ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT

In the Matter of Sevita and BrightSpring
File No. 251-0060

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Centerbridge Seaport Acquisition Fund, through its subsidiary National Mentor Holdings, Inc., ("Sevita"), and BrightSpring Health Services, Inc. ("BrightSpring") (collectively, "Respondents"). The Consent Agreement is designed to remedy the anticompetitive effects that may result from Sevita's acquisition of certain assets of BrightSpring, namely the ResCare assets. Pursuant to an agreement dated January 17, 2025, Sevita proposes to acquire the ResCare assets in a transaction valued at approximately $835 million ("the Transaction"). The Commission alleges in its Complaint that the Transaction, 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 substantially lessening competition in the market for the provision of services to individuals with intellectual and developmental disabilities ("IDD") in an intermediate care facility ("ICF") in three states: Indiana, Louisiana, and Texas. The Consent Agreement will remedy the alleged violations by preserving the competition that otherwise would be eliminated by the Transaction.

Under the terms of the proposed Decision and Order ("Order"), Respondents are required to divest Sevita's ICF facilities in certain core-based statistical areas ("CBSAs") in Indiana (Evansville, Indianapolis, Muncie, Bedford, and Jasper), Louisiana (Baton Rouge), and Texas (Austin, Beaumont, Houston, and San Angelo). The Commission and Respondents have agreed to an Order to Maintain Assets that requires Respondents to operate and maintain all divestiture assets in the normal course of business until the assets are ultimately divested. The Commission issued the Order to Maintain Assets as final.

The Commission has placed the Consent Agreement, along with the proposed Order and the Order to Maintain Assets, on the public record for thirty days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Order, along with the comments received, to make a final decision as to whether it should withdraw, modify, or make final the proposed Order. The Commission is issuing the Order to Maintain Assets when the Consent Agreement is placed on the public record.

I. Respondents

Respondent Centerbridge Seaport Acquisition Fund is a limited partnership, with its headquarters address at 375 Park Avenue, 11th Floor, New York, New York. Respondent Centerbridge Seaport controls Respondent Sevita, with its headquarters at 6600 France Avenue South, Edina, Minnesota. Sevita is the nation's largest provider of home and community-based services for individuals with IDD. Sevita employs approximately 41,000 employees, serves approximately 50,000 individuals in 40 states, and generates approximately $3 billion in annual revenue.

Respondent BrightSpring Health Services, Inc., is a corporation, with its headquarters address at 805 N Whittington Pkwy, Louisville, Kentucky. ResCare is the nation's second largest provider of home and community-based services for individuals with IDD. ResCare operates in 25 states. In 2024, the business generated approximately $1 billion in revenue.

II. The Structure of the Markets

The Transaction raises competitive concerns in the market for the provision of ICF services to individuals with IDD in certain CBSAs in Indiana (Evansville, Indianapolis, Muncie, Bedford, and Jasper), Louisiana (Baton Rouge), and Texas (Austin, Beaumont, Houston, and San Angelo).

There are approximately eight million individuals in the United States with IDD, whose care represents over $70 billion in annual spending. Individuals with IDD rely on a broad range of long-term services and supports, including assistance with activities such as bathing, dressing, shopping, and cooking, as well as employment-related services, behavioral support, and supervision to complete tasks (collectively, "IDD Services"). IDD Services providers typically offer a variety of services depending on the needs of the individual. Medicaid is the predominant payer for these services.

The field of IDD Services encompasses various service models, broken down generally into institutional versus home- and community-based care. In 1971, Congress enacted legislation that provided federal funding for ICFs, residential facilities licensed and certified by state agencies. ICFs are typically run by private parties, such as Sevita and BrightSpring, although there are some that are state-owned. In 1981, Congress enacted legislation allowing Medicaid funding for IDD Services through a different service model, commonly referred to as the Home and Community Based Services ("HCBS") waiver program. This model provides vouchers for more flexible spending and enables individuals with IDD to get long-term support in their home and community, rather than a more institutionalized setting.

