



DAVE YOST

OHIO ATTORNEY GENERAL

Charitable Law Section
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June 18, 2025

Sent via electronic mail only to:

Kevin Hilvert
Epstein Becker Green
250 West Street, Suite 300
Columbus, OH 43215
KHilvert@ebglaw.com

Re: Conditional Approval of Proposed Transaction by Nonprofit Health Care Entity.

Dear Mr. Hilvert,

The Attorney General has completed his review and analysis of a proposed transaction that would transfer the assets of your clients, Summa Health and Summa Health Systems (“Summa”), from nonprofit health care organizations to a for-profit operation owned by Health Assurance Transformation LLC (“HATCo”), a Delaware LLC and subsidiary of Delaware venture capital firm General Catalyst.

The transaction is conditionally approved, as explained in this letter. The approval requires changes to the proposed transaction that increase the price HATCo must pay to acquire Summa, that ensure sale proceeds will carry on the charitable purpose of supporting the health of the community, and that make certain that the new owner honors its promises to continue operating Summa’s health-care operations.

We understand that the parties intend to fulfill all the conditions set forth in this letter and will provide proof of fulfillment in advance of closing the transaction for any conditions that must be fulfilled prior to closing. For the sake of clarity, because this approval is conditioned upon such fulfillment, the Attorney General does not approve any transaction between the parties (within the scope of R.C. 109.34) that fails to fulfill these conditions or that substantially alters the original proposed Asset Purchase Agreement in any way other than to fulfill these conditions.

I. Summary of the Proposed Transaction.

The proposed transaction is governed by an Asset Purchase Agreement executed on October 31, 2024, with closing of the transaction dependent on, among other things, Attorney General approval.

Under the original agreement, HATCo will purchase, and transfer to for-profit operation, substantially all of the assets owned and utilized by Summa in the operation of its regional health care system, which includes two acute hospitals, one behavioral hospital, a health insurance plan, and various related health care businesses in the Akron, Ohio area.

The agreement calls for a base purchase price of \$485 million. Some portion of this payment, along with some of Summa's current assets, will be used to retire Summa's current debts, eliminating ongoing costs associated with servicing these debts.

The remainder of the purchase price will be controlled by what amounts to a new charitable foundation that will operate independently from the for-profit operation and will administer these sale proceeds for charitable purposes. This foundation will also hold and control additional charitable restricted funds that currently exist among Summa's assets.

In addition to this base purchase price, HATCo has agreed to make capital expenditures for the benefit of Summa's ongoing operations. HATCo agrees to invest at least \$350 million within the first five years following closing and at least an additional \$200 million within the first seven years following closing.

HATCo also agreed to several key protections to ensure continued access to the high-quality healthcare services currently available to the communities served by Summa. First, three members of the new for-profit system board will be local community members, with one of those members also sitting on the HATCo parent board. Second, some guarantees in the purchase agreement require supermajority approval, meaning approval by a majority of local community board members (who continue to be nominated by the new foundation for 10 years post-closing). Three material commitments made by HATCo require supermajority approval.

- Charity Care. HATCo will maintain Summa's current charity care policy and cannot modify the charity care policies without obtaining supermajority approval.
- Essential Services. HATCo will protect key safety-net service offerings, such as Behavioral Health, Obstetrics, Emergency Services, and Trauma. No essential service may be discontinued without supermajority approval.
- Medical Education. HATCo will continue to support graduate medical education and clinical research programs. Reduction to the level of support for these programs requires supermajority approval.

In addition, HATCo will continue to service Medicare and Medicaid patients, maintain employment and benefits for all employees of the health system for at least one year, and maintain the headquarters of the health system in Akron. SummaCare will remain the primary operating platform for any and all future expansions or acquisitions by HATCo of additional health plan businesses.

