IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NEW LIFECARE HOSPITALS OF CHESTER COUNTY LLC, *et al.*, Plaintiffs, v. ALEX M. AZAR II, Secretary U.S. Department of Health and Human Services Defendant.	Civil Action No. 19-cv-705 (EGS)

PLAINTIFFS' REPLY IN SUPPORT OF APPLICATION FOR A PRELIMINARY INJUNCTION

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I. INTRODUCTION

The Defendant's memorandum in opposition to Plaintiffs' application for a preliminary injunction ("Defendant's Memorandum" or "Def.'s Mem."), Dkt. 10, goes to great lengths to mischaracterize Plaintiffs' position about the specific budget neutrality adjustments ("BNAs") to Plaintiffs' Medicare payments that are duplicative. The relatively few times the Defendant actually addresses the two outlier BNAs that apply to Long-Term Care Hospital ("LTCH") site neutral payments do not improve the agency's position. Nothing the Defendant can say at this point changes the simple math that these two BNAs of the same size reduce LTCH payments by double the stated amount. Continuing to call one an "input" does not change its purpose—to adjust LTCH site neutral payments for LTCH high-cost outlier ("HCO") payments. If the Court were to accept the Defendant's argument that this so-called "input" has *no* meaning or purpose, then it is by necessity arbitrary and capricious and must be reversed. There are no other options. The Defendant has clearly erred, and his continuing refusal to rectify this error has greatly exacerbated the impact of the site neutral payment rate in a way that is not sustainable for many of the Plaintiffs' hospitals. Their sworn affidavits confirm the unexpected harm from this duplicative BNA that has befallen them—a harm that is now both imminent and irreparable. The Plaintiffs have done all they can reasonably do to save their hospitals, programs of care and medical staff, but the mounting losses have unfairly accelerated due to the duplicative BNA. The Court should put a stop to this extra, unwarranted BNA now by granting Plaintiffs' request for a preliminary injunction. The Defendant's recent proposal to continue applying the duplicative BNA after September 30, 2019, when it will double in effect, requires that the Court act now.

II. ARGUMENT

A. The Standard of Review in this Case is Not Highly Deferential to the Agency

In discussing the four factors for preliminary injunctions, the Secretary argues that the D.C. Circuit "appears to have rejected the test previously used in the D.C. Circuit under which the requisite degree of likelihood of success and the degree of harm to the party seeking the injunction were balanced along a sliding scale." Def.'s Mem. at 11 n.3 (citing *Davis v. PBGC*, 571 F.3d 1288, 1295-96 (D.C. Cir. 2009)). However, as explained in Plaintiff's memorandum in support of the application for a preliminary injunction ("Plaintiffs' Memorandum" or "Pls.' Mem."), Dkt. 8 at 17-18, later D.C. Circuit decisions show that the D.C. Circuit has not yet determined whether to abandon the sliding-scale approach. *Archdiocese of Washington v. Washington Metro. Area Transit Auth.*, 897 F.3d 314, 334 (D.C. Cir. 2018) ("[T]his court has not yet decided whether . . . a 'sliding scale' approach to weighing the four factors be abandoned . . . ."). The Secretary also argues that the standard for evaluating preliminary injunctions is more stringent when a plaintiff seeks a mandatory injunction. Def.'s Mem. at 11. However, in one of the cases cited by the Secretary, *Allina Health Servs. v. Sebelius*, 756 F. Supp. 2d 61 (D.D.C. 2010), the Court observed that "[s]ome courts have held the movant for a mandatory injunction to a higher burden, *although the D.C. Circuit has yet to address this question*." *Id.* at 69–70 (emphasis added). The Secretary says that he is entitled to greater deference under the APA because of the "'tremendous complexity of the Medicare statute.'" Def.'s Mem. at 12 (citing *Dist. Hosp. Partners, L.P. v. Burwell*, 786 F.3d 46, 60 (D.C. Cir. 2015)). However, deference to the agency in Medicare cases "is not unlimited." *Cape Cod Hosp. v. Sebelius*, 630 F.3d 203, 216 (D.C. Cir. 2011).[1] The Court must still "engage in a 'searching and careful' review of the record

[1] The Secretary does not have the discretion to pay providers using erroneous payment rates. *Cape Cod Hosp.*, 630 F.3d at 214-15 ("[W]e never suggested that even after the error in the data on which the Secretary has relied was brought to her attention, she could have chosen to continue using the inaccurate wage index in calculating future payments.").

to ensure that the Secretary has applied her expertise in a reasoned manner and has not acted arbitrarily or capriciously or otherwise violated legislative mandates." *Id.* (quoting *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971)).

B. Plaintiffs are Likely to Succeed on the Merits of their Claims

Plaintiffs' Memorandum shows that Plaintiffs meet the first factor for a preliminary injunction because Plaintiffs are likely to succeed on the merits of their claims. Pls.' Mem. at 18-36. In the D.C. Circuit, likelihood of success on the merits is the "first and most important factor" for a preliminary injunction. *Aamer v. Obama*, 742 F.3d 1023, 1038 (D.C. Cir. 2014).

1. The BNA is Duplicative

Plaintiffs' Memorandum clearly explains how CMS applies duplicative outlier BNAs to the LTCH PPS site neutral payment rate. Pls.' Mem. at 4-15, 18-29. The Secretary responds with a long recitation of how the BNA to adjust IPPS payments for outlier payments to IPPS hospitals is not the same as the BNA to adjust LTCH site neutral payments for outlier payments to LTCH hospitals. Def.'s Mem. at 25-28. The Secretary argues that the "two BNAs serve distinct purposes." Def.'s Mem. at 26. According to the Secretary, the "IPPS outlier BNA adjusts IPPS payment rates downward to account for the high cost outlier payments within the IPPS" and the "outlier BNA for site-neutral payments in LTCH PPS in contrast adjusts for site-neutral high cost outlier payments within the LTCH PPS . . . ." Def.'s Mem. at 26-27. We agree. Plaintiffs do *not* argue that these BNAs are duplicative *when applied to their own respective payment systems*, the IPPS and the LTCH PPS. The duplication occurs when the agency applies both BNAs to site neutral payments under the LTCH payment system. Pls.' Mem. at 14, 21. The outlier BNA from the IPPS reduces site neutral payments under the LTCH PPS by 5.1%, and the additional outlier BNA created for the LTCH PPS site neutral payment rate reduces the same site neutral payments by another 5.1%. The result is that LTCHs receive site neutral payments (or portion of the

blended payment during the transition period) that have been reduced by 10.2% for outlier payment budget neutrality. CMS' decision to include both BNAs in the LTCH PPS site neutral payment rate is a textbook violation of the Administrative Procedure Act ("APA") arbitrary and capricious standard.[2] *See U.S. Postal Serv. v. Postal Regulatory Comm'n*, 785 F.3d 740, 750 (D.C. Cir. 2015) (recognizing that agency action must be reasonable to survive arbitrary and capricious review under the APA); *Cty. of L.A. v. Shalala*, 192 F.3d 1005, 1021 (D.C. Cir. 1999).

When the Defendant is not distracting the Court from the real issue, they can only repeat the same artifice that when CMS applies the BNA from the IPPS to the IPPS comparable per diem amount used for LTCH site neutral payments it magically loses all meaning and is simply an "input" to the calculation of the LTCH site neutral payment. Specifically, the Secretary says that the "IPPS comparable per diem amount" used to determine LTCH site neutral payments was not already reduced by 5.1% because it is only "certain *inputs* to the IPPS comparable per diem amount calculation [that] incorporate the IPPS outlier BNA." Def.'s Mem. at 28 (emphasis in original). The Secretary therefore admits that CMS uses the IPPS outlier BNA in the calculation of LTCH site neutral payments, but calls it an "input" to avoid the appearance of duplication. This form over function argument fails because CMS' own explanation of the IPPS comparable per diem amount clearly shows that CMS has carefully selected all other parts of the IPPS

[2] The Secretary argues that to "maintain budget neutrality within LTCH PPS, the Secretary reasonably determined that it is not sufficient to merely rely on adjustments incorporated into certain of the inputs for the calculation of the site-neutral payment rate because those adjustments account only for outliers in IPPS hospitals." Def.'s Mem. at 29. This is not an accurate statement because the IPPS outlier BNA only adjusts payments *to IPPS hospitals* for outlier payments made *to IPPS hospitals*. When CMS uses the IPPS outlier BNA to adjust site neutral payments to LTCH hospitals it cannot possibly be for outlier payments made to IPPS hospitals—it must either be for outlier payments made to LTCH hospitals or it is a purely arbitrary payment reduction.

operating and capital rates to use for the IPPS comparable per diem amount based on their function.

CMS bases the IPPS comparable per diem amount for LTCH site neutral cases on the IPPS rate as instructed by Congress in section 1206(a)(1) the Pathway for SGR Reform Act of 2013 ("PSRA"), Pub. L. No. 113-67, Div. B, 127 Stat. 1165 (2013) (now codified at 42 U.S.C. § 1395ww(m)(6)). The definition of the LTCH PPS site neutral payment rate in the statute directs CMS to use the "IPPS comparable per diem amount" as determined under 42 C.F.R. § 412.529(d)(4). 42 U.S.C. § 1395ww(m)(6)(B)(ii). The regulation at 42 C.F.R. § 412.529 contains CMS' payment policy for LTCH short-stay outliers.[3] Subparagraph (d)(4)(i)(A) of this regulation generally describes how CMS calculates the IPPS comparable per diem amount as: "An amount comparable to what would otherwise be paid under the hospital inpatient prospective payment system based on the sum of the applicable operating inpatient prospective payment system standardized amount and the capital inpatient prospective payment system Federal rate in effect at the time of the LTCH discharge." 42 C.F.R. § 412.529(d)(4)(i)(A). The Secretary argues that Congress understood that the LTCH site neutral payment rate would include the IPPS outlier BNA because Congress instructed CMS to calculate the "IPPS comparable per diem amount" in accordance with 42 C.F.R. § 412.529(d)(4). Def.'s Mem. at 28. However, Congress never instructed CMS to apply two BNAs for outlier payments to the LTCH

[3] Short-stay outliers are cases where the beneficiary's length of stay at the LTCH is significantly less than the average. FY 2019 IPPS/LTCH PPS Final Rule, 83 Fed. Reg. 41144, 41520 (Aug. 17, 2018) (Rulemaking Record ("R.R.") at 5787). Short-stay outliers are not specifically at issue in this case, except that the definition of the LTCH site neutral payment rate borrows the concept of the IPPS comparable per diem amount from the short-stay outlier regulation (42 C.F.R. § 412.529). *See* 42 U.S.C. § 1395ww(m)(6)(B)(ii).

site neutral payment rate, and their argument is directly contradicted by the agency's own instructions on how the IPPS comparable per diem amount is calculated.

The Secretary claims that section 412.529(d)(4) sets forth a "complex process for calculating the 'IPPS comparable per diem amount.'" Def.'s Mem. at 28. However, it is obvious that this short-stay outlier regulation does not include any budget neutrality adjustment. The regulation says that the IPPS comparable payment is calculated by adding together the IPPS operating amount and the IPPS capital amount in effect at the time of the LTCH discharge. 42 C.F.R. § 412.529(d)(4)(i)(A). Clauses (ii) and (iii) list numerous adjustments that CMS applies to the IPPS operating standardized amount and IPPS capital amount, including adjustments for: IPPS DRG weighting factors, different area wage levels, indirect medical education ("IME") costs, and costs of serving a disproportionate share of low-income patients ("DSH"). *Id.* at §§ 412.529(d)(4)(ii),(iii). **Importantly, this CMS regulation does *not* say to use the outlier BNAs from the IPPS operating and capital amounts in this calculation of the IPPS comparable per diem amount. Likewise, CMS' subregulatory guidance implementing the LTCH short-stay outlier policy also does not reference any budget neutrality adjustment.** *See* Exhibit A (CMS, *Medicare Claims Processing Manual (CMS Pub. 100-04)*, Ch. 3 § 150.9.1.1) (providing a more detailed explanation of the same adjustments listed in the regulation)). The Secretary states that CMS applies a separate BNA to LTCH short-stay outlier payments. Def.'s Mem. at 30. This makes sense because CMS does not use the IPPS outlier BNA in the calculation of the IPPS comparable per diem amount for LTCH short-stay outlier payments. It is entirely inconsistent for CMS to apply the IPPS outlier BNA in the calculation of the same IPPS comparable per diem amount for LTCH site neutral payments. By doing so, CMS is violating the statute at 42 U.S.C. § 1395ww(m)(6)(B)(ii).

