 2022, p. 58

³²⁵ NC DOJ Letter to HCA 16 March 2022, <https://www.scribd.com/document/567469487/NC-DOJ-Letter-to-HCA-16-March-2022>

³²⁶ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21), p. 65

³²⁷ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21), p. 65

**KFF Lowest Cost Plan in the County for 40-Year-Old Male
2020**



Source: Davis et al. v. HCA Healthcare and Mission Health System (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21)

Unfortunately, this has wider implications regarding public employers that are significant purchasers of health insurance. When healthcare costs increase, public funds are pulled from other pressing needs to cover these costs. North Carolina Treasurer Dale Folwell filed an *amicus* brief in support of the class action plaintiffs explaining that:

“[a] significant part of the state’s budget goes to health care . . . It is impossible to give appropriate raises to valued employees or take on new employees when so much funding has been budgeted for healthcare. State government leadership on this issue is imperative. The ever-increasing costs being charged with these multi-state behemoths like HCA HealthCare are of high concern.”³²⁸

In his capacity as treasurer, Folwell “administers the health plan of more than 750,000 current and retired public employees, making it the largest single purchaser of health care in the state.”³²⁹

Richman, the Duke professor mentioned above, explained to WLOS ABC-News 13:

³²⁸ Derek Lacey, “NC Treasurer files interest in HCA anti-trust suit; plaintiffs reiterate concerns, *North Carolina Business Group on Health*. <https://ncbgh.org/nc-treasurer-files-interest-in-hca-anti-trust-suit/>

³²⁹ Derek Lacey, “NC Treasurer files interest in HCA anti-trust suit; plaintiffs reiterate concerns, *North Carolina Business Group on Health*. <https://ncbgh.org/nc-treasurer-files-interest-in-hca-anti-trust-suit/>

“Whether you use Mission or not, if you have insurance in Western North Carolina, you’re paying monopoly prices and it’s cutting into your paycheck.”³³⁰

Lack of Competition and Higher Prices at Mission Means Diminished Access to Care

As is widely understood, higher prices and higher out of pocket costs often means diminished access to care. Noreen Rutledge explained to *News13* that she was a patient at Mission before and throughout the HCA/Mission acquisition, and she noticed her bill increased significantly when the sale was finalized. For the same few treatments Ms. Rutledge had been receiving each month, Rutledge received a bill for \$1,383.70 in February 2019 and \$3,836.80 in May. Ms. Rutledge explained to the news outlet, “It makes me afraid to get sick. I felt that it was extortion.”³³¹ As AG Stein has noted, “[A]nticompetitive conduct in health care can hurt North Carolinians’ access to affordable, quality care.”³³²

The current situation also has implications for the quality of care provided in the area. Competition increases a provider’s incentive to ensure it is providing high quality, safe care. When patients do not have another care option, providers can make decisions to cut corners, reduce staffing and other necessary costs, including unprofitable but crucial service lines, and ultimately, skimp on care. Unfortunately, this is what we have seen so far from Mission Health. See response to *Criterion § 131E-183 (a) (20)* for a more detailed explanation of quality deterioration at Mission.

North Carolina State and Local Leaders Are Taking Action

The seriousness of these allegations and the observed effects that the alleged behavior has had on the community has prompted a number of North Carolina leaders to come out either in support of the above lawsuits, in support of an alternative provider entering the market, or both. In December, North Carolina Treasurer Dale Folwell submitted an *amicus* brief in support of the class action plaintiffs, noting that,

“For years, residents and businesses of Western North Carolina have endured some of the highest and fastest growing healthcare prices in the State, while the quality of care they receive has deteriorated. That is because Mission Health ... has a near-total monopoly over essential healthcare services in the region.”³³³

In March, AG Stein submitted an *amicus* brief in support of the class action plaintiffs, arguing that the court should allow the case to proceed despite Mission Health’s motion to dismiss.³³⁴ Of the case filed by Brevard County, Folwell called it “courageous,” stating,

“I grieve for the people of Western North Carolina as we’re coming up on the third birthday of this transaction ... All we’re seeing is more evidence of lower quality, lower access and higher cost of health care.”³³⁵

³³⁰ Karen Zatkulak, “Healthcare in WNC is more expensive because of Mission Health, lawsuit claims,” *WLOS ABC-News 13*, September 16, 2021. <https://wlos.com/news/local/mission-health-lawsuit-healthcare-costs-wnc>

³³¹ Karen Zatkulak, “Healthcare in WNC is more expensive because of Mission Health, lawsuit claims,” *WLOS ABC-News 13*, September 16, 2021. <https://wlos.com/news/local/mission-health-lawsuit-healthcare-costs-wnc>

³³² Andrew Jones, “2 NC officials backing Asheville HCA lawsuit call new Brevard case ‘serious,’ ‘courageous,’” *Asheville Citizens Times*, June 14, 2022. <https://www.citizen-times.com/story/news/2022/06/14/north-carolina-state-officials-voice-thoughts-brevard-v-hca-lawsuit/7609927001/>

³³³ Derek Lacey, “NC Treasurer files interest in HCA anti-trust suit; plaintiffs reiterate concerns,” *North Carolina Business Group on Health*. <https://ncbgh.org/nc-treasurer-files-interest-in-hca-anti-trust-suit/>

