

**ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS
TO AID PUBLIC COMMENT**

*In the Matter of Community Health Systems, Inc. and
Health Management Associates, Inc., File No. 131 0202*

I. INTRODUCTION AND BACKGROUND

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Community Health Systems, Inc. (“CHS”) and Health Management Associates, Inc. (“HMA”). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that otherwise would result from CHS’s acquisition of HMA. The proposed Consent Agreement requires CHS to divest the Riverview Regional Medical Center (“Riverview”) and all associated operations and businesses in and around Gadsden, Alabama, and the Carolina Pines Regional Medical Center (“Carolina Pines”) and all associated operations and businesses in and around Hartsville, South Carolina, to a Commission-approved acquirer, and in a manner approved by the Commission, within six months after the Decision and Order is issued. Under the proposed Consent Agreement, CHS also is required to hold separate the to-be-divested assets and maintain the economic viability, marketability, and competitiveness of the divestiture assets, until the potential acquirer is approved by the Commission and the divestiture is complete. Finally, CHS is required to provide the Commission prior notice of any acquisition of a GAC services provider in the Gadsden Metropolitan Statistical Area and the Florence Metropolitan Statistical Area for ten years.

The proposed Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission again will review the proposed Consent Agreement and comments received, and decide whether it should withdraw the Consent Agreement, modify the Consent Agreement, or make it final.

On July 29, 2013, CHS and HMA signed a merger agreement pursuant to which CHS agreed to acquire HMA for \$7.6 billion. The Commission’s complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by removing an actual, direct, and substantial competitor from two local markets in Alabama and South Carolina for general acute care inpatient services sold to commercial health plans. The proposed Consent Agreement would remedy the alleged violations by requiring complete divestitures in the affected markets. The divestitures will replace the competition that otherwise would be lost in the Alabama and South Carolina markets because of the proposed acquisition.

II. THE PARTIES

Headquartered in Franklin, Tennessee, CHS is a for-profit health system that owns 135 hospitals with approximately 20,000 licensed beds in 29 states. CHS is the second-largest U.S. hospital chain and one of the largest publicly-traded operators of hospitals in the United States. CHS generated approximately \$13 billion in revenue in 2012.

HMA is a for-profit health system headquartered in Naples, Florida that owns 71 hospitals in 15 states, primarily in the southeastern United States. In 2012, HMA generated \$5.9 billion in revenue.

III. GENERAL ACUTE CARE INPATIENT SERVICES

CHS's proposed acquisition of HMA poses substantial antitrust concerns in the relevant product market of general acute care inpatient services ("GAC services") provided to commercially insured patients. GAC services consist of a broad cluster of routine inpatient services that require an overnight hospital stay. They are sold to commercial health plans, which sell benefit plans to commercially insured patients. GAC services do not include services related to psychiatric care, substance abuse, and rehabilitation services. Likewise, outpatient services are not included in GAC services because such services are characterized by different competitive conditions (*e.g.*, different competitors, lower entry barriers) and because health plans and their members generally cannot substitute those services for inpatient services in response to a small but significant and non-transitory increase in price.

GAC services markets are local in nature. Evidence gathered from market participants shows that patients strongly prefer to receive care as close to home as possible and to stay within the area where they live or work. Accordingly, the proposed acquisition raises serious antitrust concerns in two local markets for patients seeking GAC services: (1) the area that approximates Etowah County and includes the City of Gadsden, Alabama (the "Gadsden Area"); and (2) the area that approximates Darlington County, South Carolina (the "Darlington County Area").

The proposed acquisition would combine the only two competitively meaningful hospitals providing GAC services to Gadsden Area patients—HMA's Riverview and CHS's Gadsden Regional Medical Center ("Gadsden Regional"). The Gadsden Area market already is highly concentrated, and the proposed merger would substantially increase concentration in that market absent relief. Post-merger, commercially insured patients in the Gadsden Area would have only CHS's hospitals as meaningful options to obtain GAC services. The presumption of anticompetitive harm created by such high levels of market concentration is supported by evidence of the close competition between Riverview and Gadsden Regional that would be eliminated by the proposed merger. Consumers in the Gadsden Area have benefited from this head-to-head competition in the form of lower health care costs and higher quality of care. Absent relief, CHS would gain additional leverage and be able to demand higher reimbursement rates from commercial health plans, and would have reduced incentives to maintain and improve its quality of care. Ultimately, these effects are felt by local patients in the form of higher premiums, co-pays, and out-of-pocket costs, as well as reduced access to high-quality care.