When CMS implemented the LTCH site neutral payment rate, CMS again explained that based on the regulation at section 412.529(d)(4)(i)(A) the IPPS comparable per diem amount includes adjustments for applicable DRG weighting factors, differences in area wage levels, the DSH payment adjustment, and an IME payment adjustment. FY 2016 IPPS/LTCH PPS Final Rule, 80 Fed. Reg. 49326, 49608 (Aug. 17, 2015) (R.R. at 1250). CMS said that its regulation for the site neutral payment rate at 42 C.F.R. § 412.522(c)(1)(i) "provides that the IPPS comparable per diem amount would be calculated using the *same method* used to determine an amount comparable to the hospital IPPS per diem amount as set forth in the existing regulations at § 412.529(d)(4) [LTCH short-stay outlier regulation]." *Id.* (emphasis added). But the agency is not using the same method because it is applying the IPPS outlier BNA in addition to the separate "budget neutrality factor to the LTCH PPS payments for [high-cost outlier] cases to maintain budget neutrality." *Id.* at 49609 (R.R. at 1251). The first BNA applies because "the IPPS base rates that are used in site neutral payment rate calculation include a budget neutrality adjustment for IPPS HCO payments." *Id.* at 49622 (R.R. at 1264). The second BNA is a separate "budget neutrality factor to the payment for all site neutral payment rate cases" under 42 C.F.R. § 412.522(c)(2)(i). *Id.* at 49621 (R.R. at 1263). CMS is reducing LTCH site neutral payments twice for budget neutrality related to LTCH high-cost outliers. The same two BNAs have been used to reduce LTCH site neutral payments in each subsequent year, including FY 2019, 83 Fed. Reg. at 41723, 41728, 41737-38, and FY 2020 (proposed), FY 2020 IPPS/LTCH PPS Proposed Rule, 84 Fed. Reg. 19158, 19593-94, 19598, 19606, 19617 (May 3, 2019).

Accordingly, based on the plain reading of CMS' regulations and subregulatory guidance, it is impossible to see how Congress "understood that certain inputs to the calculation would reflect the application of the IPPS outlier BNA." Def.'s Mem. at 28. None of these

authorities addressing the IPPS payment rate used for the IPPS comparable per diem amount reference a budget neutrality adjustment. Moreover, Congress never specifically authorized CMS to apply two BNAs to the LTCH site neutral payment rate. Therefore, it is incorrect for the Secretary to claim that "Congress clearly did not perceive any duplication of budget neutral adjustments in CMS's methodology." Def.'s Mem. at 30. The regulations and guidance show in detail that each part of the IPPS rate CMS uses for the IPPS comparable per diem amount has a specific function or purpose that applies to each LTCH site neutral case. The characteristics of each site neutral patient and LTCH where services are provided determine the appropriate DRG weighting factor, area wage level, and applicable DSH and IME payment adjustments. These are not meaningless "inputs," so the IPPS outlier BNA cannot be a meaningless input either.

Yet, the Secretary continues to argue that "certain *inputs* to the IPPS comparable per diem amount calculation incorporate the IPPS outlier BNA." Def.'s Mem. at 28 (emphasis in original). Even if the Court accepts this sleight of hand at face value, it would have to conclude that the Secretary violated the APA and the Medicare statute because it is necessarily a meaningless number and therefore arbitrary and capricious. *See Select Specialty Hosp.-Bloomington, Inc. v. Burwell*, 757 F.3d 308, 314 (D.C. Cir. 2014) ("[W]hen ambiguity begets ambiguity, making it such that we cannot discern the decisional standard, much less the correctness of its application, we have little choice but to declare the decision arbitrary and capricious . . . ."); *see also Amerijet Int'l, Inc. v. Pistole*, 753 F.3d 1343, 1350 (D.C. Cir. 2014) ("[C]onclusory statements will not do; 'an agency's statement must be one of *reasoning*.'").

2. The BNA Is Arbitrary and Capricious Because CMS Did Not Account For the Budget Neutrality Adjustments Already Included in the IPPS Comparable Amount

a. CMS' Unwarranted BNA is Arbitrary and Capricious Because it is Unreasonable

As discussed above, CMS has established a payment rate for LTCH site natural cases that includes a duplicative BNA. *See supra* Part II.B.1. CMS' decision to adopt the duplicative BNAs for LTCH site neutral payment is arbitrary and capricious because CMS "has failed to provide a reasoned explanation" for the duplicative BNAs. *Cty. of L.A. v. Shalala*, 192 F.3d 1005, 1021 (D.C. Cir. 1999). The second BNA for LTCH site neutral cases serves no purpose and therefore must be arbitrary and capricious. CMS says that the "IPPS outlier BNA is one part of the calculation of certain inputs to the IPPS comparable per diem amount" that is used to determine the LTCH site neutral payment rate. Def.'s Mem. at 30. This is not a "reasoned explanation." *Cty. of L.A.*, 192 F.3d at 1021. As noted above, various components of the IPPS payment rates serve a specific purpose in the IPPS comparable per diem amount, so the IPPS outlier BNA used in this amount must be accounting for outlier payments to LTCHs or it is meaningless. In this way, the agency offered "'insufficient reasons for treating similar situations differently.'" *Cty. of L.A.*, 192 F.3d at 1022 (quoting *Transactive Corp. v. U.S.*, 91 F.3d 232, 237 (D.C.Cir.1996)). Thus, there is no legitimate purpose for the extra BNA at 42 C.F.R. § 412.522(c)(2)(1). *See supra* Part II.B.1.

b. CMS Did Not Engage in a Reasoned Analysis When It Implemented the Duplicative BNA without Accounting for the Adjustments Already Applied to the IPPS Comparable Per Diem Amount

Plaintiffs' Memorandum also describes how Plaintiffs are likely to succeed on the merits of their substantive APA claim because CMS "entirely failed to consider an important aspect of the problem" when it adopted the duplicative BNAs for LTCH site neutral payments. *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983); Pls.' Mem. at 22-24. In response, the Secretary only argues that "CMS has carefully considered comments that the outlier BNA for the LTCH site-neutral payment rate was duplicative of the

IPPS outlier BNA and has explained why those comments are incorrect." Def.'s Mem. at 32. There are a few problems with this response. First, as noted above, the Secretary misinterprets the nature of Plaintiffs' written comments to the agency each year since FY 2016. The Plaintiffs have not said that that the IPPS outlier BNA when used to pay IPPS hospitals is duplicative of the LTCH outlier BNA when used to pay LTCH hospitals. Rather, Plaintiffs have consistently objected to the duplicative nature of these BNAs when they are both applied to LTCH site neutral payments. Second, despite the Plaintiffs' detailed comment letters on this issue, CMS never offered a reasoned analysis of why both BNAs are used to reduce LTCH site neutral payments—only a vague notion that the IPPS outlier BNA is merely an "input" to this calculation. Moreover, in the FY 2017, FY 2018 and FY 2019 final rules, CMS did not even bother to address the new evidence and information provided by Plaintiffs and others in their written comments on this issue. FY 2017 IPPS/LTCH PPS Final Rule, 81 Fed. Reg. 56762, 57308 (Aug. 22, 2016) (R.R. at 2908); FY 2018 IPPS/LTCH PPS Final Rule, 82 Fed. Reg. 37990, 38545-46 (Aug. 14, 2017) (R.R. at 4612-13); 83 Fed. Reg. at 41738 (R.R. at 6005). Contrary to the Secretary's claim, CMS' responses do not reflect careful consideration by the agency. Instead, CMS' terse responses in the final rules suggest that the agency is unwilling to even consider if it mistakenly adopted a payment policy for LTCH site neutral cases that includes multiple BNAs for high-cost outlier payments.

c. CMS' Decision to Apply a Duplicative Budget Neutrality Adjustment is Arbitrary and Capricious Because CMS' Reasoning is Internally Inconsistent

Plaintiffs' Memorandum demonstrates that Plaintiffs are likely to succeed on the merits of the APA claims because CMS' decision to apply the duplicative BNAs to the LTCH site neutral payment rate is internally inconsistent. Pls.' Mem. at 24-26. An agency decision is arbitrary and capricious if it is "internally inconsistent and inadequately explained." *District*

Hosp. Partners v. Burwell, 786 F.3d 46, 59 (D.C. Cir. 2015). The Secretary does not respond to most of Plaintiffs' arguments regarding the internal inconsistency within CMS' decision to apply two outlier BNAs to LTCH site neutral payments. The Secretary says "there is nothing 'internally inconsistent' about CMS' reasoning" and then defends the general rationale for budget neutrality. Def.'s Mem. at 32-33. The Plaintiffs do not argue that CMS' use of the same HCO threshold and targets for LTCH site neutral cases and IPPS cases means CMS should "forgo applying a BNA for outliers in the LTCH PPS." Def.'s Mem. at 32. Rather, the Plaintiffs' Memorandum showed why it was internally inconsistent for CMS to make the LTCH site neutral outlier policy identical to the IPPS outlier policy, and then add an *extra* BNA to LTCH site neutral payments. CMS' decision to apply multiple BNAs is also contrary to the purpose of budget neutrality. According to CMS, budget neutrality means that "estimated site neutral payment rate HCO payments should not result *in any change* in estimated aggregate LTCH PPS payments." 83 Fed. Reg. at 41737 (emphasis added) (R.R. at 6004). However, CMS' policy of applying two BNAs *lowers* estimated aggregate LTCH PPS payments. This is contrary to the intent of budget neutrality and therefore shows that CMS' reasoning is internally inconsistent, a violation of the APA's arbitrary and capricious standard. *Banner Health v. Price*, 867 F.3d 1323, 1349 (D.C. Cir. 2017); *District Hosp. Partners v. Burwell*, 786 F.3d 46, 59 (D.C. Cir. 2015).

d. CMS' Decision to Apply a Duplicative Budget Neutrality Adjustment is Arbitrary and Capricious Because it Reflects a Clear Error of Judgment

Plaintiffs' Memorandum explains that CMS' duplicative LTCH site neutral BNAs reflect a clear error of judgment and therefore violates the APA's arbitrary and capricious standard. Pls.' Mem. at 27-29. The Secretary argues that there was no "clear error judgment" by CMS because the agency did not ignore evidence, "but rather carefully considered comments that the LTCH PPS BNA was duplicative and reasonably determined that it was not." Def.'s Mem. at 33.

Notably, the Secretary does not cite to any portion of the rulemaking record to support his claim that CMS carefully considered comments on this issue and made a reasonable determination about the duplicative BNAs. The rulemaking record shows that the Plaintiffs submitted detailed comment letters to CMS each year since 2015 explaining that CMS is using an erroneous calculation of the LTCH site neutral payment rate that includes double the BNA for high cost outlier payments. *See e.g.*, R.R. at 687-89, 2109-2116, 3589-96, 5241-48. The rulemaking record also contains comments from other stakeholders that clearly explained this error to CMS, including comment letters from the Medicare Payment Advisory Commission ("MedPAC"), the American Hospital Association, the Federation of American Hospitals, and the National Association of Long Term Hospitals. R.R. at 498-99, 1878-80, 5352-53, 5401-03. CMS' limited responses to these comments do not show "careful consideration" by the agency of this issue. MedPAC's decision to comment on this issue for FY 2017 shows that the duplicative BNA continued to be a major issue that CMS needed to reconsider. But CMS never acknowledged that MedPAC specifically told CMS in writing not to finalize the LTCH outlier BNA because it is duplicative of the IPPS outlier BNA applied to LTCH site neutral payments. *See* MedPAC, Comment Letter on FY 2017 IPPS/LTCH PPS Proposed Rule at 16 (May 31, 2016) (R.R. at 1879-80) ("Given that the IPPS standard payment amount is already adjusted to account for HCO payments, CMS' proposal to reduce the site-neutral portion of the LTCH payment by a budget neutrality adjustment of 0.949 is duplicative and exaggerates the disparity in payment rates across provider settings."). Perhaps seeing this clear error of judgment, the Defendant has decided not to address MedPAC's comments at all in Defendant's Memorandum.