³³⁴ “Attorney General Josh Stein Supports Continuation of Antitrust Case Against HCA,” Attorney General Josh Stein, March 30, 2022. <https://ncdoj.gov/attorney-general-josh-stein-supports-continuation-of-antitrust-case-against-hca/>

³³⁵ Andrew Jones, “2 NC officials backing Asheville HCA lawsuit call new Brevard case ‘serious,’ ‘courageous,’” *Asheville Citizens Times*, June 14, 2022. <https://www.citizen-times.com/story/news/2022/06/14/north-carolina-state-officials-voice-thoughts-brevard-v-hca-lawsuit/7609927001/>

Buncombe County Commissioners, as well as Transylvania County Leaders submitted letters in support of a hospital other than HCA providing these needed beds.³³⁶ Transylvania County Commission Chair Jason Chappell explained, “That’s not a slight to any one particular group, that’s just anytime you have competition, I think it makes your delivery of service better.”³³⁷

Brian Turner, House Representative for North Carolina’s District 116, wrote an op-ed in the *Asheville Citizens Times* encouraging an alternative provider for the needed beds.

“[There] is an opportunity at the statewide level to introduce a competitive playing field here ... We need another entity to apply and provide the opportunity to change the status quo, giving all of us a choice in our health care in Western North Carolina ... Competition will bring health gains to Western North Carolina instead of just financial ones for HCA.”³³⁸

AG Stein has even begun looking into potential merger law changes in North Carolina that would give his office more oversight power, partially motivated by the fallout from this acquisition.³³⁹

HCA’s Behavior at Mission is Part of a Larger Anti-Competitive Strategy

The anti-competitive behavior and aggressive pricing that we see from Mission Health are a staple strategy for healthcare behemoth HCA. In fact, as the complaint in *Davis* alleges, HCA has already “been subject to at least 20 antitrust proceedings brought by the FTC.”³⁴⁰

First, HCA’s overall anticompetitive strategy is evidenced by the hospital chain’s above average charge-to-cost ratio. For example, an SEIU analysis shows that, of 146 HCA hospitals reporting charge and cost data to Medicare in 2019, 133 (91%) had charge-to-cost ratios above the 80th percentile nationally, and of the 100 hospitals nationwide with the highest charge-to-cost ratios in 2019, 51 of them were HCA facilities.³⁴¹

A *Modern Healthcare* article from 2018 explained that “[s]ize and dominant market share have enabled HCA to negotiate higher prices from health insurers.”³⁴² The article identifies HCA’s clear expansion strategy:

“When expanding into new territories, HCA eyes areas where it will dominate in terms of market share, which it can leverage into negotiating power to secure better rates from insurers.”³⁴³

³³⁶ Andrew James, “Transylvania County leaders express “full support” for AdventHealth hospital proposal,” *WLOS ABC-News 13*, June 14, 2022. <https://wlos.com/news/local/adventhealth-hospital-proposal-transylvania-county-commissioners-leaders-full-support-letter-acute-care-beds-buncombe-madison-yancey-graham-hca-mission-health-novant>

³³⁷ Andrew James, “Transylvania County leaders express “full support” for AdventHealth hospital proposal,” *WLOS ABC-News 13*, June 14, 2022. <https://wlos.com/news/local/adventhealth-hospital-proposal-transylvania-county-commissioners-leaders-full-support-letter-acute-care-beds-buncombe-madison-yancey-graham-hca-mission-health-novant>

³³⁸ Brian Turner, “Opinion: How to remedy Mission, restore great health care in our area? Competition,” *Citizens Times*, April 17, 2022 <https://www.citizen-times.com/story/opinion/2022/04/17/buncombe-county-nc-how-combat-mission-restore-great-health-care-area-competition/7309183001/>

³³⁹ Andrew Jones, “AG Stein hears WNC leaders on Mission sale fallout, says he’s eyeing merger law changes,” *Asheville Citizens Times*, April 28, 2022. <https://www.citizen-times.com/story/news/2022/04/28/nc-attorney-general-medical-community-hca-healthcare-mission-hospital-fallout-asheville-buncombe/9573721002/>; Kimberly King, “Community leaders, members air Mission/HCA complaints during roundtable hosted by AG Stein,” *My40*, April 29th 2022. <https://my40.tv/news/local/buncombe-health-human-services-symposium-tackles-mission-hospital-concerns-josh-stein-roundtable-asheville-north-carolina-hca-esther-manheimer-maureen-copelof-julie-mayfield-asheville-watchdog-ianice-brumit>

³⁴⁰ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21), p. 19

³⁴¹ SEIU Analysis of Medicare cost report data.

³⁴² Shelby Livingston, “HCA’s success over 50 years banks on sticking with the basics,” *Modern Healthcare*, October 06, 2018. <https://www.modernhealthcare.com/article/20181006/NEWS/181009941/hca-s-success-over-50-years-banks-on-sticking-with-the-basics>

³⁴³ Shelby Livingston, “HCA’s success over 50 years banks on sticking with the basics,” *Modern Healthcare*, October 06, 2018. <https://www.modernhealthcare.com/article/20181006/NEWS/181009941/hca-s-success-over-50-years-banks-on-sticking-with-the-basics>

Ultimately, “HCA’s aggressive pricing, enabled by its market share and patient volume, is a major factor in its financial success.”³⁴⁴ We have seen this strategy clearly at play in HCA’s acquisition of Mission.