Finally, the agreement guards against the disposition of key facilities and sale-leaseback arrangements that have created significant issues at other for-profit healthcare organizations. Specifically, HATCo has agreed, for ten years following closing, that without the prior written

consent of the foundation it will not: (1) change control of HATCo, or (2) divest of or cease to operate the business (including SummaCare, SIC, SHMG, any hospital, or any other assets constituting a material portion of the business or any material assets used in the operation of the business). Further, any future purchaser must agree to be bound by the charity care policies, continuation of essential services, commitment to education and training, and headquarters.

II. The Attorney General's Review of the Statutory Factors.

Pursuant to Ohio R.C. 109.35, parties seeking to transfer a nonprofit health care organization to a for-profit operation, as this transaction would do, must first obtain approval from the Ohio Attorney General. The Attorney General's determination is based on four factors:

- (1) Whether the proposed transaction will result in a breach of fiduciary duty, as determined by the attorney general, including conflicts of interest related to payments or benefits to officers, directors, board members, executives, and experts employed or retained by the parties;
- (2) Whether the nonprofit health care entity will receive full and fair market value for its charitable or social welfare assets;
- (3) Whether the proceeds of the proposed transaction will be used consistent with the nonprofit health care entity's original charitable purpose; and
- (4) Any other criteria the attorney general considers necessary to determine whether the nonprofit health care entity will receive full and fair market value for its charitable or social welfare assets as required in rules adopted by the attorney general in accordance with Chapter 119. of the Revised Code.

As part of its investigation and review, the Attorney General's Charitable Law Section required copies of organizational and governing documents, copies of all contracts and other agreements among the parties or their officers and directors in furtherance of the proposed transaction, descriptions of the amount, source and nature of the consideration to be paid in connection with the transaction, financial statements of Summa Health for the previous three years, valuation statements, and various other documents and information explaining and further describing the aforementioned documents. The Attorney General also required the submission of affidavits by board members and officers of Summa Health and HATCo. In addition to reviewing all of the requested documents, the Attorney General conducted numerous interviews, meetings, and phone calls with interested parties and experts. Additionally, the Attorney General engaged an independently qualified valuation expert pursuant to R.C. 109.35(C) to assist in ensuring that Summa Health will receive full and fair market value for its charitable and social welfare assets.

Based on this investigation and review, the Attorney General concludes that the proposed transaction meets the requirements set forth in R.C. 109.34 and 109.35 provided that the Parties comply with the conditions set forth below.

III. Conditions Required for Approval.

CONDITION 1. HATCo agrees to increase the purchase price by \$15 million in cash to reflect the fair market value.

CONDITION 2. HATCo agrees to add an additional \$15 million in common equity in the HATCo platform to the Base Purchase Price at closing (bringing the total Base Purchase Price to \$500M cash and \$15M equity). This equity represents a passive economic interest without voting rights consistent with other passive investors (i.e., no change to governance rights already reflected in the Asset Purchase Agreement).

CONDITION 3. For three years, the entities comprising the community foundation (together, the “Foundation”), shall not sell the \$15 million equity interest (described in Condition 2 above), except with the consent of the Attorney General.

CONDITION 4. The charitable purpose of the Foundation set forth in the articles of incorporation shall be consistent with the original charitable purpose of the nonprofit health care entities, to wit: “to promote the health of the Summa Community by advancing health care, promoting access to health care, and/or supporting medical and scientific research.” The Foundation shall also provide in the articles of incorporation that it is “prohibited from making direct payments or providing direct support to the hospital system or any other entity owned and operated by the Purchaser or its parent, subsidiaries, or related entities after the closing of such sale transaction.”

CONDITION 5. The Foundation board shall be comprised such that a majority of members have no affiliation with Summa Health. “Affiliation” is defined as employment, independent contractor status, or fiduciary relationship to the Purchaser or Summa Health or its affiliates, including Summa Foundation, in the last five years.

CONDITION 6. Foundation board members shall complete Charitable University within three months of transaction close.

CONDITION 7. For ten years, HATCo agrees that the Attorney General has continuing jurisdiction to enforce HATCo’s ongoing obligations as set forth in Section 7.13 through Section 7.29 of the Asset Purchase Agreement and the conditions set forth herein.