Similar to the Secretary's arguments in Defendant's Memorandum, CMS' response to comments in the FY 2019 IPPS/LTCH PPS Final Rule only addresses CMS' general authority to

implement the LTCH site neutral outlier policy in a budget neutral manner. *See* 83 Fed. Reg. at 41738 (R.R. at 6005). The response completely disregards the substance of the written comments and shows that CMS refuses to entertain the possibility that the LTCH site neutral payment rate includes duplicative BNAs. CMS' decisionmaking therefore violated the APA as a clear error of judgment by "ignoring salient facts" and "offering patently implausible justifications." *James Madison Ltd. by Hecht v. Ludwig*, 82 F.3d 1085, 1098 (D.C. Cir. 1996).

3. CMS' Decision to Apply a Second Outlier Budget Neutrality Adjustment to the LTCH Site Neutral Payment Rate is Not Supported by Substantial Evidence

Plaintiffs' Memorandum also described how Plaintiffs are likely to succeed on the merits of their APA claim based upon the lack of substantial evidence in the rulemaking record to support CMS' decision to apply the duplicative BNAs. Pls.' Mem. at 29-30. The Secretary concedes CMS' violation of the APA substantial evidence standard by failing to respond to Plaintiffs' arguments.

4. CMS Did Not Provide a Sufficient Response to Comments Raising Major Issues Regarding the Duplicative BNA in the FY 2019 IPPS/LTCH PPS Final Rule

In addition to the numerous violations of the APA's substantive requirements, the Plaintiffs' Memorandum also explained that Plaintiffs were likely to succeed on the merits of their procedural APA claim. Pls.' Mem. at 31-32. The Secretary argues that CMS "easily met [the] obligation to respond to comments." Def.'s Mem. at 33. However, the D.C. Circuit has "cautioned against an overly literal reading of the statutory terms concise and general" in section 553(c) of the APA. *Indep. U.S. Tanker Owners Comm. v. Dole*, 809 F.2d 847, 852 (D.C. Cir. 1987) (internal quotation marks omitted).

The Plaintiffs' FY 2019 IPPS/LTCH PPS comment letters specifically asked CMS to take a fresh look at this issue in FY 2019. *See e.g.*, R.R. at 5242; *see also* R.R. at 5288 ("We hope that

CMS will take our concerns more seriously, now that the agency has had additional time to consider the matter."). The Plaintiffs respectfully requested a fresh look at this issue in light of the upcoming doubling of the monetary effect of the duplicative BNA in FY 2020. However, the agency ignored these comments. Even the Secretary admits now that CMS' FY 2019 basis and purpose statement merely "referenced CMS's earlier substantive responses" from prior rulemakings.[4] Def.'s Mem. at 34. CMS only stated that it "continue[s] to disagree with the commenters" and it previously explained that the agency has the authority to implement the site neutral HCO policy in a budget neutral manner. 83 Fed. Reg. at 41738 (R.R. at 6005).

5. CMS' Duplicative BNA Violates the Social Security Act and Other Federal Laws

Plaintiffs' Memorandum explains that Plaintiffs are likely to succeed on the merits of their claims challenging the duplicative BNA on the grounds that it is contrary to law with at least three major violations. Pls.' Mem. at 33-36. The Secretary argues that the Plaintiffs' claims fail because they are based on "the ill-conceived duplication theory." Def.'s Mem. at 31. However, it is the Secretary who misunderstands the duplication at issue in this case. Def.'s Mem. at 25-28. The Plaintiffs have shown that the LTCH site neutral payment rate includes duplicative BNAs. *See supra* Part II.B.1. As a result of this duplication, the BNA is not an "appropriate adjustment" under section 307 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 ("BIPA") and results in Medicare costs being shifted to non-Medicare beneficiaries in violation of the Social Security Act ("SSA"), 42 U.S.C.

[4] The Plaintiffs' comment letters in each subsequent year responded to the CMS' arguments defending the duplicative BNA. Each year the Plaintiffs responded to CMS' points and offered further evidence and explanation as to why CMS should not apply the duplicative BNA. *See e.g.*, 1900-04, 2019-2026, 2109-2116, 2328-35, 3427, 3457-60, 3491-95, 3589-96, 5164-68, 5241-48, 5285-89.

§ 1395x(v)(1)(A). The Secretary also alleges that Plaintiffs are arguing that the Pathway for SGR Reform Act of 2013 requires "identical payments" under the IPPS and the LTCH PPS. Def.'s Mem. at 31. This was never Plaintiffs' position. Plaintiffs argued that CMS violated section 1206 of PSRA because "CMS is acting in direct contradiction of its own position on the dual rate LTCH PPS by paying LTCH site neutral cases a rate other than the site neutral payment rate contemplated by the statute." Pls.' Mem. at 35. If anything, the inclusion of the IPPS outlier BNA in the LTCH site neutral payment is *too* similar to the IPPS rate, which Plaintiffs have shown is inconsistent with the PSRA's directive to use the IPPS comparable per diem amount methodology in the existing LTCH short-stay outlier regulation that does not include a BNA.

C. Plaintiffs Will Suffer Imminent, Irreparable Harm if Defendant's Improper BNA is Not Enjoined

Plaintiffs' Memorandum and supporting affidavits document the imminent, irreparable harm that Plaintiffs suffer if the duplicative BNA is not enjoined.[5] Pls.' Mem. at 36-41; Dkt. 8-1 (Cronin Aff.); Dkt. 8-2 (Stober Aff.); Dkt. 8-3 (Fegan Aff.); Dkt. 8-4 (Algood Aff.). Specifically, Plaintiffs meet the test for irreparable harm because Plaintiffs have demonstrated that the monetary loss from the duplicative BNA threatens the very existence of Plaintiffs' businesses. *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (per curiam). The Plaintiffs do not dispute that Congress' creation of the site neutral payment rate for certain LTCH beneficiaries has significantly reduced Plaintiffs' Medicare reimbursement. However, when Congress enacted the site neutral payment rate, the Plaintiffs could not foresee that CMS would apply two BNAs

[5] The Secretary argues that "irreparable harm is 'perhaps the single most important prerequisite for the issuance of a preliminary injunction[.]'" Def.'s Mem. at 14 (quoting *Sierra Club v. U.S. Army Corps of Eng'rs*, 990 F. Supp. 2d 9, 38 (D.D.C. 2013)). Of course, the D.C. Circuit has more recently observed that it is actually the likelihood of success on the merits that is the "first and most important factor" for a preliminary injunction. *Aamer v. Obama*, 742 F.3d 1023, 1038 (D.C. Cir. 2014).

of equal value to further reduce the site neutral payment rate by more than 10%. It is this duplicative BNA that unexpectedly reduces Plaintiffs' Medicare reimbursement by millions of dollars each year, making it impossible for many of them to continue providing the programs, staff, and even the facilities to Medicare beneficiaries. Thus, the duplicative BNA threatens Plaintiffs' very existence.

The Secretary argues that the Court only needs to consider irreparable harm, and may ignore the other three factors of a preliminary injunction, because Plaintiffs made no showing of irreparable harm. Def.'s Mem. at 14-15. This is plainly incorrect. The Plaintiffs' affidavits in support of a preliminary injunction show the Plaintiffs easily meet the standard in this circuit for irreparable harm. Pls.' Mem. at 36-41; Cronin Aff. ¶¶ 6-11; Stober Aff. ¶¶ 6-12; Fegan Aff. ¶¶ 6-11; Algood Aff. ¶¶ 6-11. Plaintiffs have clearly shown that the harm is "'certain and great, actual and not theoretical, and so imminent that there is a clear and present need for equitable relief to prevent irreparable harm.'" Def.'s Mem. at 15 (quoting *League of Women Voters of United States v. Newby*, 838 F.3d 1, 7–8 (D.C. Cir. 2016)).

Plaintiffs' Memorandum also described how this is a case where a preliminary injunction is appropriate because "the totality of the harm would not necessarily have been immediately apparent." Pls.' Mem. at 41 (quoting *Texas Children's Hosp. v. Burwell*, 76 F. Supp. 3d 224, 245 (D.D.C. 2014) (Sullivan, J.)). Therefore, the Secretary's argument that the harm from the duplicative BNA "is based on the alleged gradual financial impact over the course of several years" is of no help to the Defendant. Def.'s Mem. at 16. In FYs 2016 to 2018, Plaintiffs estimate that they lost a total $12,502,353 in Medicare reimbursement just from CMS' duplicative BNA. Cronin Aff. ¶ 6; Stober Aff. ¶ 6; Fegan Aff. ¶ 6; Algood Aff. ¶ 6. In FY 2019 alone, Plaintiffs estimate that the duplicative BNA will reduce their aggregate Medicare

reimbursement by approximately $9,388,544, but no less than $3,358,322.[6] Cronin Aff. ¶ 7; Stober Aff. ¶ 7; Fegan Aff. ¶ 7; Algood Aff. ¶ 7. This "threatens the very existence" of their businesses. *Wis. Gas Co.*, 259 F.2d at 674. Despite Plaintiffs' best attempts to avoid the duplicative BNA by admitting fewer patients that qualify for the site neutral rate, the Plaintiffs have not been able to avoid this harm. Twenty-one of Plaintiffs' LTCHs have already closed since the duplicative BNA was adopted, and another five LTCHs are scheduled to close this year. Cronin Aff. ¶ 10; Stober Aff. ¶ 11; Fegan Aff. ¶ 10; Algood Aff. ¶ 10. Many more LTCHs are likely to close, especially now that CMS has issued the FY 2020 IPPS/LTCH PPS Proposed Rule that includes the same duplicative BNA, but applied to the entire site neutral payment instead of half. 84 Fed. Reg. at 19467, 19593-94, 19598, 19606, 19617.

The Secretary claims that "Plaintiffs' extraordinary delay in seeking emergency relief should be fatal to their claim of irreparable harm." Def.'s Mem. at 15. However, courts take a different approach to evaluating claims of delay in preliminary injunction cases involving harm to healthcare providers caused by cuts to reimbursement. For example, in *Arc of Cal. v. Douglas*, 757 F.3d 975 (9th Cir. 2014), the Ninth Circuit said "delay is but a single factor to consider in evaluating irreparable injury; courts are 'loath to withhold relief solely on that ground.'" *Id.* (quoting *Lydo Enters., Inc. v. City of Las Vegas*, 745 F.2d 1211, 1214 (9th Cir. 1984)). The court

[6] The Secretary argues that this loss in reimbursement is "very small." Def.'s Mem. at 19. Although the monetary effect of the duplicative BNA may be smaller than the site neutral payment rate generally, the duplicative BNA still significantly reduces Plaintiffs' Medicare reimbursement. The total loss would be even larger if Plaintiffs did not mitigate the harm of the duplicative BNA admitting fewer Medicare beneficiaries that qualify for the site neutral payment rate. Algood Aff. ¶ 9 ("The company has also had to reduce the number of Medicare site neutral patients by nearly 50% given the financial condition those patients would place on our hospitals."). LTCHs have closed despite their best efforts to mitigate the damage from the duplicative BNA. Cronin Aff. ¶ 10; Stober Aff. ¶ 11; Fegan Aff. ¶ 10; Algood Aff. ¶ 10.

also noted that the irreparable harm analysis is different in a case involving cuts to provider reimbursement:

> [T]ardiness is not particularly probative in the context of ongoing, worsening injuries. Here, for example, the alleged injuries resulted from various cuts in compensation, enacted over a period of time and having a cumulative impact. In such circumstances, the magnitude of the potential harm becomes apparent gradually, undermining any inference that the plaintiff was sleeping on its rights. In particular, we note that the harm alleged here related in part to the continued economic viability of service providers in the face of cuts in compensation. So the actual impact of the various reductions in compensation might well become irreparable only over time. Under such circumstances, waiting to file for preliminary relief until a credible case for irreparable harm can be made is prudent rather than dilatory. The significance of such a prudent delay in determining irreparable harm may become so small as to disappear.

Id. at 990–91 (internal citations and quotation marks omitted). The same circumstances are at issue here. The cumulative impact of the duplicative BNA created the imminent, irreparable harm documented by Plaintiffs. Waiting until now to file for preliminary relief is "prudent rather than dilatory." *Id.* at 991.