As HCA’s former CEO explained in 2012,

“We typically, in our large urban markets, operate somewhere between 20% and 40% market share, generally a very stable position, but it gives us a big footprint in which to operate and to negotiate with the managed care organizations.”³⁴⁵

In fact, the FTC recently filed an administrative complaint and lawsuit in federal court to block HCA’s proposed acquisition of five Steward hospitals in Utah in order to prevent HCA from engaging in this very behavior.³⁴⁶ In September, HCA’s Mountain division had announced plans to add Steward’s five Utah hospitals to its current portfolio of 11 hospitals across Utah, Idaho and Alaska.³⁴⁷ In the suit, the FTC “allege[d] that the deal would eliminate the second and fourth largest healthcare systems in the Wasatch Front region, where approximately 80 percent of Utah’s residents live.”³⁴⁸ FTC Bureau of Competition Director Holly Vedova explained that competition between two alternative systems helped to keep healthcare costs down in the area:

“The result is lower prices and more innovative services for patients and their families. If these companies merge, this competition will be lost, and Steward will no longer be available to patients as a low-cost provider in this region.”³⁴⁹

In particular, the lawsuit asserts that the merger would reduce the number of general inpatient acute care providers from three competitors to two competitors in some markets and from four to three in another, and that, without the two systems competing for inclusion in insurer networks, this would “enable HCA to command even higher reimbursement rates.”³⁵⁰ Furthermore, the FTC explained that “commercial insurers are likely to pass on at least a portion of those higher healthcare costs to employers and health plan members in the form of increased premiums, deductibles, co-pays, and other out-of-pocket expenses.”³⁵¹ In North Carolina, there is an opportunity to introduce the type of competition that the FTC attempts to save in this suit.³⁵²

³⁴⁴ Shelby Livingston, “HCA’s success over 50 years banks on sticking with the basics,” *Modern Healthcare*, October 06, 2018.

³⁴⁵ <https://www.modernhealthcare.com/article/20181006/NEWS/181009941/hca-s-success-over-50-years-banks-on-sticking-with-the-basics>

³⁴⁶ Richard M. Bracken, CEO, Conference Presentation, HCA Presents at 22nd Annual UBS Global Healthcare Services Conference, 2/8/2012. p. 4.

³⁴⁷ Federal Trade Commission, “FTC Sues to Block Merger Between Utah Healthcare Rivals HCA Healthcare and Steward Health Care System,” June 2, 2022. <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-block-merger-between-utah-healthcare-rivals-hca-healthcare-steward-health-care-system>

³⁴⁸ Molly Gamble, “HCA, Steward make for 2nd called-off hospital deal within days of FTC challenge,” *Becker’s Hospital Review*, June 17th, 2022. <https://www.beckershospitalreview.com/hospital-transactions-and-valuation/hca-steward-make-for-2nd-called-off-hospital-deal-within-days-of-ftc-challenge.html#:~:text=Nashville%2C%20Tenn.,throughout%20Utah%2C%20Idaho%20and%20Alaska>.

³⁴⁹ Federal Trade Commission, “FTC Sues to Block Merger Between Utah Healthcare Rivals HCA Healthcare and Steward Health Care System,” June 2, 2022. <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-block-merger-between-utah-healthcare-rivals-hca-healthcare-steward-health-care-system>

³⁵⁰ Federal Trade Commission, “FTC Sues to Block Merger Between Utah Healthcare Rivals HCA Healthcare and Steward Health Care System,” June 2, 2022. <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-block-merger-between-utah-healthcare-rivals-hca-healthcare-steward-health-care-system>

³⁵¹ Federal Trade Commission, “FTC Sues to Block Merger Between Utah Healthcare Rivals HCA Healthcare and Steward Health Care System,” June 2, 2022. <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-block-merger-between-utah-healthcare-rivals-hca-healthcare-steward-health-care-system>

³⁵² Federal Trade Commission, “FTC Sues to Block Merger Between Utah Healthcare Rivals HCA Healthcare and Steward Health Care System,” June 2, 2022. <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-block-merger-between-utah-healthcare-rivals-hca-healthcare-steward-health-care-system>

³⁵² HCA Healthcare and Steward Health Care System decided to abandon the proposed deal days after the FTC’s filing. Molly Gamble, “HCA, Steward make for 2nd called-off hospital deal within days of FTC challenge,” *Becker’s Hospital Review*, June 17th, 2022. <https://www.beckershospitalreview.com/hospital-transactions-and-valuation/hca-steward-make-for-2nd-called-off-hospital-deal-within-days-of-ftc-challenge.html#:~:text=Nashville%2C%20Tenn.,throughout%20Utah%2C%20Idaho%20and%20Alaska>.

Furthermore, North Carolina is not the only place HCA has drastically increased its charges following an acquisition. Following HCA's recent purchases of two Georgia hospitals, Memorial Satilla Health and MHUMC in Savannah, both went from having below-average charge-to-cost ratios to above-average charge-to-cost ratios after they were bought by HCA.³⁵³

HCA's global strategy is a clear warning that it could use these additional inpatient acute care beds to further its market share in the multicounty service area and continue to raise prices. If Mission's market share increases, HCA will only have more power to price gouge North Carolinians on needed care and cut vital costs by further reducing staffing, all to make a profit. The only adequate solution to the above is to reject Mission's application to provide these beds. An alternative provider would increase competition in the area and impose some checks on Mission's harmful pricing and operational behaviors.