In South Carolina, the proposed acquisition would combine two of only three competitively meaningful hospitals providing GAC services to Darlington County Area commercially insured patients—HMA’s Carolina Pines and CHS’s Carolinas Hospital-Florence (“Carolinas Hospital”). Third-party McLeod Regional Medical Center (“McLeod Regional”) also serves the Darlington County Area. The Darlington County Area market is highly concentrated, and the proposed merger would substantially increase concentration in that market absent relief. Post-merger, commercially insured patients in the Darlington County Area would have only two meaningful options for GAC services—either a CHS-owned hospital or third-party McLeod Regional. The presumption of anticompetitive harm is supported by evidence of the close competition between Carolina Pines and Carolinas Hospital that would be eliminated by the proposed merger. Consumers in the Darlington County Area have benefited from this head-to-head competition in the form of lower health care costs and higher quality of care. Absent relief, CHS would gain additional leverage and be able to demand higher reimbursement rates from commercial health plans, and would have reduced incentives to maintain and improve its quality of care. Ultimately, these effects are felt by local patients in the form of higher premiums, co-pays, and out-of-pocket costs, as well as reduced access to high-quality care.

New entry or expansion is unlikely to deter or counteract the anticompetitive effects of the proposed acquisition in either market. Alabama’s Certificate of Need (“CON”) statute poses a regulatory hurdle that must be overcome before constructing new healthcare facilities, expanding or modifying existing facilities, or altering inpatient services. South Carolina has a similar CON statute. Significant entry barriers also include the time and costs associated with constructing or expanding a general acute care hospital. There is no evidence of planned entry into either market or any evidence that there is unmet demand for GAC services in either market that might spur entry or expansion. Thus, it is unlikely that new entry or expansion sufficient to achieve a significant market impact will occur in a timely manner in either market.

IV. THE PROPOSED CONSENT AGREEMENT

The proposed Consent Agreement remedies the anticompetitive concerns in both local markets. The proposed Consent Agreement would maintain competition in the Gadsden Area by requiring CHS to divest Riverview and its associated operations and businesses. Similarly, the proposed Consent Agreement would fully maintain competition in the Darlington County Area by requiring CHS to divest Carolina Pines and its associated operations and businesses. Any potential buyer for either hospital is subject to the prior approval of the Commission.

The proposed Consent Agreement also requires CHS to provide transitional services to the approved acquirers for one year, as needed, to assist the acquirers with operating the divested assets as viable and ongoing businesses. Until the divestitures are completed, CHS is required to hold Riverview and Carolina Pines separate, subject to the standard terms of the Order to Hold Separate and Maintain Assets. The proposed order also appoints Curtis Lane, the senior managing director of MTS Health Partners, LP, as Hold Separate Monitor to oversee CHS’s compliance with the Order to Hold Separate and Maintain Assets. Finally, the proposed order

contains a ten-year prior notice requirement for acquisitions of GAC services providers in the Gadsden, Alabama Metropolitan Statistical Area or in the Florence, South Carolina Metropolitan Statistical Area, as well as compliance reporting requirements.

The hospitals to be divested are each stand-alone businesses and include all of the assets and real property necessary for a Commission-approved buyer to compete immediately and effectively in each relevant market. In addition to divestiture of the actual facilities at issue, CHS has agreed to divest the rights to all intellectual property, including the facility names, and all provider and health plan contracts associated with the facilities. Although the competitive concerns relate to GAC services to commercially insured patients only, the proposed order contemplates divestiture of all services and operations that are affiliated with the facility or facilities to be divested that are necessary to be a viable business. Specifically, CHS will divest all outpatient operations and businesses, including outpatient physician practices, associated with each hospital. This requirement is consistent with similar divestitures in prior Commission actions.

The sole purpose of this analysis is to facilitate public comment on the Consent Agreement. This analysis does not constitute an official interpretation of the Consent Agreement or modify its terms in any way.