In *Kan. Health Care Ass'n, Inc. v. Kan. Dept. of Soc. & Rehab. Servs.*, 31 F.3d 1536 (10th Cir. 1994), the Tenth Circuit also rejected the defendant's claim of delay after nursing homes sued the state to challenge the calculation of Medicaid reimbursement rates and moved for a preliminary injunction. *Id.* at 1538, 1542. The Tenth Circuit noted that the nursing homes were attempting to negotiate a settlement with the state, but then filed suit when the settlement was not finalized. *Id.* at 1544. Similarly, Plaintiffs here were trying to work directly with the agency to fix the duplicative BNA by submitting comment letters in response to the notices of proposed rulemaking, as contemplated by the APA. The Plaintiffs only bring this lawsuit now because the continued application of the duplicative BNA threatens Plaintiffs' businesses, and the harm will only magnify when the monetary effect of the duplicative BNA doubles on October 1, 2019.

This Court previously recognized that it is only a plaintiff's *unexplained* delay that suggests a lack of irreparable harm. *See Texas Children's Hosp. v. Burwell*, 76 F. Supp. 3d 224, 244 (D.D.C. 2014) (Sullivan, J.) ("Plaintiffs, however, have explained why they filed suit when they did."); *see also NRDC v. Pena*, 147 F.3d 1012, 1026 (D.C. Cir. 1998) ("[I]f [plaintiff] has no reasonable explanation for its delay, the district court should be reluctant to award relief."); *Cent. United Life, Inc. v. Burwell*, 128 F. Supp. 3d 321, 329 (D.D.C. 2015), *aff'd sub nom. Cent. United Life Ins. Co. v. Burwell*, 827 F.3d 70 (D.C. Cir. 2016) ("[P]laintiffs have offered both a reasonable explanation for the delay and ample (and unrebutted) reasons to believe that they would suffer irreparable harm if the new fixed indemnity rule remains in force."). In *Texas Children's Hosp.*, this Court found that there was no merit to the defendant's allegation of delay "[i]n light of plaintiffs' diligent pursuit of a variety of avenues for reversing" the agency's policy. *Id.* at 245. Here, there are several obvious explanations as to why Plaintiffs are now seeking a preliminary injunction to prevent further harm from the duplicative BNA. First, many of the Plaintiffs did not become subject to the duplicative BNA until nearly one year after the start of federal FY 2016. *See* Dkt. 1-1 at 13-16. Plaintiffs with cost reporting periods starting on September 1st have only been subject to the BNA since September 1, 2016. Second, the Plaintiffs' were initially optimistic that CMS (or Congress) would correct the error of the duplicative BNA based upon the overwhelming and consistent comments the agency received. Just like the hospitals in *Texas Children's Hosp.* that tried to reverse CMS' payment policy before filing suit, Plaintiffs here have diligently attempted to convince the agency to correct the duplicative BNA since it was first proposed. *Texas Children's Hosp.*, 76 F. Supp. 3d at 245. Finally, the Plaintiffs made attempts to mitigate the harm caused by the duplicative BNA, but the cumulative impact of the harm has finally resulted in irreparable changes to their operations.

CMS recently issued the FY 2020 IPPS/LTCH PPS Proposed Rule that, if finalized, would double the monetary impact of the duplicative BNA on LTCHs. 84 Fed. Reg. at 19467, 19593-94, 19598, 19606, 19617. The Secretary cites several cases addressing delay in preliminary injunction cases. Def.'s Mem. at 15-16. However, none of these cases involve a cumulative harm similar to what Plaintiffs are experiencing from the duplicative BNA. *See Jack's Canoes & Kayaks, LLC v. National Park Serv.*, 933 F. Supp. 2d 58 (D.D.C. 2013) (delay in applying for contract to avoid harm); *Open Top Sightseeing USA v. Mr. Sightseeing, LLC*, 48 F. Supp. 3d 87 (D.D.C. 2014) (plaintiffs sought 95-day delay of hearing on preliminary injunction).

The Secretary argues that Plaintiffs' affidavits to Plaintiffs' Memorandum indicate that LTCHs "closed for reasons unrelated to the BNA." Def.'s Mem. at 17. This is incorrect. The duplicative BNA is part of CMS' site neutral payment rate. Indeed, it arbitrarily reduces that payment rate by an additional 5.1%. Plaintiffs have quantified the impact of the duplicative BNA in their affidavits. Cronin Aff. ¶ 6-10; Stober Aff. ¶ 6-11; Fegan Aff. ¶ 6-10; Algood Aff. ¶ 6-10. The site neutral payment rate generally reduces the amount that CMS pays Plaintiffs for Medicare patients that do not qualify for the LTCH standard Federal payment rate. But the duplicative BNA created a harm all its own by unexpectedly driving down site neutral payments to unsustainable levels in many cases. The "loss of Medicare reimbursed caused by the duplicative BNA is a great harm" because it "results in a material reduction in funds that are necessary for Post Acute Medical to carry out its patient care mission." Stober Aff. ¶ 9; *see also* Cronin Aff. ¶ 9; Fegan Aff. ¶ 9; Algood Aff. ¶ 9. At a certain point, the hospitals have no choice but to close.

The Secretary also selectively quotes snippets from several exhibits regarding LTCH closures included with Plaintiffs' affidavits to argue that the LTCHs closed for reasons other than

the duplicative BNA. Def.'s Mem. at 17-18. For example, the Secretary points to Kindred hospitals that closed "to consolidate services into nearby Kindred hospitals." Algood Aff., Ex. H & J. The Secretary criticizes another exhibit that says LifeCare closed a hospital due to "regulatory changes, referral patterns and other market dynamics." Cronin Aff., Ex. E. These incomplete statements relate to LTCHs that closed due to the site neutral payment rate with its duplicative BNA. The adoption of the site neutral payment rate was detrimental to Plaintiffs but not unexpected after the PSRA was enacted. However, the duplicative BNA was both unexpected and significant. It will deprive the Plaintiffs of millions of dollars for patient services just in FY 2019. Cronin Aff. ¶ 7; Stober Aff. ¶ 7; Fegan Aff. ¶ 7; Algood Aff. ¶ 7.

The Secretary also glibly argues that the parent companies of Plaintiffs can easily cover the losses Plaintiffs suffer. Def.'s Mem. at 22-24. The Secretary has no basis and no evidence in the record to assert that Plaintiffs have sufficient capital to sustain the mounting losses from the duplicative BNA. In fact, the evidence in the record and Plaintiffs' Memorandum confirms that the lost Medicare reimbursement from the duplicative BNA is a serious threat to Plaintiffs' businesses. Cronin Aff. ¶ 9; Stober Aff. ¶ 9; Fegan Aff. ¶ 9; Algood Aff. ¶ 9. The Secretary's claim that Plaintiffs' are owned by "profitable businesses that likely can financially support the plaintiff hospitals during the course of this litigation" is clearly refuted by the multiple LTCH closures within each of the four companies involved in this case, Cronin Aff. ¶ 10; Stober Aff. ¶ 11; Fegan Aff. ¶ 10; Algood Aff. ¶ 10, and the fact that LifeCare Hospitals, the parent company for 12 hospital Plaintiffs, just filed for bankruptcy on May 6, 2019. *See* Exhibit B (Voluntary Pet. for Non-Individuals Filing for Bankruptcy, *In re Hospital Acquisition LLC*, No. 19-10998 (Bankr. D.Del. May 6, 2019), Dkt. 1); Decl. of James Murray, Chief Executive Officer of Hospital Acquisition LLC, In Support of Chapter 11 Pet. and First Day Motions, *In re Hospital*

Acquisition LLC, No. 19-10998, Dkt. 2 at 9 (discussing sharp decline in reimbursement for site neutral patients). Clearly, the financial stability Defendant tried to glean from certain statements on the LifeCare Health Partners website regarding acquisition of new healthcare facilities is wrong. Def.'s Mem. at 24. The parent companies involved in this case are primarily operating LTCHs. As a result, the parent companies do not have several other lines of profitable businesses that can subsidize the Plaintiffs' losses from the duplicative BNA, nor is that a reasonable expectation for a federal agency to have about a hospital. *See Brooks-Scanlon Co. v. R.R. Comm'n of La.*, 251 U.S. 396, 399 (1920) (a person "cannot be compelled to carry on even a branch of business at a loss, much less the whole business."). Even a larger and better diversified company like Kindred Healthcare, Inc. has suffered significantly from the duplicative BNA. Algood Aff. ¶¶ 9-10. Defendant refers to Kindred's overall revenues, Def.'s Mem. at 23, but revenues are not the same as profits. Without considering expenses, they only tell half the story. Even hospitals need to be profitable for owners to continue to support them. The Secretary cites to several cases to argue that a preliminary injunction is not necessary to "ensure the survival of these well-funded businesses." Def.'s Mem. at 24. Notably, none of the cases the Secretary cites are Medicare cases. Moreover, the bankruptcy of LifeCare Hospitals just days ago is enough evidence of the imminent harm to Plaintiffs for a preliminary injunction and satisfies any interest the Court has in their present financial condition. *See* Def.'s Mem. at 22 ("Plaintiffs have not submitted any information about their corporate structure, financial conditions, or the finances of their parent companies that would allow the Court to conclude they suffer an actual threat to their existence.").

D. The Balance of Equities Tips in Favor of Plaintiffs

Plaintiffs' Memorandum explains that Plaintiffs meet the standard for the third preliminary injunction factor, "'that the balance of equities tips in his favor.'" Pls.' Mem. at 42

(quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). In response, the Secretary argues that this factor weighs against a preliminary injunction because Plaintiffs are asking for an order directing CMS to change its policy. Def.'s Mem. at 35. The Secretary alleges that there are "substantial administrative burdens associated with effectuating an abrupt revision of Medicare payment policy." Def.'s Mem. at 36. However, as explained in Plaintiffs' Memorandum, CMS' own guidance documents indicate it is a simple process for correcting payment rates, even for prior payments. Pls.' Mem. at 42-43. Just last year, CMS reduced the LTCH site neutral payment rate by 4.6% mid-year to comply with Section 51005(b) of the Bipartisan Budget Act of 2018, Pub. L. No. 115-123, 132 Stat. 64 (2018). To accomplish this, CMS simply updated the rate in the LTCH Pricer program and issued a transmittal to the Medicare contractors instructing them to pay claims with the updated LTCH PPS Pricer. CMS Transmittal 4046 (Change Request 10547) at 8-9 (May 10, 2018). Accordingly, there is no merit to the Secretary's claim that there is a substantial burden to changing the Medicare payment rates.

The Secretary makes a similar argument that there will be a "significant burden" on CMS if the Court grants Plaintiffs' motion for a preliminary injunction, but later rules in favor of the Secretary on the merits. Def.'s Mem. at 36. The Secretary says the burden would result from CMS needing to recoup overpayments to LTCHs. Again, there is no merit to this claim. When implementing section 51005(b) of the Bipartisan Budget Act of 2018, CMS also instructed its contractors to reprocess previously paid claims for site neutral patient cases. CMS Transmittal 4046 (Change Request 10547) at 9. There should be fewer than 30,000 LTCH site neutral claims for FY 2019[7]—a small fraction of the more than 1.2 billion claims that Medicare processes

[7] The latest data from CMS shows 30,093 LTCH site neutral payment rate cases for FY 2018. *See* https://www.cms.gov/Medicare/Medicare-Fee-for-Service-

Continued on following page

annually for more than 1.5 million health care providers.[8] CMS, through its payment contractors, can also recoup overpayments from future Medicare payments to Plaintiffs. 42 C.F.R. § 405.373.

Finally, the Secretary claims that Plaintiffs' "excessive delay . . . shifts the balance of equities in favor of Defendant." Def.'s Mem. at 36-37. However, as discussed above, any alleged delay is not probative in this Medicare reimbursement case involving "ongoing, worsening injuries." *Arc of Cal. v. Douglas*, 757 F.3d 975, 990 (9th Cir. 2014). The Plaintiffs gave CMS ample opportunity to fix the duplicative BNA without resorting to litigation. The Plaintiffs have now filed suit due to the totality of the harm and the proposed continuation of the duplicative BNA in FY 2020 when it will double in effect.