³⁵³ SEIU Analysis of Medicare cost report data.

REVIEW CRITERION (20)

*Criterion § 131E-183 (a) (20)—An applicant already involved in the provision of health services shall provide evidence that quality care has been provided in the past.*³⁵⁴

Since HCA's acquisition of Mission Health, community members, patients, staff, and local and state leaders have consistently voiced concerns over the quality of care provided by the health system, including at Mission Hospital - Asheville. Below is a detailed overview of care quality complaints at Mission Health. Notably, these quality issues are not unique to Mission Health—HCA appears to have a pattern of this behavior. Based on the quality of care and patient safety grievances explained below, we have serious concerns that Mission Health will be unable to maintain a level of quality care that is necessary to accommodate the addition of new beds.

Mission Hospital Threatened with Medicare Termination Due to Lapses in Care

Healthcare providers must meet basic health and safety requirements in order to participate in, and thus, receive funding from, the Medicare and Medicaid programs. Medicare-certified providers are subject to [inspection] surveys to assess compliance with the CMS/Medicare Conditions of Participation (CoPs) and other regulations.³⁵⁵ Inspection surveys may give rise to enforcement actions called remedies if surveyors find violations of CoPs, or other deficiencies with healthcare standards. Remedies are based upon the scope and severity of the violation.³⁵⁶ Generally, inspectors give providers six months to remedy the violations and fall back into substantial compliance with regulations, but continued failure to do so may result in the provider being terminated from the Medicare and Medicaid programs.³⁵⁷ According to CMS, this drastic measure of terminating a provider agreement is “generally a last resort after all other attempts to remedy the deficiencies at a facility have been exhausted.”³⁵⁸ In other words, threats of contract termination from CMS are rare.³⁵⁹ Therefore, when CMS does choose to take this action, it is clearly in response to something very serious.

Lapses in care following HCA's takeover prompted CMS to send Mission Hospital a letter threatening to terminate its Medicare contract in November of 2020. Inspectors had learned that a patient released from Mission Hospital's ER had died by suicide just days after being discharged. CMS determined that Mission hospital's “dedicated emergency department failed to provide an ‘appropriate medical screening examination’ in one of 30 reviewed cases.”³⁶⁰ The inspection that prompted Mission Hospital's CMS termination was also preceded by two other two inspections in which the hospital was found to be noncompliant with standards—one in February of 2020, where “Mission's dietary services was indicated to be without a director and food tray temperatures documentation was unavailable and undocumented.”

³⁵⁴ Article 9. Certificate of Need, § 131E-183(a)(20)

https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_131E/Article_9.html

³⁵⁵ “A Q&A with CMS: Getting up to speed on inspection reports,” *HospitalInspections.org*. <http://www.hospitalinspections.org/qa-with-cms/#17> ; <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationEnforcement/Nursing-Home-Enforcement>

³⁵⁶ <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationEnforcement/Nursing-Home-Enforcement>

³⁵⁷ <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationEnforcement/Nursing-Home-Enforcement>

³⁵⁸ Rebecca Carballo, <https://www.houstonchronicle.com/business/article/houston-hospital-medicare-feds-violations-16688960.php>

³⁵⁹ Jennifer Emert, “What changes have been made since Medicare threatened to cut Mission Hospital's contract?” *WLOS ABC-News 13*, May 5, 2021. <https://wlos.com/news/local/news-13-investigates-what-changes-have-been-made-since-medicare-threatened-to-cut-mission-hospitals-contract>

³⁶⁰ Jennifer Emert, “What changes have been made since Medicare threatened to cut Mission Hospital's contract?” *WLOS ABC-News 13*, May 5, 2021. <https://wlos.com/news/local/news-13-investigates-what-changes-have-been-made-since-medicare-threatened-to-cut-mission-hospitals-contract>

Another inspection occurred in July where “a patient’s fall and injury during a procedure failed the patient’s “right to care in a safe setting.”³⁶¹

However, this is not the first time CMS has threatened to terminate its contract with an HCA hospital, suggesting a system-wide pattern of poor behavior. Good Samaritan Hospital in San Jose received a “Notice of Termination” from CMS in July of 2021.³⁶² In this 65-page inspection report detailing a series of deficiencies,³⁶³ regulators noted that hospital management failures placed “13 of sampled 37 patients at risk for adverse events” and claimed management had failed to address “serious, systemic, and recurring issues.”³⁶⁴ The report also identified:

- “[N]urse-to-patient staffing ratios that were out of compliance with state mandates on multiple occasions.”³⁶⁵
- A “lack of adequate staffing [that] led to overburdened nurses and mistakes in care, including at least 11 missed patient assessments and at least four instances where medications were not administered to ICU patients according to physician orders.”³⁶⁶
- Failure to provide “formal re-education” to staff after patients who were involuntarily hospitalized for mental health crises were left able to harm themselves. “One of those patients was left in the bathroom alone ... and another was inappropriately discharged.”³⁶⁷

Ultimately, the report notes, “The cumulative effect of these systemic problems resulted in the hospital’s inability to ensure the provision of quality health care in a safe environment.”³⁶⁸

Western North Carolina cannot risk giving Mission the responsibility of providing these needed beds. Contract termination means a hospital can no longer accept Medicare or Medicaid patients. Mission’s application notes that for fiscal year 2021, 43.3% of its total patients served were covered by Medicare and 16.2% were covered by Medicaid.³⁶⁹ This means that, if CMS were to take further action in the future, well over 50% of Mission’s patient population could immediately lose access to acute care hospital services.