CONDITION 8. HATCo agrees to reasonably cooperate with any future Attorney General investigation, including, but not limited to, providing, upon reasonable request, information or data sufficient to allow for an independent analysis or calculation of matters relevant to enforcing Section 7.13 through Section 7.29 of the Asset Purchase Agreement or annual report required under Section 7.28 of the Asset Purchase Agreement.

CONDITION 9. For ten years post-closing, HATCo agrees to provide the Attorney General a copy of the annual report set forth in Section 7.28 of the Asset Purchase Agreement reflecting HATCo’s compliance with its post-closing obligations.

CONDITION 10. For ten years post-closing, HATCo agrees to provide notice to the Attorney General of certain transactions that could trigger antitrust concerns, as follows:

Notification of Future Acquisitions

1. Notification Obligation: Akron Assurance Hospital Company LLC (“AAHC”)¹ agrees that in the event it or any of its controlled subsidiaries, including SummaCare (collectively, the “AAHC Group”) intends to acquire, directly or indirectly, an ownership interest exceeding fifty percent of the outstanding stock or partnership interests in, or to acquire, directly or indirectly, substantially all of the assets of, an entity owning or operating a hospital or other licensed inpatient medical facility in Ohio (collectively, “New Facility”) within five years from the Effective Date of this Agreement with the Ohio Attorney General, AAHC shall provide written notice of such acquisition to the Attorney General at 30 E. Broad St., Columbus, OH 43215, Attn: Section Chief, Antitrust Section (the “Notification Obligation”).

2. Advance Notice Timeline: The written notice described above in subsection 1 shall be provided no later than thirty days after any member of the AAHC Group shall have executed a definitive stock or asset purchase agreement with respect to the acquisition. Such agreement shall provide that it is subject to compliance by AAHC with the terms of this Notification Obligation and that the acquisition shall not close until thirty days after receipt of such written notice by the Attorney General. For the avoidance of doubt, this Notification Obligation shall not be construed as an approval or consent requirement, nor shall the Notification Obligation, or any subsequent information or documentation requested pursuant to subsection 3, delay, impair or otherwise impede the ability of the parties to such acquisition to close. The notice shall include, at a minimum:

- a. The identity and physical location(s) of the New Facility;
- b. A brief description of the operations and medical service lines currently offered by the New Facility; and
- c. A brief description of the terms of the acquisition, including but not limited to the purchase price and other consideration for the transaction.

¹ Section 7.23(b) of the Asset Purchase Agreement provides that “SummaCare shall serve as the primary operating platform for any and all future expansions of the Business or acquisitions of additional health plan businesses by Parent and its Subsidiaries.”

3. Cooperation: AAHC agrees to reasonably cooperate with the Attorney General's office in providing any additional information or documentation reasonably requested in connection with such acquisition.

4. No Waiver of Rights: The Parties acknowledge that the obligations set forth in this Section do not waive any rights or defenses that either Party may have under applicable law or regulations.

IV. Conclusion

Based solely on this review and the information and documents provided to the Attorney General by the Parties and pursuant to the Attorney General's authority under the common law and R.C. 109.24, 109.34, and 109.35, the Attorney General conditionally approves the transaction for which notice was provided in the filing made with this Office on November 7, 2024.

The Attorney General reserves all applicable authority, including the authority under common law and the Ohio Charitable Trust Act, to seek redress for any breaches of fiduciary duty or other violations of law. Furthermore, the conditions in this letter do not limit or affect any civil or criminal right, claim, or defense that the Attorney General may assert under common law or the Revised Code.

We appreciate the Parties' cooperation throughout this process. Please note that the approval indicated herein now triggers your obligation under R.C. 109.35(E) to provide notice and then to conduct a public hearing "to receive comment on the proposed use of the proceeds of the transaction," in accordance with the conditions and time frames specified in that statute.

Very respectfully yours,



Daniel W. Fausey
Section Chief, Charitable Law Section
Office of Ohio Attorney General Dave Yost