E. An Injunction is in the Public Interest

Plaintiffs' Memorandum explained that a preliminary injunction would serve the public interest by ensuring the Secretary complies with applicable law. Pls.' Mem. at 43. The Secretary did not provide a direct response, but defends the general LTCH site neutral payment policy and repeats its belief that Plaintiffs "have not established that any hospitals were closed because of the challenged BNA." Def.'s Mem. at 35-36. Yet, Plaintiffs are not challenging site neutral payment generally. The Court's analysis of this final factor should instead focus on whether the duplicative BNA itself serves the public interest. As discussed above, the duplicative BNA causes Medicare to underpay Plaintiffs for site neutral patients. The financial losses are real, as are the resulting LTCHs closings. This is a very real threat to the existence of Plaintiffs' businesses. A preliminary injunction against the duplicative BNA would serve the public interest

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Payment/LongTermCareHospitalPPS/Downloads/FY2020-LTCH-NPRM-Impact-File.zip (the sum total for column D).

[8] https://www.cms.gov/Medicare/Medicare-Contracting/Medicare-Administrative-Contractors/What-is-a-MAC.html

by requiring accurate Medicare payments, putting Plaintiffs in a better position to remain open and continue to treat medically complex Medicare beneficiaries. Pls.' Mem. at 44.

F. The Court Has Authority to Issue an Injunction Stopping CMS from Applying the Duplicative BNA Now and in the Future

The Secretary argues that the Court does not have subject matter jurisdiction over Plaintiffs' claims challenging the duplicative BNA that CMS used to reduce LTCH site neutral payments in years other than FY 2019. Def.'s Mem. at 14. However, the PRRB's decision granting expedited judicial review notes that Plaintiffs objected to the duplicative BNA in FY 2016 and subsequent years. Dkt. 1-1 at 5-6. CMS has already proposed to continue applying the same duplicative BNA in FY 2020. *See* 84 Fed. Reg. at 19617. A federal court has "broad power to restrain acts which are of the same type or class as unlawful acts which the court has found to have been committed or whose commission in the future unless enjoined, may fairly be anticipated from the defendant's conduct in the past." *NLRB v. Express Publishing Co.*, 312 U.S. 426, 435 (1941); *also United States Dep't of Justice v. Daniel Chapter One*, 89 F. Supp. 3d 132, 143 (D.D.C. 2015) (Sullivan, J.), *aff'd*, 650 F. App'x 20 (D.C. Cir. 2016). The Court can fairly anticipate from CMS' past conduct and its position in this case that it will finalize its proposal for the upcoming fiscal year. Pursuant to this "broad power," the Court should enjoin the Secretary from applying the duplicative BNA now and in the future, including federal FY 2020.

Dated: May 10, 2019

Respectfully Submitted,

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EXHIBIT A

Medicare Claims Processing Manual

Chapter 3 - Inpatient Hospital Billing

Table of Contents
(Rev. 4271, 03-29-19)

Payments to LTCHs under the LTCH PPS are based on a single standard Federal rate for both the inpatient operating and capital-related costs (including routine and ancillary services), but not certain pass through costs (i.e., bad debts, direct medical education, new technologies, and blood clotting factors). This single standard Federal rate is updated annually by the excluded hospital with capital market basket index. The formula for an unadjusted LTCH PPS prospective payment is as follows:

- Federal Prospective Payment = LTC-DRG Relative Weight * Standard Federal Rate Case-Level Adjustments

Effective July 1, 2003, the annual update to the standard Federal rate is based on the "LTCH PPS rate year" of July 1 through June 30, rather than the Federal fiscal year (October 1 through September 30). July 1, 2008, is the final rate year; LTCH PPS is moving back to a Federal Fiscal Year effective October 1, 2009.

150.9.1 - Case-Level Adjustments
(Rev. 1, 10-01-03)

Payments are based on the LTC-DRG described as well as possible adjustments specific to the case. Because LTCHs are distinguished from other inpatient hospital settings by an average length of stay of greater than 25 days, it was necessary to establish payment categories for certain cases that have stays of considerably less than the average length of stay. The following case-level adjustments are applied to cases that, based on length of stay at the LTCH, receive significantly less than the full course of treatment for a specific LTC-DRG.

150.9.1.1 - Short-Stay Outliers
(Rev. 2060, Issued: 10-01-10, Effective: 10-01-10, Implementation: 10-04-10)

- Generally, a short-stay outlier (SSO) is a case that has a covered length of stay between 1 day and up to and including 5/6 of the average length of stay for the LTC-DRG to which the case is grouped. Effective for LTCH PPS discharges occurring on or before June 30, 2006, the adjusted payment for an SSO case is the least of:

    - 120 percent of the cost of the case (determined using the facility-specific cost to charge ratio (CCR) and covered charges from the bill);

    - 120 percent of the LTC-DRG specific per diem payment (determined using the LTC-DRG relative weight, the average length of stay of the LTC-DRG, and the length of stay of the case); or

    - The full LTC-DRG payment.

To compute 120% of cost:

- Charges x CCR = Cost ($13,870.33) x (0.8114) = $11,254.39

- 120% of cost = $11,254.39 x 1.2 = $13,505.27

To compute 120% of the specific LTC-DRG per diem:

- Full LTC-DRG payment / ALOS LTC-DRG x LOS of the case x 1.2

  Full LTC-DRG payment:

  $34,956.15 (FY 2003 standard Federal rate)

  x 0.72885 (labor %)

  $25,477.79 (labor share)

  x 1.0301 (1/5th wage index value for FY 2003)

  $26,244.67 (wage adjusted labor share)

  + 9,478.36 (non-labor share=$34,956 x 0.27115)

  $35,723.03 (adjusted standard Federal rate)

  x 1.4103 (LTC-DRG 113 relative weight)

  $50,380.19 (full LTC-DRG payment

  Per Diem = $50,380.19 / 36.9 (ALOS LTC-DRG 113) = $1365.32 per day

  If LOS of case is 10 days, then 120% of per diem = $1365.32 per day x 10 days x 1.2 = $16,383.80.

In this example, the case is paid 120% of cost ($13,505.27) since it is less than $120% of the specific LTC-DRG per diem ($16,383.80) and the full LTC-DRG payment ($50,380.19).

For discharges occurring on or after August 8, 2003, short-stay outlier payments are to be reconciled upon cost report settlement to account for differences between the estimated cost-to-charge-ratio and the actual cost-to-charge ratio for the period during which the discharge occurs. For further information, refer to the June 9, 2003 High Cost Outlier final rule (68 FR 34506 - 34513).

For RY 2007, the SSO policy was revised as follows:

- Effective for LTCH PPS discharges occurring on or after July 1, 2006, the adjusted payment for a SSO case is equal the least of:

- 100 percent of estimated cost of the case,
- 120 percent of the LTC-DRG per diem amount,
- the full LTC-DRG payment, or
- a blend of an amount comparable to what would otherwise be paid under the IPPS, computed as a per diem and capped at the full IPPS DRG comparable amount, and the 120 percent LTC-DRG per diem amount.

Under the blend alternative, the percentage of the 120 percent LTC-DRG per diem amount is based on the ratio of the (covered) length of stay of the case to the lesser of the SSO threshold for the LTC-DRG (i.e., 5/6ths of the geometric ALOS of the LTC-DRG) or 25 days. As the length of stay reaches the lower of the five-sixths SSO threshold or 25 days, the adjusted SSO payment is no longer be limited by this fourth option. This is because for SSO cases with a LOS of 25 days or more, the amount determined under the blend alternative is equal to 100 percent of the 120 percent of the LTC- DRG specific per diem amount and 0 percent of the IPPS comparable per diem amount. In addition, the LOS in the numerator cannot exceed the number of days in the denominator (i.e., the percentage may not exceed 100 percent). The remaining percent of the blend alternative (that is, 100 percent minus the percentage applied to the 120 percent of the LTC-DRG per diem amount) is applied to the IPPS comparable per diem amount (capped at the full IPPS comparable amount).

The following examples illustrate how the blend alternative is calculated when the LTCH patient is grouped to hypothetical DRG XYZ. For purposes of this example, for DRG XYZ, the full LTC DRG payment is $38,597.41, the LTCH PPS geometric ALOS is 33.6 days, the LTCH PPS SSO threshold (i.e., 5/6ths of the geometric ALOS) is 28.0 days, the full IPPS comparable amount is $8,019.82, and the IPPS geometric ALOS is 4.5 days.

SSO Example #1 - LOS equals 11 Days:

Step Number	Description of Step	Description of Calculation	Example of Calculation	Result
1a	Determine 120 percent of the LTC-DRG per diem amount	Divide the full LTC-DRG payment by the geometric ALOS of LTC-DRG XYZ and multiply that per diem amount by both the covered LOS and 1.2	$38,597.41 x11 days x 1.2 33.6 days	$15,163.27

Step Number	Description of Step	Description of Calculation	Example of Calculation	Result
1b*	Calculate the percentage of the 120 percent of the LTC-DRG per diem amount	Divide the covered LOS by the lesser of the 5/6th ALOS of LTC-DRG XYZ or 25 days	11 days ÷ 25 days	0.44
1c	Determine the LTC-DRG per diem portion of the blend alternative	Multiply the percentage determined in step (1-b) by the LTC-DRG per diem amount in step (1-a)	0.44 x $15,163.28	$6,671.84
2a	Calculate the IPPS comparable per diem amount	Divide the full IPPS comparable amount by the geometric ALOS of DRG XYZ and multiply by the covered LOS	$\frac{\$8,019.82}{4.5 \text{ days}}$ x 11 days	$19,604.00
2b	Determine the IPPS comparable per diem amount to be used in the blend alternative	Compare the full IPPS comparable amount to the IPPS comparable per diem amount to determine which is the least amount	The full IPPS comparable amount ($8,019.82) is lower than the IPPS comparable per diem amount ($19,604.00)	$8,019.82
2c	Calculate the percentage of the IPPS comparable per diem amount	Subtract the percentage determined in step (1-b) from 1 (i.e., 1 minus the covered LOS divided by the lesser of the 5/6th ALOS of LTC-DRG XYZ or 25 days)	1 - 0.44	0.56
2d	Determine the IPPS comparable per diem portion of the blend alternative	Multiply the percentage determined in step (2-c) by the IPPS comparable amount determined in step (2-b)	0.56 x $8,019.82	$4,491.10

Step Number	Description of Step	Description of Calculation	Example of Calculation	Result
3	Compute the blend alternative	Add the LTC-DRG per diem portion determined in step (1-c) and the IPPS comparable per diem portion determined in step (2-d)	$6,671.84 + $4,491.10	$11,162.94

* In this example, 25 days was used in the denominator since the 5/6th ALOS of LTC DRG XYZ (28.0 days) is greater than 25 days. If the 5/6th ALOS of LTC-DRG XYZ was less than 25 days, that value would have been used in the denominator of this calculation. In addition, the LOS in the numerator may not exceed the number of days in the denominator (i.e., the percentage may not exceed 100 percent).

SSO Example #2 - LOS equals 27 Days:

Step Number	Description of Step	Description of Calculation	Example of Calculation	Result
1a	Determine 120 percent of the LTC-DRG per diem amount	Divide the full LTC-DRG payment by the geometric ALOS of LTC-DRG XYZ and multiply that per diem amount by both the covered LOS and 1.2	$38,597.41 x 27 days 33.6 days x 1.2	$37,218.93
1b*	Calculate the percentage of the 120 percent of the LTC-DRG per diem amount	Divide the covered LOS by the lesser of the 5/6th ALOS of LTC-DRG XYZ or 25 days; however, since the LOS in the numerator exceeds the number of days in the denominator, the percentage equals 100 percent	27 days ÷ 25 days is > 1; therefore percent is 1.00	1.00
1c	Determine the 120 percent of the LTC-DRG per diem portion of the blend alternative	Multiply the percentage determined in step (1-b) by the 120 percent of the LTC-DRG per diem amount in step (1-a)	1.0 x $37,218.93	$37,218.93

Step Number	Description of Step	Description of Calculation	Example of Calculation	Result
2a	Calculate the IPPS comparable per diem amount	Divide the full IPPS comparable amount by the geometric ALOS of DRG XYZ and multiply by the covered LOS	$\frac{\$8,019.82}{4.5 \text{ days}} \times 11 \text{ days}$	$48,118.92
2b	Determine the IPPS comparable per diem amount to be used in the blend alternative	Compare the full IPPS comparable amount to the IPPS comparable per diem amount to determine which is the least amount	The full IPPS comparable amount ($8,019.82) is lower than the IPPS comparable per diem amount ($48,118.92)	$8,019.82
2c	Calculate the percentage of the IPPS comparable per diem amount	Subtract the percentage determined in step (1-b) from 1 (i.e., 1 minus the covered LOS divided by the lesser of the 5/6th ALOS of LTC-DRG XYZ or 25 days)	1 - 1.00	0.00
2d	Determine the IPPS comparable per diem amount portion of the blend alternative	Multiply the percentage determined in step (2-c) by the IPPS comparable per diem amount determined in step (2-b)	0.00 x $8,019.82	$0.00
3	Compute the blend alternative	Add the 120 percent of the LTC-DRG per diem portion determined in step (1-c) and the IPPS comparable per diem portion determined in step (2-d)	$37,218.93 + $0.00	$37,218.93**

* In this example, 25 days was used in the denominator since the 5/6th ALOS of LTC DRG XYZ (28.0 days) is greater than 25 days. If the 5/6th ALOS of LTC-DRG XYZ was less than 25 days, that value would have been used in the denominator of this calculation. In addition, the LOS in the numerator may not exceed the number of days in the denominator (i.e., the percentage may not exceed 100 percent).