³⁶¹ Jennifer Emert, “What changes have been made since Medicare threatened to cut Mission Hospital’s contract?” *WLOS ABC-News 13*, May 5, 2021. <https://wlos.com/news/local/news-13-investigates-what-changes-have-been-made-since-medicare-threatened-to-cut-mission-hospital-contract>

³⁶² Candice Nguyen and Michael Bott, “Medicare Agency Hits Good Samaritan Hospital With “Notice of Termination”,” *NBC Bay Area*, July 13, 2021. <https://www.nbcbayarea.com/investigations/exclusive-good-samaritan-hospital-hit-with-immediate-jeopardy-notice-by-regulators/2593774/>

³⁶³ <https://www.documentcloud.org/documents/21044034-good-sam-cms-report>

³⁶⁴ Candice Nguyen, Michael Bott and Mark Villarreal, “Good Samaritan Hospital Leadership Blasted in Medicare Agency Report,” *NBC Bay Area*, September 23, 2021. <https://www.nbcbayarea.com/investigations/good-samaritan-hospital-leadership-blasted-in-medicare-agency-report/2633470/>

³⁶⁵ Candice Nguyen, Michael Bott and Mark Villarreal, “Good Samaritan Hospital Leadership Blasted in Medicare Agency Report,” *NBC Bay Area*, September 23, 2021. <https://www.nbcbayarea.com/investigations/good-samaritan-hospital-leadership-blasted-in-medicare-agency-report/2633470/>

³⁶⁶ Candice Nguyen, Michael Bott and Mark Villarreal, “Good Samaritan Hospital Leadership Blasted in Medicare Agency Report,” *NBC Bay Area*, September 23, 2021. <https://www.nbcbayarea.com/investigations/good-samaritan-hospital-leadership-blasted-in-medicare-agency-report/2633470/>

³⁶⁷ Candice Nguyen, Michael Bott and Mark Villarreal, “Good Samaritan Hospital Leadership Blasted in Medicare Agency Report,” *NBC Bay Area*, September 23, 2021. <https://www.nbcbayarea.com/investigations/good-samaritan-hospital-leadership-blasted-in-medicare-agency-report/2633470/>

³⁶⁸ Candice Nguyen, Michael Bott and Mark Villarreal, “Good Samaritan Hospital Leadership Blasted in Medicare Agency Report,” *NBC Bay Area*, September 23, 2021. <https://www.ntbcbayarea.com/investigations/good-samaritan-hospital-leadership-blasted-in-medicare-agency-report/2633470/>

³⁶⁹ Certificate of Need Application for acute care beds submitted by MH Mission Hospital, LLLP. June 15, 2022, p. 144

Furthermore, hospitals cannot sustain themselves without these large public insurers - if Mission got itself in this situation again, it would be devastating to Mission's service area population.

Mission Hospital Fined by the North Carolina Department of Labor's Occupational Safety and Health Division for COVID Reporting Violations

Unfortunately, the above is not the only regulatory trouble Mission Hospital has faced since HCA purchased the system. In March of 2022, Mission Hospital was fined a total of nearly \$30,000 by the North Carolina Department of Labor's Occupational Safety and Health Division (OSH) for multiple COVID safety and reporting failures.³⁷⁰ Specifically, OSH conducted three separate inspections in late 2021 in which the agency identified violations for:

- "1. Failing to conduct an annual fit test for employees who were required to wear an N95 respirator
2. Failing to establish a record of employee fit testing
3. Failing to notify the North Carolina Department of Labor of the death of an employee due to Covid-19 in a timely manner (HCA waited nearly two weeks to notify the Department of Labor of the death.)
4. Failing to report each work-related Covid-19 inpatient hospitalization within 24 hours of learning about the hospitalization (HCA delayed notifying the Department of Labor about an employee hospitalization for more than a month.)"³⁷¹

In terms of fit testing, the inspection noted, "the employer did not ensure that the employee(s) using a tight-fitting facepiece respirator were fit tested prior to initial use of the respirator, whenever a different respirator facepiece ... were used."³⁷² Clearly, failing to fit employees for PPE puts both staff and patients at risk of contracting COVID.

Perhaps most shockingly, Mission hospital failed to report an employee's COVID-related hospitalization and subsequent death. The employee was hospitalized on October 18, 2021 and tragically died on November 10, but Mission waited until November 22 to report the individual's passing to OSH, clearly long past the required reporting period of eight hours.³⁷³ Another employee at Mission confirmed to Cardinal & Pine that the employee who passed was a nurse in a COVID ward at the hospital.³⁷⁴

Patient Testimony

On top of these regulatory failures, patients and community members have consistently raised concerns to multiple audiences about breakdowns in care and some common themes have emerged. As explained in other portions of this letter, these are not isolated incidents. These testimonies match a larger pattern of unacceptable and horrifying patient care failures at HCA-owned hospitals.