Individuals with IDD can receive Medicaid funding for their long-term support needs by choosing either services through an ICF or the HCBS waiver program. ICFs provide the most structured setting compared to other residential settings for people with IDD. The provision of ICF services is an entitlement program, meaning that if an individual is eligible for an ICF level of care, the individual has a legal right to receive that service under Medicaid. In contrast, HCBS are optional Medicaid benefits and are therefore subject to admission restrictions.

Other types of IDD Services are excluded from the relevant market, including HCBS, state-owned ICFs in Texas, and non-residential services. HCBS are excluded from an ICF services market because HCBS are not substitutable for ICF services and are offered under different competitive conditions. HCBS do not provide the same oversight, structure, or level of support as ICF services. As a result, individuals cannot substitute HCBS for ICF residential services. Residential services provided in state-owned facilities in Texas (referred to as State

Supported Living Centers or "SSLCs") are distinct from ICF residential services. While SSLCs are ICFs that provide residential services, these facilities are large, secured settings with higher reimbursements that provide services to a distinct population. SSLCs are located in more isolated areas and can house hundreds of individuals. They also serve a distinct population; the majority of residents are behaviorally or medically complex and are involuntary (i.e., court-ordered). Individuals cannot substitute SSLCs for ICF residential services.

Non-residential services such as day habilitation and other periodic services are excluded from an ICF services market. Periodic services are intermittent and are less than 24-hour. The ICF services market excludes periodic services because such services are not substitutable for residential services and are offered under different competitive conditions. Residential services are 24-hour services provided in a residential setting and, as a result, individuals cannot substitute periodic or intermittent services for 24-hour residential services.

The relevant geographic markets in which to analyze the effects of the Transaction are likely no broader than individual CBSAs because this geography reflects individuals' preferences to receive ICF residential services close to family or their community.

Certain CBSAs in Indiana, Louisiana, and Texas are highly concentrated.

In Indiana, five CBSAs (Evansville, Indianapolis, Muncie, Bedford, and Jasper) meet the DOJ's and FTC's 2023 Merger Guidelines' Guideline 1 structural presumption for an ICF residential services market with a change in HHI greater than 100 and a combined share of over 30 percent. The combined company would have market shares well over 30 percent in the five CBSAs at issue.

In Louisiana, the Baton Rouge CBSA meets the Guideline 1 structural presumption for an ICF residential services market with a change in HHI greater than 100 and a combined share of over 30 percent. The combined company would have a market share well over 30 percent in the Baton Rouge CBSA.

In Texas, four CBSAs (Austin, Beaumont, Houston, and San Angelo) meet the Guideline 1 structural presumption for an ICF residential services market with a change in HHI greater than 100 and a combined share of over 30 percent. The combined company would have market shares well over 30 percent in the four CBSAs at issue.

III. Competitive Effects

The Transaction will eliminate head-to-head competition between Sevita and BrightSpring in each relevant market. The competitive effects from the Transaction center on decreased quality and the reduction of consumer choice.

Respondents are each other's closest competitor. Respondents recognize that maintaining high occupancy rates and keeping their ICFs full improves their revenues and profits. Referrals are central to their profits and, accordingly, Respondents each attempt to increase their own referrals, improve conversion of referrals, and then reduce discharges of current residents.

To meet census and occupancy metrics, Respondents compete with each other on quality; higher quality service is understood to increase referrals and decrease discharges and vacancies. Moreover, consumer choice is a central, and historical, concept in the IDD Services community. Following an industry-wide push toward the deinstitutionalization of IDD Services following the Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), the core tenet of the modern IDD Services industry is to provide individuals the freedom to choose whether to reside in an ICF, a community setting, or in their own homes. "Choice" includes choice of provider, setting, and services. According to state and local regulators, as well as non-profits and advocacy groups, choice of where to live is integral to the well-being of individuals with IDD.