** Note that, since in this example the LOS of the SSO case exceeds 25 days, the blend percentage applicable to the 120 percent of the LTC-DRG specific per diem amount is 100 percent and the percentage applicable to the IPPS comparable per diem amount is 0 percent, therefore the amount computed under the blend option is equal to 120 percent of the LTC-DRG specific per diem amount.

Under the blend alternative of the SSO payment formula, an amount comparable to what would otherwise be paid under the IPPS (i.e., full IPPS comparable amount) includes payment for the costs of inpatient operating services based on the standardized amount determined under §412.64(c), adjusted by the applicable DRG weighting factors determined under §412.60 as specified at §412.64(g). This amount is further adjusted to account for different area wage levels by geographic area using the applicable IPPS labor-related share, based on the CBSA where the LTCH is physically located as set forth at §412.525(c) and using the IPPS wage index for non-reclassified hospitals published in the annual IPPS final rule. (In the RY 2006 LTCH PPS final rule (70 FR 24200), we discuss the inapplicability of geographic reclassification procedures for LTCHs.) For LTCHs located in Alaska and Hawaii, this amount is also adjusted by the applicable proposed COLA factor used under the IPPS published annually in the IPPS final rule. (Currently, the same COLA factors are used under both the IPPS and the LTCH PPS.)

Additionally, an amount comparable to what would be paid under the IPPS for the case includes a disproportionate share (DSH) adjustment (see §412.106), if applicable, and includes an indirect medical education (IME) adjustment (see §412.105), if applicable. For the comparable IPPS DSH adjustment, provider specific file elements 24 (Bed Size), 27 (Supplemental Security Income Ratio (SSI)), and 28 (Medicaid Ratio) are required, as discussed below. In determining a LTCH's SSI ratio and Medicaid ratio used in the calculation of the comparable IPPS DSH adjustment, refer to sections 20.3.1.1 and 20.3.1.2 of this manual.

For the comparable IPPS IME adjustment, provider specific file elements 23 (Intern/Beds Ratio) and 49 (Capital Indirect Medical Education Ratio) are required, as discussed below. Furthermore, the IPPS comparable IME adjustment for a LTCH is determined by imputing a limit on the number of full-time equivalent (FTE) residents that may be counted for IME (IME cap) based on the LTCH's direct GME cap as set forth at §413.79(c)(2) (which will already be established for a LTCH which had residency programs). In determining the IPPS comparable IME adjustment for a LTCH, if applicable, the use of a proxy for the IME cap is necessary because it would not be appropriate to apply the IPPS IME rules literally in the context of this LTCH PPS payment adjustment. The full IPPS comparable amount used under the blend alternative in the SSO payment adjustment, also includes payment for inpatient capital-related costs, based on the capital Federal rate at §412.308(c), which is adjusted by the applicable IPPS DRG weighting factors. This amount is further adjusted by the applicable geographic adjustment factors set forth at §412.316, including wage index (based on the CBSA where a LTCH is physically located and derived from the IPPS wage index for non-reclassified hospitals as published in the annual IPPS final rule), and large urban location, if applicable. A LTCH PPS payment amount comparable to what would be paid under the IPPS does not include additional

payments for extraordinarily high cost cases under the IPPS outlier policy (§412.80(a)). Under existing LTCH PPS policy, a SSO case that meets the criteria for a LTCH PPS high cost outlier payment at §412.525(a)(1) (i.e., if the estimated costs of the case exceeds the adjusted LTCH PPS SSO payment plus the fixed-loss amount) will receive an additional payment under the LTCH PPS HCO high cost outlier at §412.525(a) (67 FR 56026; August 30, 2002). Under the revised SSO payment formula, we will continue to use the fixed-loss amount calculated under §412.525(a), and not a fixed-loss amount based on §412.80(a), to determine whether a SSO case receives an additional payment as a high cost outlier case.

For RY 2008, the SSO policy was revised as follows:

Effective for LTCH PPS discharges occurring on or after July 1, 2007, and on or before December 28, 2007*, the payment adjustment formula for SSO cases was revised for those cases where the patient's LTCH covered LOS is less than, or equal to an "IPPS-comparable" threshold. For cases falling within this "IPPS-comparable" threshold, Medicare payment under the SSO policy is subject to an additional adjustment.

The IPPS-comparable threshold is defined as the geometric average length of stay for the same DRG under the IPPS plus one standard deviation (refer to Table 3 in the LTCH PPS RY 2008 final rule (72 FR 26870 at 27019- 27029)).

If the covered LOS at the LTCH is less than or equal to the IPPS-comparable threshold for the LTC-DRG, Medicare payment is based on the IPPS comparable per diem amount, capped at the full IPPS comparable amount. This option replaces the "blend" amount in the adjusted LTCH PPS SSO payment formula.

Effective for discharges occurring on or after July 1, 2007 and on or before December 28, 2007*, therefore, the adjusted Medicare payment for an SSO case where the covered LOS at the LTCH is within the IPPS-comparable threshold, is equal the least of:

- 100 percent of estimated cost of the case,
- 120 percent of the LTC-DRG per diem amount,
- the full LTC-DRG payment, or
- the "IPPS comparable" per diem amount , capped at the full IPPS comparable amount

The IPPS comparable amount is determined by the same methodology as the IPPS comparable portion of the blend alternative, specified above in the above examples at 2a.

For SSO cases where the covered length of stay exceeds the "IPPS threshold," payment is made under the SSO payment formula that became effective beginning in RY 2007, as specified above.

***NOTE:** On December 29, 2007, the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) was enacted that mandated a modification to the SSO payment adjustment formula for a 3-year period beginning on the date of enactment of the Act. Specifically, section 114(c)(3) of the MMSEA specifies that the revision to the SSO policy implemented in RY 2008 shall not apply for a 3-year period beginning with discharges occurring on or after December 29, 2007. Consequently, the fourth option in the SSO payment adjustment formula at §412.529(c)(3)(i) will not apply during this 3-year period, and therefore, there will be no comparison of the covered LOS of the SSO case to the "IPPS threshold" in determining the payment adjustment for SSO cases. Therefore, for SSO discharges occurring on or after December 29, 2007, and before December 29, 2012, the adjusted payment for a SSO case is equal to the least of:

- 100 percent of estimated cost of the case,
- 120 percent of the LTC-DRG per diem amount,
- the full LTC-DRG payment, or
- a blend of an amount comparable to what would otherwise be paid under the IPPS, computed as a per diem and capped at the full IPPS DRG comparable amount, and the 120 percent LTC-DRG per diem amount.

As noted above, during this 3-year period specified by the MMSEA, all SSO cases (including those where the covered LOS exceeds the "IPPS threshold") are paid under the SSO payment formula that became effective beginning in RY 2007, as described above.

Short Stay Outlier Policy for LTCHs qualifying under §1886(d)(1)(B)(II)

A "subsection (II)" hospital:

- Was excluded as a LTCH in 1986
- Has an average inpatient LOS of greater than 20 days, and
- Demonstrates that 80 percent of its annual Medicare inpatient discharges in the 12-month reporting period ending FFY 1997 have a principal finding of neoplastic disease.

For a "subsection (II)" hospital there is a special short-stay outlier policy effective for the remainder of the transition period (i.e., **discharges** occurring on or after July 1, 2003 through December 31, 2006), where the lesser of 120 percent of cost or120 percent of the per diem LTC-DRG in the existing short-stay outlier policy is replaced with the follow percentages:

- Effective for **discharges** occurring on or after **July 1, 2003 through the first year of transition 195%**;

- Effective for **discharges** during the second year of the transition, **193%**;

- Effective for **discharges** during the third year of the transition, **165%**;

- Effective for **discharges** during the fourth year of the transition, **136%**; and

- Effective for **discharges** for the last year and thereafter, the percentage returns to **120%**.

150.9.1.2 - Interrupted Stays

(Rev. 1231; Issued: 04-27-07; Effective: 12-03-07; Implementation: 12-03-07)

Beginning on July 1, 2004, there are two interruption of stay policies in effect under the LTCH PPS.

A 3-day or less interruption of stay is a stay at an LTCH during which the beneficiary is discharged from the LTCH to an acute care hospital, IRF, SNF, or home and readmitted to the same LTCH within 3-days of the discharge. The 3-day or less period begins with the date of discharge from the LTCH and ends not later than midnight of the third day.

Medicare payment for any test, procedure, or care provided on an outpatient basis or for any inpatient treatment during the “interruption" would be the responsibility of the LTCH “under arrangements” with one limited exception: for RY 2005 and RY 2006, if treatment at an inpatient acute care hospital would be grouped to a surgical DRG, a separate Medicare payment would be made under the IPPS for that care. Effective for dates of service on or after July 1, 2006 (RY 2007**)**, this limited exception for surgical DRGs is no longer applicable. No further separate payment to an acute care hospital will be made. Any tests or procedures, that were administered to the patient during that period of time of interruption will be considered to be part of that single episode of LTCH care and bundled into the payment to the LTCH. The LTCH will be required to pay any other providers without additional Medicare program payment liability.

If no additional Medicare services are delivered during the3-day or less interruption (e.g., the patient is home and doesn’t receive any outpatient or inpatient services at an acute care hospital or IRF or care at a SNF) prior to readmission to the LTCH, the number of days away from the LTCH will not be included in the total length of stay for that beneficiary stay. If care is delivered on any day during the interruption, however, that the LTCH pays for “under arrangements,” all the days of the interruption are included in the total length of stay for that beneficiary stay. Therefore, if a patient receives services on only one of the days of the interruption but is away from the LTCH for 3 days, all 3 days will be deemed a part of the total episode of care and counted towards the length of stay for that patient stay. If an interruption of stay exceeds 3-days, the original interrupted stay policy, below, governs payment.

EXHIBIT B

Fill in this information to identify your case:

United States Bankruptcy Court for the:

DISTRICT OF DELAWARE

Case number *(if known)* _____ Chapter **11**

☐ Check if this an amended filing

Official Form 201

Voluntary Petition for Non-Individuals Filing for Bankruptcy 4/19

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals,* is available.

1.	**Debtor's name**	**Hospital Acquisition LLC**
2.	**All other names debtor used in the last 8 years** Include any assumed names, trade names and *doing business as* names	
3.	**Debtor's federal Employer Identification Number** (EIN)	**46-1523232**
4.	**Debtor's address**	**Principal place of business** **5340 Legacy Drive, Suite 150** **Plano, TX 75024** Number, Street, City, State & ZIP Code **Collin** County **Mailing address, if different from principal place of business** P.O. Box, Number, Street, City, State & ZIP Code **Location of principal assets, if different from principal place of business** Number, Street, City, State & ZIP Code
5.	**Debtor's website** (URL)	**www.lifecarehealthpartners.com**
6.	**Type of debtor**	☒ Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP)) ☐ Partnership (excluding LLP) ☐ Other. Specify: _____

Debtor **Hospital Acquisition LLC** Case number (*if known*)
Name

7. Describe debtor's business

A. *Check one:*

- ☒ Health Care Business (as defined in 11 U.S.C. § 101(27A))
- ☐ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- ☐ Railroad (as defined in 11 U.S.C. § 101(44))
- ☐ Stockbroker (as defined in 11 U.S.C. § 101(53A))
- ☐ Commodity Broker (as defined in 11 U.S.C. § 101(6))
- ☐ Clearing Bank (as defined in 11 U.S.C. § 781(3))
- ☐ None of the above

B. *Check all that apply*

- ☐ Tax-exempt entity (as described in 26 U.S.C. §501)
- ☐ Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. §80a-3)
- ☐ Investment advisor (as defined in 15 U.S.C. §80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See http://www.uscourts.gov/four-digit-national-association-naics-codes.