³⁷⁰ Lauren Brigman, "OSHA cites Mission Hospital following complaint from nurses union," *WLOS ABC-News 13*, March 23rd 2022. <https://wlos.com/news/local/osha-cites-mission-hospital-following-complaint-from-nurses-union-failure-follow-covid-19-safety-protocols-30000->; Hayley Fowler, "Hospital waited more than a week to report worker's COVID death, NC officials say," *The Carolina Observer*, March 23, 2022. <https://www.charlotteobserver.com/news/coronavirus/article259696570.html>

³⁷¹ National Nurses Organizing Committee/National Nurses United, "HCA's Mission Hospital penalized nearly \$30,000 for failing to protect nurses and other health care workers from Covid-19," March 23, 2022. <https://www.nationalnursesunited.org/press/hca-mission-hospital-penalized-for-failing-to-protect-nurses>

³⁷² Andrew Jones, "Mission Hospital did not report employee's COVID death on time, Labor Department says," *Asheville Citizens Times*, March 23, 2022. <https://www.citizen-times.com/story/news/2022/03/23/mission-hca-citations-show-ppe-and-covid-death-reporting-failures/7139196001/>

³⁷³ Michael McElroy, "NC Fines Asheville Hospital \$30,000 After Nurses Complain of COVID Risks," *Cardinal & Pine*, March 25, 2022. <https://cardinalpine.com/story/nc-fines-asheville-hospital-30000-after-nurses-complain-of-covid-risks/>

³⁷⁴ Michael McElroy, "NC Fines Asheville Hospital \$30,000 After Nurses Complain of COVID Risks," *Cardinal & Pine*, March 25, 2022. <https://cardinalpine.com/story/nc-fines-asheville-hospital-30000-after-nurses-complain-of-covid-risks/>

Mission Hospital is Understaffed

Staffing is a problem across HCA hospitals, and patient and staff testimony shows that Mission Hospital is, unfortunately, no different. HCA does not allocate the proper resources at its hospitals to provide the kind of high-quality care that Asheville residents need, want, and deserve.

- A complaint submitted in 2021 to the Attorney General by a Mission employee stated: “I do not feel safe in my practice and I do not feel safe for my patients,” and claimed that some patients “are having to sit in their own excrement for hours because our floor is expecting 1 CNA to look after 44 patients.”³⁷⁵
- Alexandra Kiefer, of Henderson County, spent 11 nights at Mission Hospital for back surgery. Recalling “harried and hurried” nurses, Kiefer explained that the response time from nurses was much slower than when she had spent time at Mission six years prior. Kiefer told the Asheville Citizens times: “My husband ended up having to do a lot of the things that a nurse or CNA (certified nursing assistant) would do ... I even ended up hiring a private duty nurse on top of that for the night my husband couldn’t be there.”³⁷⁶
- Jennifer Kirby, a bedside nurse at Mission who had been with the hospital for almost 15 years, tearily told attendees of a public meeting held in Asheville by the HCA/Mission Independent Monitor: “Every single department in the hospital that is designed to help the patient get out and toward wellness is critical and unethically and inhumanely understaffed ... I used to be really proud of where I work, and I’m not anymore.”³⁷⁷
- Dr. Martin Palmeri, an oncologist who left Mission in December 2019 and who was recently elected president of the North Carolina Oncology Association, reported to the *Asheville Watchdog* that patients were left in “excruciating pain” due to low staffing at the hospital: “Palmeri said he was ‘horrified’ to find on more than one occasion his patients at Mission in ‘excruciating pain’ because nurses responsible for seven to eight patients each could not administer pain medications on time.”³⁷⁸ In fact, in June, after increasingly fielding dissatisfaction from patients, the oncology team took a no confidence vote in HCA management. Another doctor who asked to be kept anonymous by the Asheville Watchdog reported: “I get asked every day by a patient if I can treat them elsewhere than Mission.”
- Will Overfelt, one of the plaintiffs in the class action antitrust suit recently filed against Mission/HCA, spent time at Mission Hospital in February of 2020 while his father was admitted. While there, Overfelt would reportedly, “push the call button and an excessive amount of time would lapse before someone would come to his father’s room.” The complaint further alleges that, “There were delays in getting help so his father could go to the bathroom. There were delays in

³⁷⁵ Clarissa Donnelly-DeRoven, “AG Stein received 290 complaints about HCA/Mission in Asheville; A mom tells her story” *Asheville Citizens Times*, September 20, 2021. <https://www.citizen-times.com/story/news/2021/09/20/hundreds-complain-nc-attorney-general-ashevilles-hca-mission/8370318002/>

³⁷⁶ <https://www.citizen-times.com/story/news/local/2020/02/11/asheville-crowd-vents-hca-mission-health-independent-monitor-meeting/4650215002/>

³⁷⁷ <https://www.citizen-times.com/story/news/local/2020/02/11/asheville-crowd-vents-hca-mission-health-independent-monitor-meeting/4650215002/>