Reimbursement rates for ICFs (i.e., prices) are set by state Medicaid agencies pursuant to federal guidelines, meaning the merging parties typically do not primarily compete on price. Antitrust law, however, is not confined to price effects alone; it safeguards consumers—here, individuals with IDD—from a broader spectrum of harms. A substantial lessening of competition to provide ICF services can manifest along non-price dimensions, most notably in quality and choice. Quality harms occur when reduced rivalry diminishes incentives to maintain, invest in, or improve facilities, staffing levels and training, care standards, safety protocols, and individualized services—critical factors for vulnerable populations. Choice harms arise when consolidation limits the variety of providers, curtailing families' ability to select facilities aligned with their unique needs and preferences. The presence of regulatory oversight does not mitigate the harm to competition in the relevant markets. The ability to credibly sanction IDD providers ultimately rests on regulators' ability to move residents out of offending facilities to alternative providers. The combined company's high market shares in the relevant markets, and the lack of meaningful alternative options to which residents can turn, suggests that the threat of regulatory sanctions would not meaningfully prevent the harm from the loss of quality competition. In fact, the Transaction could heighten quality concerns to the extent reduced alternatives impede federal and state regulators' ability to effectively enforce sanctions for quality deficiencies.

Entry or expansion into the ICF services market in the relevant geographic markets is unlikely to be timely, likely, or sufficient to offset anticompetitive harms caused by the Transaction. There are significant barriers to entry and expansion for ICF service providers. Regulations, market demand, and market dynamics all limit entry and expansion of ICFs.

IV. The Proposed Order and the Order to Maintain Assets

The proposed Order effectively remedies the competitive concerns raised by the Transaction in each of the CBSAs at issue. Pursuant to the proposed Order, Respondents are required to divest Sevita's ICFs in the CBSAs at issue. Respondents must accomplish these divestitures no later than 10 days after Sevita consummates the Transaction. The proposed Order further requires Sevita to maintain the economic viability, marketability, and competitiveness of the divested facilities until the divestiture to Dungarvin Group, Inc. ("Dungarvin") is complete.

Dungarvin appears to be a suitable purchaser with experience acquiring and improving residential facilities and services for individuals with IDD. Dungarvin is financially sound and well-positioned to integrate the divestiture assets quickly and effectively. Dungarvin's previous industry experience, business plan, and financial statements show that it will be able to effectively operate the divestiture assets and preserve existing competition in the affected CBSAs. The company has demonstrated a successful track record over more than a decade of acquisitions, including into novel state markets, and its business plan includes viable plans for the development and improvement of the divested assets. Dungarvin also has the financial capacity to acquire these assets and ensure their continued operation going forward.

The proposed Order provides Dungarvin with the assets and support necessary to take over the divested facilities in Indiana, Louisiana, and Texas, and provide effective competition in the affected CBSAs. The proposed Order contains several provisions to help ensure the effectiveness of the relief. For example, Sevita has agreed to an Order to Maintain Assets that requires Sevita to operate and maintain the divestiture assets in the ordinary course of business consistent with past practices until such assets are fully transferred to Dungarvin. The Order also requires Sevita to provide transition services to Dungarvin as it integrates the divestiture assets to enable Dungarvin to operate similarly to how Respondents operated.

The proposed Order prohibits Sevita from re-acquiring any of the divested facilities for a period of 10 years. The proposed Order also requires Sevita to notify the Commission before acquiring any ICFs located within any of the same CBSAs as the divested facilities. The prior notice requirements are helpful where, as in this matter, future acquisitions in already-concentrated markets are likely but could fall below the Hart-Scott-Rodino Act premerger notification thresholds.

The proposed Order also includes provisions designed to ensure the effectiveness of the relief, including a provision that allows the Commission to appoint an independent third party as a Monitor to oversee Respondents' compliance with the requirements of the proposed Order. Respondents are also required to report on how they are complying with the Order, submit compliance reports, maintain specific written communications, and grant representatives of the Commission access to information and personnel for purposes of determining compliance with the Order.

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The purpose of this analysis is to facilitate public comment on the Consent Agreement and proposed Order to aid the Commission in determining whether it should make the proposed Order final. This analysis is not an official interpretation of the proposed Order and does not modify its terms in any way.