6223

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check one:

- ☐ Chapter 7
- ☐ Chapter 9
- ☒ Chapter 11. *Check all that apply*:
  - ☐ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than $2,725,625 (amount subject to adjustment on 4/01/22 and every 3 years after that).
  - ☐ The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). If the debtor is a small business debtor, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if all of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
  - ☐ A plan is being filed with this petition.
  - ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
  - ☐ The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
  - ☐ The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.
- ☐ Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

If more than 2 cases, attach a separate list.

- ☒ No
- ☐ Yes

District _____ When _____ Case number _____
District _____ When _____ Case number _____

10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?

List all cases. If more than 1, attach a separate list

- ☐ No
- ☒ Yes

Debtor See Attachment 1 Relationship Affiliate
District Delaware When _____ Case number, if known _____

Debtor **Hospital Acquisition LLC** Case number (*if known*)
Name

11. Why is the case filed in *this district?*

Check all that apply:

- ☒ Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.
- ☒ A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?

- ☒ No
- ☐ Yes Answer below for each property that needs immediate attention. Attach additional sheets if needed.

Why does the property need immediate attention? (*Check all that apply.*)

- ☐ It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.
  What is the hazard? _____
- ☐ It needs to be physically secured or protected from the weather.
- ☐ It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).
- ☐ Other _____

Where is the property? _____
Number, Street, City, State & ZIP Code

Is the property insured?

- ☐ No
- ☐ Yes Insurance agency _____
  Contact name _____
  Phone _____

Statistical and administrative information

13. Debtor's estimation of available funds

Check one:

- ☒ Funds will be available for distribution to unsecured creditors.
- ☐ After any administrative expenses are paid, no funds will be available to unsecured creditors.

14. Estimated number of creditors (on a consolidated basis)

☐ 1-49	☐ 1,000-5,000	☒ 25,001-50,000
☐ 50-99	☐ 5001-10,000	☐ 50,001-100,000
☐ 100-199	☐ 10,001-25,000	☐ More than 100,000
☐ 200-999		

15. Estimated Assets

☒ $0 - $50,000	☐ $1,000,001 - $10 million	☐ $500,000,001 - $1 billion
☐ $50,001 - $100,000	☐ $10,000,001 - $50 million	☐ $1,000,000,001 - $10 billion
☐ $100,001 - $500,000	☐ $50,000,001 - $100 million	☐ $10,000,000,001 - $50 billion
☐ $500,001 - $1 million	☐ $100,000,001 - $500 million	☐ More than $50 billion

16. Estimated liabilities

☒ $0 - $50,000	☐ $1,000,001 - $10 million	☐ $500,000,001 - $1 billion
☐ $50,001 - $100,000	☐ $10,000,001 - $50 million	☐ $1,000,000,001 - $10 billion
☐ $100,001 - $500,000	☐ $50,000,001 - $100 million	☐ $10,000,000,001 - $50 billion
☐ $500,001 - $1 million	☐ $100,000,001 - $500 million	☐ More than $50 billion

Debtor **Hospital Acquisition LLC** Case number (*if known*)
Name

Request for Relief, Declaration, and Signatures

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

17. Declaration and signature of authorized representative of debtor

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I have been authorized to file this petition on behalf of the debtor.

I have examined the information in this petition and have a reasonable belief that the information is trued and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on **05/06/2019**
MM / DD / YYYY

X **/s/ James Murray**
Signature of authorized representative of debtor

James Murray
Printed name

Title **Chief Executive Officer and Manager**

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18. Signature of attorney

X **/s/ M. Blake Cleary**
Signature of attorney for debtor

Date **05/06/2019**
MM / DD / YYYY

M. Blake Cleary
Printed name

Young Conaway Stargatt & Taylor, LLP
Firm name

Rodney Square
1000 N. King Street
Wilmington, DE 19801
Number, Street, City, State & ZIP Code

Contact phone **(302) 571-6600** Email address **mbcleary@ycst.com**

3614 DE
Bar number and State

ATTACHMENT 1

Pending Bankruptcy Cases Filed by Affiliated Entities

On the date hereof, each of the related entities listed below (collectively, the "***Debtors***"), including the debtor in this chapter 11 case, filed a petition in the United States Bankruptcy Court for the District of Delaware (the "***Court***") for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532. Contemporaneously with the filing of their voluntary petitions, the Debtors filed a motion requesting that the Court jointly administer their chapter 11 cases for administrative purposes only.

Hospital Acquisition LLC
Hospital Acquisition Intermediate Sub LLC
LifeCare Holdings LLC
LifecCare Behavioral Health Hospital of Pittsburgh LLC
New LifeCare Hospitals LLC
New LifeCare of Hospitals of Dayton LLC
New LifeCare Hospitals of Milwaukee LLC
New LifeCare Hospitals of South Texas LLC
Hospital Acquisition Sub II LLC
New LifeCare Management Services LLC
New LifeCare REIT 1 LLC
New LifeCare Hospitals of Mechanicsburg LLC
New Pittsburgh Specialty Hospital LLC
LifeCare Vascular Services, LLC
New LifeCare Hospitals of North Texas LLC
New LifeCare Hospitals of Chester County LLC
New LifeCare Hospitals of Northern Nevada LLC
New San Antonio Specialty Hospital LLC
New LifeCare Hospitals of North Carolina LLC
New LifeCare Hospitals of Pittsburgh LLC
New NextCare Specialty Hospital of Denver LLC
Hospital Acquisition MI LLC
LifeCare Pharmacy Services LLC
New LifeCare REIT 2 LLC
New LifeCare Hospitals at Tenaya LLC
New LifeCare Hospitals of Sarasota LLC

CERTIFICATE OF SECRETARY
OF
HOSPITAL ACQUISITION LLC

May 6, 2019

I, Tracey Dry, being the duly appointed and authorized Secretary of Hospital Acquisition LLC ("**Hospital Acquisition**"), hereby deliver this Certificate of Secretary on behalf of Hospital Acquisition and do hereby certify, in my capacity as such duly appointed and authorized Secretary, that I have access to the company records of Hospital Acquisition; and

I further certify that attached hereto as Exhibit A is a true, correct, and complete copy of the resolutions duly adopted and approved on May 6, 2019 by the Board of Managers of Hospital Acquisition and that such resolutions (a) have not been amended, rescinded, or modified since their adoption and remain in full force and effect as of the date hereof, and (b) were adopted in accordance with the provisions of applicable law and the certificate of formation and limited liability company agreement of Hospital Acquisition.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the 6th day of May 2019.

/s/ Tracey Dry
Tracey Dry
Secretary

EXHIBIT A

RESOLUTIONS OF
THE BOARD OF MANAGERS OF
HOSPITAL ACQUISITION LLC

May 6, 2019

On May 6, 2019, at a telephonic meeting of the board of managers (the "***Board***") of Hospital Acquisition LLC, a Delaware limited liability company ("***Hospital Acquisition***"), which is the sole member or the indirect parent, as applicable, of each entity listed on Exhibit A hereto (each, a "***Company***" and collectively with Hospital Acquisition, the "***Companies***"), the Board took the following actions and adopted the following resolutions in accordance with (i) the Delaware Limited Liability Company Act, Title 6, Chapter 18, §§ 18-101, et seq, and any successor statute, as it may be amended from time to time, (ii) the limited liability company operating agreement of Hospital Acquisition, and (iii) the certificate of formation of Hospital Acquisition.

Authorization to Commence Chapter 11 Proceedings;
Authorization to Employ and Retain Requisite Professionals

WHEREAS, the Board has reviewed and analyzed the materials presented by Companies' management and the Companies' financial, legal, and other advisors and has held numerous, extensive and vigorous discussions (including with management and such advisors) regarding such materials and the liabilities and liquidity situation of the Companies, the short- and long-term prospects of the Companies, the restructuring and strategic alternatives available to the Companies, and the impact of the foregoing on the Companies' business and operations and has consulted with management and the Companies' financial, legal, and other advisors regarding the above; and

WHEREAS, the Board has determined that it is necessary, advisable and in the best interests of the Companies, their respective creditors, employees, shareholders and other interested parties, and necessary and convenient to the purpose, conduct, promotion, or attainment of the business and affairs of the Companies, that a petition be filed by each Company seeking relief under chapter 11 of title 11 of the United States Code (the "***Bankruptcy Code***") and that such Company undertake related actions.

NOW THEREFORE BE IT:

RESOLVED, that the Board, in its best judgment, and after consultation with management and the Companies' financial, legal, and other advisors, has determined that it is desirable and in the best interests of the Companies, their respective creditors, employees, shareholders and other interested parties that a voluntary petition for relief under chapter 11 of the Bankruptcy Code be filed and directs that each Company file or cause to be filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code;

RESOLVED FURTHER, that the "***Authorized Officers***" referenced in these resolutions shall be, with respect to each Company, the Chief Executive Officer, the Chief Financial Officer, the General Counsel, the Chief Compliance Officer and/or the Secretary of such Company or, where applicable, the Chief Executive Officer, the Chief Financial Officer, the General Counsel,

the Chief Compliance Officer and/or the Secretary of a Company in such Company's capacity as the sole member of a Company;

RESOLVED FURTHER, that each Authorized Officer, be, and hereby is, authorized and empowered on behalf of, and in the name of, each Company to execute and verify or certify a petition under chapter 11 of the Bankruptcy Code and to cause the same to be filed in the United States Bankruptcy Court for the District of Delaware at such time as such officers shall determine;

RESOLVED FURTHER, that each Authorized Officer be, and hereby is, authorized and empowered on behalf of, and in the name of, each Company to execute and file all pleadings, schedules, lists, and other papers, and to take any and all actions that each such officer may deem necessary or proper in connection with the foregoing resolutions;

RESOLVED FURTHER, that each Authorized Officer be, and hereby is, authorized and empowered on behalf of, and in the name of, each Company to engage the law firm of Akin Gump Strauss Hauer & Feld LLP ("***Akin Gump***") as general bankruptcy counsel to represent and assist such Company in carrying out their duties under the Bankruptcy Code and to take any and all actions to advance such Company's rights and interests, including filing any pleadings and making any filings with regulatory agencies or other governmental authorities; and, in connection therewith, each Authorized Officer be, and hereby is, authorized and directed to execute appropriate retention agreements, pay appropriate retainers prior to and after the filing of each Company's chapter 11 case, and cause to be filed an appropriate application for authority to retain the services of Akin Gump;

RESOLVED FURTHER, that each Authorized Officer be, and hereby is, authorized and empowered on behalf of, and in the name of, each Company to engage the law firm of Young Conaway Stargatt & Taylor, LLP ("***Young Conaway***") as local counsel to represent and assist such Company in carrying out their duties under the Bankruptcy Code and to take any and all actions to advance such Company's rights and interests, including filing any pleadings and making any filings with regulatory agencies or other governmental authorities; and, in connection therewith, each Authorized Officer be, and hereby is, authorized and directed to execute appropriate retention agreements, pay appropriate retainers prior to and after the filing of each Company's chapter 11 case, and cause to be filed an appropriate application for authority to retain the services of Young Conaway;

RESOLVED FURTHER, that each Authorized Officer be, and hereby is, authorized and empowered on behalf of, and in the name of, each Company to engage Prime Clerk LLC ("***Prime Clerk***") as claims, notice and balloting agent to represent and assist such Company in carrying out its duties under the Bankruptcy Code and to take any and all actions to advance such Company's rights and interests; and, in connection therewith, each Authorized Officer be, and hereby is, authorized and directed to execute appropriate retention agreements, pay appropriate retainers prior to and after the filing of each Company's chapter 11 case, and cause to be filed an appropriate application for authority to retain the services of Prime Clerk;

RESOLVED FURTHER, that each Authorized Officer, be, and hereby is authorized and empowered on behalf of, and in the name of, each Company to engage Houlihan Lokey, Inc.

