

**JOSH STEIN**  
**ATTORNEY GENERAL**



**REPLY TO:**  
**KEVIN ANDERSON**  
**SENIOR COUNSEL FOR**  
**CONSUMER PROTECTION**  
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**LITIGATION**  
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July 29, 2024

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

**[DELIVERED VIA EMAIL TO: [dhsr.con.comments@dhhs.nc.gov](mailto:dhsr.con.comments@dhhs.nc.gov)]**

**RE: Mission Hospital's Certificate of Need Application (Project ID: B-012518-24)**

Dear Ms. Lightbourne:

In accordance with N.C. Gen. Stat. § 131E-185(a1)(1), Attorney General Josh Stein submits these comments on the application (Project ID: B-012518-24) filed by Mission Hospital (“Mission”) to add acute care beds to its facility in Asheville. Mission’s application is one of three competing applications to meet the need identified in the 2024 State Medical Facilities Plan for 26 acute care beds in Buncombe, Graham, Madison, and Yancey Counties.

The Department of Health and Human Services (the “Department”) should deny Mission’s application. Any grant of a Certificate of Need should promote competition and advance the State Medical Facility Plan’s basic principles of safety, quality, access, and value.<sup>1</sup> Granting Mission’s application would do neither. The large market share for acute care services that Mission already enjoys in western North Carolina makes it a poor candidate to promote competition in that region. And Mission is failing to provide safe, quality, accessible, and affordable care in the region at its existing facilities.

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<sup>1</sup> N.C. Gen. Stat. § 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 . . . .”); *see also* State Health Coordinating Council, 2024 State Medical Facilities Plan 2-3 (Dec. 22, 2023), available at [https://info.ncdhhs.gov/dhsr/ncsmfp/2024/02/Proposed-2024\\_all\\_bookmarks.pdf](https://info.ncdhhs.gov/dhsr/ncsmfp/2024/02/Proposed-2024_all_bookmarks.pdf).

Western North Carolina needs additional competition for acute care. Until recently, Mission held all Buncombe County’s acute care beds. The Department’s 2022 decision awarding a Certificate of Need for 67 acute care beds to Advent Health was a step in the right direction and introduced some competition in the area.<sup>2</sup> But even after Advent opens its new facility, Mission will still have 682 of the county’s 749 acute care beds. More competition in the region is still necessary.

Competition is crucial for reducing health care costs and improving quality of care for patients. “Hospitals with a dominant position in their markets . . . are a major (perhaps *the* major) driver of cost in healthcare.”<sup>3</sup> Hospital monopolists—like HCA in western North Carolina—can exploit patients’ lack of choice to charge higher rates and offer lower quality care.<sup>4</sup> Meanwhile, “a large, well-established body of research” shows that “robust competition in health care markets promotes lower health care costs and improved working conditions, while fostering high-quality patient care and driving innovation across the health system.”<sup>5</sup>

The current state of Mission Hospital is an unfortunate example of the dangers of unchecked hospital consolidation. Mission has stopped offering patients safety, quality, access, or value. It would be inadvisable to give the hospital more acute care beds when it is not properly serving the region with the beds it already has.

First, Mission has endangered its patients. The Department and Centers for Medicare and Medicaid Services (CMS) recently found that Mission was violating CMS’s Conditions of Participation in ways that placed patients at risk of serious injury or death.<sup>6</sup> Specifically, regulators determined that Mission’s understaffing of the emergency department left the hospital

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<sup>2</sup> See N.C. Dep’t of Health & Hum. Servs, Healthcare Planning & Cert. of Need Sec., 2022 Buncombe/Graham/Madison/Yancey Acute Care Bed Review 116 (Nov. 22, 2022), *available at* <https://info.ncdhhs.gov/dhstr/coneed/decisions/2022/nov/findings/2022%20Buncombe-Graham-Madison-Yancey%20Acute%20Care%20Bed%20Competitive%20Review%20Findings.pdf>.

<sup>3</sup> Thomas L. Greaney & Barak D. Richman, Am. Antitrust Inst., Consolidation in Provider and Insurer Markets: Enforcement Issues and Priorities at 3 (2019).

<sup>4</sup> See Heather Boushey and Helen Knudsen, White House Council of Economic Advisers, *The Importance of Competition for the American Economy* (July 9, 2021), *available at* <https://www.whitehouse.gov/cea/written-materials/2021/07/09/the-importance-of-competition-for-the-american-economy/>.

<sup>5</sup> U.S. Dep’t of Justice, U.S. Dep’t of Health & Hum. Servs., Request for Information on Consolidation in Health Care Markets 1, 4 (Feb. 29, 2024), *available at* [https://www.ftc.gov/system/files/ftc\\_gov/pdf/FTC-2024-0022-0001-Request-for-Information-on-Consolidation-in-health-care-markets.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/FTC-2024-0022-0001-Request-for-Information-on-Consolidation-in-health-care-markets.pdf).

