

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Jon Leibowitz, Chairman
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen**

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In the Matter of)	
)	
Alan B. Miller,)	
 a natural person;)	
)	
 and)	
)	
Universal Health Services, Inc.,)	
 a corporation;)	Docket No. C-4372
)	
)	
_____)	

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Universal Health Services, Inc. (“UHS”), a corporation controlled by Alan B. Miller and subject to the jurisdiction of the Commission, has agreed to acquire Ascend Health Corp. (“Ascend”), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Alan B. Miller is a natural person with his offices and principal place of business located at 367 South Gulph Road, P.O. Box 61558, King of Prussia, PA 19406-0958. Alan B. Miller is the ultimate parent entity of Respondent UHS.

2. Respondent UHS is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business

located at 367 South Gulph Road, P.O. Box 61558, King of Prussia, PA 19406-0958. UHS is controlled by Respondent Alan B. Miller.

3. UHS owns or operates 25 general acute care hospitals and 198 behavioral health facilities located in 36 states, Washington, D.C., Puerto Rico, and the U.S. Virgin Islands. UHS's revenues from all operations totaled approximately \$7.5 billion in 2011. UHS's 198 behavioral health facilities generated approximately \$3.4 billion in revenue (45% of total revenues) from over 19,000 licensed beds and over five million patient days. UHS is, and at all times relevant herein has been, engaged in the sale and provision of acute inpatient psychiatric services.

II. THE ACQUIRED COMPANY

4. Ascend is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 32 E. 57th Street, 17th Floor, New York, NY 10022.

5. Ascend operates eight inpatient behavioral health facilities located in four states, namely, Texas, Oregon, Arizona, and Utah, as well as an addiction treatment center in Seattle, Washington. Ascend's revenues for the 12 months ending December 31, 2011 were approximately \$159 million. Ascend is, and at all times relevant herein has been, engaged in the sale and provision of acute inpatient psychiatric services.

II. THE PROPOSED MERGER

6. Pursuant to an Agreement and Plan of Merger dated June 3, 2012, UHS proposes to purchase all of the outstanding voting securities of Ascend ("the Merger").

7. The Merger would combine the only two significant providers of acute inpatient psychiatric services to commercially insured patients in the relevant geographic market of El Paso, Texas/Santa Teresa, New Mexico. Respondent UHS and Ascend each own and operate a psychiatric facility in this area and compete and promote their businesses based on name recognition, reputation, location, price, range of available services, quality of service, associated product offerings, and the appearance of the facilities.

III. JURISDICTION

8. Respondents, and each of their relevant operating subsidiaries and parent entities, are, and at all times relevant herein have been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, 15 U.S.C. § 44.

9. The Merger constitutes an acquisition under Section 7 of the Clayton Act.

IV. THE RELEVANT PRODUCT MARKET

10. The relevant line of commerce in which to analyze the Merger is the provision and sale of acute inpatient psychiatric services to commercially insured patients, meaning inpatient psychiatric services for the diagnosis, treatment, and care of patients deemed, due to an acute psychiatric condition, to be a threat to themselves or others or unable to perform basic life functions.

11. Acute inpatient psychiatric care is distinct from other psychiatric services such as partial hospitalization, intensive outpatient programs, outpatient care, and residential treatment. Other, less intensive, psychiatric services are not substitutes for acute inpatient psychiatric services.

V. THE RELEVANT GEOGRAPHIC MARKET

12. The relevant geographic market in which to assess the competitive effects of the Merger is El Paso, Texas/Santa Teresa, New Mexico. Santa Teresa is a northwestern suburb of El Paso.

13. In general, patients prefer to be treated for acute inpatient psychiatric services close to home or work. Accordingly, most residents of El Paso and Santa Teresa obtain acute inpatient psychiatric services from providers located in El Paso or Santa Teresa.

VI. CONCENTRATION

14. The affected local market for the provision and sale of acute inpatient psychiatric services already is highly concentrated, and the Merger will substantially increase concentration in this market as measured by the Herfindahl-Hirschman Index (“HHI”).

15. Post-merger, UHS would have a post-merger market share of nearly 100 percent in the relevant line of commerce, based on beds in the El Paso/Santa Teresa market and other information obtained by the Commission. The Merger would increase the HHI by approximately 3806 points, from 6194 to 10,000, combining the only two significant providers of acute inpatient psychiatric services to commercially insured patients.

16. Even if El Paso Psychiatric Hospital, a state-run hospital located in El Paso, Texas that primarily serves indigent, forensic, and long-term patients, competes in the relevant line of commerce, UHS would have a post-merger market share of approximately 75%, based on bed counts. Under this assumption, the Merger would increase the HHI by approximately 2127 points, from 4098 to 6225.

VII. ENTRY CONDITIONS

17. Entry into the relevant market would not be timely, likely, or sufficient to prevent or deter the likely anticompetitive effects of the Merger. Significant entry barriers include the time and costs associated with constructing or expanding an acute care psychiatric services

facility, as well as the need to satisfy regulatory and licensing requirements that govern such services.

VIII. EFFECTS OF THE ACQUISITION

18. The Merger, if consummated, may substantially lessen competition for acute inpatient psychiatric services in the relevant geographic market, identified in Paragraph 12, in the following ways, among others:

- (a) by eliminating direct and substantial competition between UHS and Ascend; and
- (b) by increasing the likelihood that Respondent UHS will unilaterally exercise market power.

19. The ultimate effect of the Merger would be to increase the likelihood that prices of acute inpatient psychiatric services would rise above competitive levels, or that there would be a decrease in the quality or availability of acute inpatient psychiatric services, in the relevant geographic market.

IX. VIOLATIONS CHARGED

20. The agreement described in Paragraph 6 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and the Merger, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, Federal Trade Commission on this fifth day of October, 2012, issues its Complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

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