³⁷⁸ Barbara Durr and Sally Kestin, “How Many Doctors Have Left Mission? HCA Won’t Say,” *Asheville Watchdog*, March 23, 2022, <https://avwatchdog.org/how-many-doctors-have-left-mission-hca-wont-say/>

obtaining water and various other items of sustenance and comfort. His father apparently was never bathed while there.”³⁷⁹

- Forrest Johnson, who presented to Mission Hospital’s emergency room after falling and breaking her leg told the *Asheville Watchdog* that she laid “for nearly six hours in the emergency room without water, ice, a blanket, a pillow to elevate her leg, food, or pain medication.” She explained “I just had a very busy nurse... He just didn’t have the time to care for me,” and recalled that the nurse had apologized that he would not be able to check on her every 15 minutes as would normally be expected of him because of under-staffing.³⁸⁰
- A nurse described the staffing situation in her unit to the *Asheville Watchdog*, explaining that on a unit with several dozen beds, nurses are assigned six or seven patients, which is double their usual workload, and are only provided one CNA when protocols require four: “It’s just not safe. It’s led to an increase in falls, and I believe people are getting sicker ... patients are lying in their own feces for up to an hour ... and they are not getting their meds for hours.”³⁸¹
- A recent inpatient told *WLOS ABC-News 13*, “of long waits for their IV changes and no nursing assistants.”³⁸²

Mission Hospital Has Cut Essential Hospital Services

HCA has cut or eliminated services at Mission, which has forced workers to perform tasks outside their scope and affected patient care.

- One nurse who submitted a complaint to the AG’s office explained to *News 13*: “When we say that patient care is number one and then we’re cutting services that allow for us to provide better patient care, that just doesn’t add up to me and I couldn’t be a part of that.”³⁸³
- A *Fortune Magazine* article published in March revealed that, after acquiring Mission, HCA chose to eliminate many of Mission’s Health Unit Coordinators, forcing other staff to pick up the slack for this reckless decision. Nurses also told the publication that “they often ended up delivering food and emptying trash bins after HCA outsourced the hospital’s food service and janitorial functions.”³⁸⁴
- Chris Jennings, who saw Mission’s care first-hand while spending time with her great-aunt at the hospital, reported in the *Asheville Independent Monitor Meeting*, “If you want to get the minimum,

³⁷⁹ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21), 70-71

³⁸⁰ Barbara Durr, “Quality of Care Concerns Rise at Mission Hospital,” *Asheville Watchdog*, May 20, 2021. <https://avlwatchdog.org/quality-of-care-concerns-rise-at-mission-hospital/>

³⁸¹ Barbara Durr, “Quality of Care Concerns Rise at Mission Hospital,” *Asheville Watchdog*, May 20, 2021. <https://avlwatchdog.org/quality-of-care-concerns-rise-at-mission-hospital/>

³⁸² Jennifer Emert, “Two years after sale to HCA, care and cost concerns raised with Mission Hospital,” *WLOS ABC-News 13*, February 24th 2021. <https://wlos.com/news/local/two-years-after-sale-to-hca-care-and-cost-concerns-raised-with-mission-hospital>

³⁸³ Karen Zatkulak, “‘A concerning number,’ Attorney General describes recent Mission Health complaints filed,” *WLOS ABC-News 13*, June 8th 2021. <https://wlos.com/news/local/josh-stein-hca-a-concerning-number-attorney-general-describes-recent-mission-health-complaints-filed>

³⁸⁴ Ericka Fry, “America’s largest hospital company is booming. So why is one community trying to run it out of town?”, *Fortune*, March 31, 2022. <https://fortune.com/longform/hca-hospital-chain-mission-health-care-north-carolina/>

go to Mission ... We had one nurse that told us she cries every single night because she knows she is not giving appropriate, competent patient care.”³⁸⁵

Patients Report Unsanitary Conditions

From news reports to lawsuit allegations, patients have provided stark examples of unsanitary conditions at Mission following the HCA acquisition.

- Janet Moore, a former senior executive at Mission while it was still under previous ownership, told the *Asheville Watchdog* that, thirty-six hours after receiving an epidural in her spine under Mission’s care, she developed a serious staph infection. Staphylococcus bacteria infections can be caused by a number of factors, but “the most serious cases frequently occur as a result of inadequate pre-surgical skin preparation and instrument sterilization.” Moore believes this is what caused her infection. As a result of the staph infection, Moore spent six days in an observation unit at Mission due to the staph infection, during which she said “no one cleaned my room.”³⁸⁶
- Overfelt says he “saw a napkin on the floor in his father’s hospital room. He left it where it was, wondering if any cleaning was really being done. The napkin was still there on the floor a week later when his father was discharged.”³⁸⁷
- William Davis, another plaintiff to the class action suit, noticed that, during his father’s stay at Mission, the hospital environment and his room were dirty.³⁸⁸
- An emergency patient told News13 that they witnessed “areas not cleaned between patients and a lack of routine restroom cleaning.”³⁸⁹

Complaints to the AG Over Mission Hospital Have Skyrocketed While Ratings Have Dipped

As of September of 2021, North Carolina’s Attorney General had received 290 complaints about Mission Health since HCA’s acquisition of the system in February of 2019.³⁹⁰ When Attorney General Stein disclosed this information, 82 complaints had been received in 2021 alone. In contrast, in 2017, prior to the sale of the health system to HCA, the Attorney General received just seven complaints.³⁹¹ Notably, *WLOS ABC-News 13* conducted an analysis of the complaints submitted to Attorney General Stein between April 2020 and April 2021 and found that 23% were related to concerns over quality of care.³⁹² The volume and