<sup>6</sup> Letter from Debbie McCarty, N.C. Dep’t of Health & Hum. Servs., to Chad Patrick, CEO, Mission Hosp. (Dec. 19, 2023).

unable to provide treatment to a concerning number of patients.<sup>7</sup> Additionally, regulators concluded Mission was providing emergency treatment in inappropriate and unsafe settings.<sup>8</sup>

Second, Mission vastly underperforms against other North Carolina hospitals in patient satisfaction, an important measure of quality. In CMS's Hospital Consumer Assessment of Healthcare Providers and Systems survey, less than fifty percent of Mission patients reported that they would recommend the hospital to friends and family.<sup>9</sup> At an average North Carolina hospital, meanwhile, two-thirds of patients would recommend the facility to friends and family.<sup>10</sup>

Third, Mission falls short on access as well. As Buncombe County's only hospital and western North Carolina's only tertiary care facility, Mission is supposed to be a vital part of the community's emergency response capabilities. Recently, however, Mission has impaired local governments' ability to timely respond to emergencies. Because Mission incompetently operates the acute care beds the Department previously granted it, it often boards acute care patients in the emergency room until a staffed inpatient bed is available. That backs up the emergency department, increasing the time ambulances must wait to transfer patients and leaving local governments with fewer ambulances to dispatch to other residents experiencing emergencies.<sup>11</sup>

Mission also fares poorly on economic accessibility. The hospital should be the primary location that Medicaid and Medicare patients go to receive critical care. But for at least one important treatment, it is not. Until November 2023, Mission's team of medical oncologists oversaw initial chemotherapy treatment for government-insured oncology patients. But the few remaining medical oncologists at Mission left in frustration late last year.<sup>12</sup> Now Mission is directing Medicaid and Medicare patients recently diagnosed with cancer to other, more distant facilities to start treatment.

Finally, a lack of competition has allowed Mission to warp health care prices in western North Carolina, depriving the region's patients of value. For many patients, health care costs are the product of negotiations between the patient's commercial insurer and health care providers. When a single health care provider dominates a region, it can charge commercial insurers higher rates, which the insurer then passes on to patients and employers in the form of higher premiums. Health care premiums in western North Carolina are more than fifty percent higher than in the

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Patient Survey Rating: Memorial Mission Hospital and Asheville Surgery Center, Medicare.gov (last visited July 18, 2024), [https://www.medicare.gov/carecompare/details/hospital/340002?city=Asheville&state=NC&zipcode=.](https://www.medicare.gov/carecompare/details/hospital/340002?city=Asheville&state=NC&zipcode=)

<sup>10</sup> *Id.*

<sup>11</sup> Letter from William J. Kehler, IV, McDowell Cnty. Dir. Emergency Servs., to Wyatt Chocklett, Mission Hosp. Chief Operating Officer (Oct. 30, 2023), available at <https://wlos.com/resources/pdf/73a5be07-4ffe-40c7-b876-9dabc3204b42-cDowellCountyEMSLetter103023.pdf>.

<sup>12</sup> Andrew R. Jones, *Mission to Lose Last Remaining Medical Oncologist*, Asheville Watchdog (Oct. 6, 2023), <https://avlwatchdog.org/mission-to-lose-last-medical-oncologist/>.

State’s metropolitan areas, presumably due to Mission’s dominance in the region.<sup>13</sup> The Attorney General, too, has received numerous complaints about the cost of care at Mission.<sup>14</sup>

The Certificate of Need application process for 26 acute care beds in Buncombe, Graham, Madison, and Yancey Counties provides a much-needed opportunity to increase health care competition in western North Carolina and promote safety, quality, access, and value in the region’s hospitals. The Department should seize that opportunity by denying Mission’s application and, instead, approving an application of a qualified competitor.<sup>15</sup>

Sincerely,



Kevin Anderson  
Senior Counsel for Consumer Protection  
and Multi-State Litigation

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<sup>13</sup> See, e.g., Pls.’ Second Amend. Compl. ¶ 258, *Davis v. HCA Healthcare, Inc.*, No. 21-CVS-3276 (N.C. Super. Ct. June 14, 2023).

<sup>14</sup> See, e.g., Letter from Josh Stein, Attorney General of North Carolina, to Greg Lowe, President, N.C Division, HCA Healthcare, Inc. (Feb. 25, 2020), available at <https://ncdoj.gov/wp-content/uploads/2020/02/Stein-Letter-to-HCA-02252020.pdf>.

<sup>15</sup> The Attorney General takes no position as between the competing applications of AdventHealth (Project ID: B-012526-24) and Novant Health (Project ID: B-012520-24).