³⁸⁵ Brian Gordon, “‘Critically understaffed’: Asheville crowd vents frustrations with Mission Health and HCA,” *Asheville Citizens Times*, November, 13, 2020. <https://www.citizen-times.com/story/news/local/2020/02/11/asheville-crowd-vents-hca-mission-health-independent-monitor-meeting/4650215002/>

³⁸⁶ Barbara Durr, “Quality of Care Concerns Rise at Mission Hospital,” *Asheville Watchdog*, May 20, 2021. <https://avlwatcdog.org/quality-of-care-concerns-rise-at-mission-hospital/>

³⁸⁷ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21), 71

³⁸⁸ *Davis et al. v. HCA Healthcare and Mission Health System* (Case No. 21 CV 03276, North Carolina Superior Court - Buncombe County, filed 08/10/21), p. 68

³⁸⁹ Jennifer Emert, “Two years after sale to HCA, care and cost concerns raised with Mission Hospital,” *WLOS ABC-News 13*, February 24th 2021. <https://wlos.com/news/local/two-years-after-sale-to-hca-care-and-cost-concerns-raised-with-mission-hospital>

³⁹⁰ Clarissa Donnelly-DeRoven, “AG Stein received 290 complaints about HCA/Mission in Asheville; A mom tells her story” *Asheville Citizens Times*, September 20, 2021. <https://www.citizen-times.com/story/news/2021/09/20/hundreds-complain-nc-attorney-general-ashevilles-hca-mission/8370318002/>

³⁹¹ Karen Zatkulak, “‘A concerning number,’ Attorney General describes recent Mission Health complaints filed,” *WLOS ABC-News 13*, June 8th 2021. <https://wlos.com/news/local/josh-stein-hca-a-concerning-number-attorney-general-describes-recent-mission-health-complaints-filed>

³⁹² Karen Zatkulak, “‘A concerning number,’ Attorney General describes recent Mission Health complaints filed,” *WLOS ABC-News 13*, June 8th 2021. <https://wlos.com/news/local/josh-stein-hca-a-concerning-number-attorney-general-describes-recent-mission-health-complaints-filed>

severity of these complaints have even prompted AG Stein to write at least three separate letters to Mission, demanding an explanation for the alleged lapses in patient care. AG Stein drafted the first letter in February of 2020,³⁹³ his second in June of 2021, and his third just this past March.³⁹⁴

At the same time, we can see that Mission Hospital's quality of care has diminished from its CMS ratings. In the Spring of 2021 CMS downgraded Mission Hospital from 5 stars to 4 stars.³⁹⁵ In addition, Mission's patient survey rating (also referred to as patient experience rating) is only 2 stars.³⁹⁶ Importantly, the "the patient survey star ratings summarize patient experience."³⁹⁷ CMS determines this star ratings by asking a random sample of recently discharged patients about their hospital care experience, specifically in terms of: Communication with doctors; Communication with nurses; Responsiveness of hospital staff; Cleanliness of the hospital; Quietness of the hospital; Communication about medicines; Discharge information; Care transition; Overall rating of hospital; Willingness to recommend hospital. Mission Hospital scored below both the national average and state average for every single metric.³⁹⁸

It is clear from these numerous testimonies, regulatory issues, and diminished ratings that Mission has not maintained the standard of care that is necessary to show they can responsibly expand its bed capacity. With all of this information, Mission cannot prove that quality care has consistently been provided at the hospital, and therefore cannot satisfy this criterion.

³⁹³ Stein Letter to HCA, February 25, 2020. <https://ncdoj.gov/wp-content/uploads/2020/02/Stein-Letter-to-HCA-02252020.pdf>; Brian Gordon, "Attorney General Josh Stein asks HCA to answer concerns about care, billing," *The Citizen-Times*, February 26, 2020. <https://www.citizen-times.com/story/news/local/2020/02/25/nc-attorney-general-josh-stein-asks-hca-address-mission-concerns/4872721002/>

³⁹⁴ NC DOJ Letter to HCA 16 March 2022, <https://www.scribd.com/document/567469487/NC-DOJ-Letter-to-HCA-16-March-2022>

³⁹⁵ Barbara Durr, "Quality Of Care Concerns Rise At Mission Hospital," *Blue Ridge Public Radio*, May 21, 2021. <https://www.bpr.org/news/2021-05-21/quality-of-care-concerns-rise-at-mission-hospital>

³⁹⁶ Medicare.gov, Memorial Mission Hospital and Asheville Surgery Center. <https://www.medicare.gov/care-compare/details/hospital/340002?city=Asheville&state=NC&zipcode=>

³⁹⁷ Medicare.gov, "Patient survey star rating for hospitals." <https://www.medicare.gov/care-compare/resources/hospital/patient-survey-rating>

³⁹⁸ Medicare.gov, Memorial Mission Hospital and Asheville Surgery Center, Patient survey rating. <https://www.medicare.gov/care-compare/details/hospital/340002?city=Asheville&state=NC&zipcode=&measure=hospital-patient-surveys>