("***Houlihan***") as financial advisor to represent and assist such Company in carrying out its duties under the Bankruptcy Code and to take any and all actions to advance such Company's rights and interests; and, in connection therewith, each Authorized Officer be, and hereby is, authorized and directed to execute appropriate retention agreements, pay appropriate retainers prior to and after the filing of each Company's chapter 11 case, and cause to be filed an appropriate application for authority to retain the services of Houlihan;

RESOLVED FURTHER, that each Authorized Officer be, and hereby is, authorized and empowered on behalf of, and in the name of, each Company to engage BRG Capital Advisors, LLC ("***BRG***") as investment banker to represent and assist such Company in carrying out its duties under the Bankruptcy Code and to take any and all actions to advance such Company's rights and interests; and, in connection therewith, each Authorized Officer be, and hereby is, authorized and directed to execute appropriate retention agreements, pay appropriate retainers prior to and after the filing of each Company's chapter 11 case, and cause to be filed an appropriate application for authority to retain the services of BRG; and

RESOLVED FURTHER, that each Authorized Officer be, and hereby is, authorized and empowered on behalf of, and in the name of, each Company to engage any other professionals as deemed necessary or appropriate in their respective sole discretion to assist such Company subsidiaries in carrying out its duties under the Bankruptcy Code, including executing appropriate retention agreements, paying appropriate retainers prior to or after the filing of the Company's chapter 11 case, and filing appropriate applications for authority to retain the services of any other professionals as any Authorized Officer shall in their sole discretion deem necessary or desirable.

DIP Financing and Related Matters

RESOLVED FURTHER, that in the judgment of the Board, it is desirable and in the best interests of each Company, their creditors and other parties in interest, that such Company shall be, and hereby is, authorized to obtain senior secured superpriority post-petition financing (the "***DIP Financing***") on the terms and conditions of the proposed debtor-in-possession financing agreement or term sheet between the applicable Companies, as borrowers or guarantors, as applicable, the financial institutions from time to time party thereto as lenders (the "***DIP Lenders***"), the administrative agent and collateral agent (in such capacities, the "***DIP Agent***"), and other agents and entities from time to time party thereto, substantially in the form presented to the Board on or in advance of the date hereof, with such changes, additions, and modifications thereto as any Authorized Officer executing the same shall approve, such approval to be conclusively evidenced by an Authorized Officer's execution and delivery thereof and to grant to the DIP Agent for itself and for the benefit of the DIP Lenders liens on substantially all of the Companies' assets with priority under sections 364(c) and (d) of the Bankruptcy Code;

RESOLVED FURTHER, that each Company will obtain benefits from the use of collateral, including cash collateral, as that term is defined in section 363(a) of the Bankruptcy Code (the "***Cash Collateral***"), which is security for certain prepetition secured lenders (collectively, the "***Secured Lenders***") party to (i) that certain Credit Agreement dated as of May 31, 2013, as amended, among certain Companies as "Borrowers" and "Guarantors" thereunder as applicable, the lenders party thereto from time to time, Seaport Loan Products LLC, as

administrative agent, and Wilmington Trust, National Association, as co-administrative agent and co-collateral agent for the such lenders and/or (ii) and that certain Credit Agreement dated as of August 10, 2018, as amended, among certain Companies as "Borrowers" and "Guarantors" thereunder as applicable, the lenders party thereto from time to time, and GLAS Trust Company LLC as administrative agent and collateral agent for the such lenders;

RESOLVED FURTHER, that in order to use and obtain the benefits of the Cash Collateral, and in accordance with section 363 of the Bankruptcy Code, each Company will provide certain adequate protection to the Secured Lenders (the "***Adequate Protection Obligations***"), as documented in a proposed interim DIP order substantially in the form presented to the Board on or in advance of the date hereof, with such changes, additions, and modifications thereto as any Authorized Officer executing the same shall approve, such approval to be conclusively evidenced by an Authorized Officer's execution and delivery thereof (the "***Interim DIP Order***") to be submitted for approval to the Bankruptcy Court;

RESOLVED FURTHER, that the form, terms, and provisions of the Interim DIP Order to which each Company is or will be subject, and the actions and transactions contemplated thereby be, and hereby are, authorized, adopted, ratified and approved, and each Authorized Officer be, and hereby is, authorized and empowered, in the name of and on behalf of each Company, to take such actions and negotiate or cause to be prepared and negotiated and to execute, deliver, perform, and cause the performance of, the Interim DIP Order, and such other agreements, certificates, instruments, receipts, petitions, motions, or other papers or documents to which such Company is or will be a party, including, but not limited to, any security and pledge agreement or guaranty agreement (collectively with the Interim DIP Order, the "***DIP Documents***"), incur and pay or cause to be paid all fees and expenses and engage such persons, in each case, in the form or substantially in the form thereof presented to the Board on or in advance of the date hereof, with such changes, additions, and modifications thereto as any Authorized Officer executing the same shall approve, such approval to be conclusively evidenced by an Authorized Officer's execution and delivery thereof;

RESOLVED FURTHER, that each Company, as debtor and debtor-in-possession under the Bankruptcy Code be, and hereby is, authorized to negotiate and incur the Adequate Protection Obligations, grant liens, make periodic payments, and to undertake any and all related transactions on substantially the same terms as contemplated under the DIP Documents (collectively, the "***Adequate Protection Transactions***");

RESOLVED FURTHER, that each of the Authorized Officers be, and hereby is, authorized and directed, and empowered in the name of, and on behalf of, each Company, as debtor and debtor-in-possession, to take such actions as in his or her reasonable discretion is determined to be necessary, desirable, or appropriate and execute the Adequate Protection Transactions, including delivery of (a) the DIP Documents and such agreements, certificates, instruments, guaranties, notices, and any and all other documents, including, without limitation, any amendments to any DIP Documents (collectively, the "***Adequate Protection Documents***"); (b) such other instruments, certificates, notices, assignments, and documents as may be reasonably requested by the DIP Agent; and (c) such forms of deposit, account control agreements, officer's certificates, and compliance certificates as may be required by the DIP Documents or any other Adequate Protection Document;

RESOLVED FURTHER, that each of the Authorized Officers be, and hereby is, authorized, directed, and empowered in the name of, and on behalf of, each Company to file or to authorize the DIP Agent to file any Uniform Commercial Code (the "***UCC***") financing statements, any other equivalent filings, any intellectual property filings and recordations and any necessary assignments for security or other documents in the name of each Company that the DIP Agent deems necessary or appropriate to perfect any lien or security interest granted under the Interim DIP Order, including any such UCC financing statement containing a generic description of collateral, such as "all assets," "all property now or hereafter acquired" and other similar descriptions of like import, and to execute and deliver, and to record or authorize the recording of, such mortgages and deeds of trust in respect of real property of each Company and such other filings in respect of intellectual and other property of each Company, in each case, as the DIP Agent may reasonably request to perfect the security interests of the DIP Agent under the Interim DIP Order; and

RESOLVED FURTHER, that each of the Authorized Officers be, and hereby is, authorized, directed, and empowered in the name of, and on behalf of, each Company to take all such further actions, including, without limitation, to pay or approve the payment of adequate protection, appropriate fees and expenses payable in connection with the Adequate Protection Transactions and appropriate fees and expenses incurred by or on behalf of such Company in connection with the foregoing resolutions, in accordance with the terms of the Adequate Protection Documents, which shall in his or her sole judgement be necessary, proper, or advisable to perform any of such Company's obligations under or in connection with the Interim DIP Order or any of the other Adequate Protection Documents and the transactions contemplated therein and to carry out fully the intent of the foregoing resolutions.

General

RESOLVED FURTHER, that each Authorized Officer be, and hereby is, authorized and empowered on behalf of, and in the name of, each Company to (i) take or cause to be taken any and all such further actions and to prepare, execute and deliver or cause to be prepared, executed and delivered and, where necessary or appropriate, file or cause to be filed with the appropriate governmental authorities, all such necessary or appropriate instruments and documents, (ii) incur and pay or cause to be paid all fees and expenses associated with or arising out of the actions authorized herein, and (iii) engage such persons as any Authorized Officer shall in their sole discretion deem necessary or desirable to carry out fully the intent and purposes of the foregoing resolutions and each of the transactions contemplated thereby, such determination to be conclusively established by the taking or causing of any such further action;

RESOLVED FURTHER, that all lawful actions of any kind taken prior to the date hereof by the Authorized Officers, or any person or persons designated or authorized to act by an Authorized Officer, which acts would have been authorized by the foregoing resolutions, except that such acts were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted as acts of the Company;

RESOLVED FURTHER**,** that the signature of any Authorized Officer on any document, instrument, certificate, agreement or other writing shall constitute conclusive evidence that such officer deemed such act or thing to be necessary, advisable or appropriate; and

RESOLVED FURTHER, that any Authorized Officer be, and hereby is, authorized and empowered to certify and to furnish such copies of these resolutions as may be necessary and such statements of incumbency of the corporate officers of each Company as may be requested.

Approval of Certain Actions of Subsidiaries

WHEREAS, Hospital Acquisition, as the sole member or the indirect parent, as applicable, of each Company listed on Exhibit A hereto, desires to adopt and approve certain resolutions in the form attached hereto as Annex 1 (collectively, the "***Company Resolutions***"); and

WHEREAS, the Board has reviewed and considered, and deems it advisable and in the best interests of Hospital Acquisition and its subsidiaries for Hospital Acquisition to adopt and approve the Company resolutions.

NOW THEREFORE BE IT:

RESOLVED, that the Company Resolutions are advisable and in the best interests of Hospital Acquisition and each of its applicable subsidiaries and are authorized, approved an adopted in all respects.

* * * * * * * * *

Exhibit A

Companies

Company	Jurisdiction	Managing Body
Hospital Acquisition Intermediate Sub LLC ("***Intermediate Sub***")	Delaware	**Sole Member**: Hospital Acquisition LLC
LifeCare Holdings LLC ("***Parent***")	Delaware	**Sole Member**: Intermediate Sub
LifeCare Behavioral Health Hospital of Pittsburgh LLC	Delaware	**Sole Member**: Parent
New LifeCare Hospitals LLC	Delaware	**Sole Member**: Parent
New LifeCare Hospitals of Dayton LLC	Delaware	**Sole Member**: Parent
New LifeCare Hospitals of Milwaukee LLC	Delaware	**Sole Member**: Parent
New LifeCare Hospitals of South Texas LLC	Delaware	**Sole Member**: Parent
Hospital Acquisition Sub II LLC	Delaware	**Sole Member**: Parent
New LifeCare Management Services LLC	Delaware	**Sole Member**: Parent
New LifeCare REIT 1 LLC	Delaware	**Sole Member**: Parent
New LifeCare Hospitals of Mechanicsburg LLC	Delaware	**Sole Member**: Parent
New Pittsburgh Specialty Hospital LLC	Delaware	**Sole Member**: Parent
LifeCare Vascular Services, LLC	Delaware	**Sole Member**: Parent
New LifeCare Hospitals of North Texas LLC	Delaware	**Sole Member**: Parent
New LifeCare Hospitals of Chester County LLC	Delaware	**Sole Member**: Parent
New LifeCare Hospitals of Northern Nevada LLC	Delaware	**Sole Member**: Parent
New San Antonio Specialty Hospital LLC	Delaware	**Sole Member**: Parent

New LifeCare Hospitals of North Carolina LLC	Delaware	**Sole Member**: Parent
New LifeCare Hospitals of Pittsburgh LLC	Delaware	**Sole Member**: Parent
New Nextcare Specialty Hospital of Denver LLC	Delaware	**Sole Member**: Parent
Hospital Acquisition MI LLC	Delaware	**Sole Member**: Parent
LifeCare Pharmacy Services LLC	Delaware	**Sole Member**: Parent
New LifeCare REIT 2 LLC	Delaware	**Sole Member**: Parent
New LifeCare Hospitals at Tenaya LLC	Delaware	**Sole Member**: Parent
New LifeCare Hospitals of Sarasota LLC	Delaware	**Sole Member**: Parent

Annex 1

Company Resolutions

(Attached.)

RESOLUTIONS OF
THE MANAGING BODIES OF
THE ENTITIES LISTED ON SCHEDULE 1 HERETO

May 6, 2019

On May 6, 2019, at a telephonic meeting of the sole member (each, a "***Managing Body***") of the applicable entity listed on Schedule I hereto (each, a "***Company***" and collectively, the "***Companies***"), each Company's respective Managing Body took the following actions and adopted the following resolutions in accordance with (i) the Delaware Limited Liability Company Act, Title 6, Chapter 18, §§ 18-101, et seq, and any successor statute, as it may be amended from time to time, (ii) the limited liability company operating agreement of each Company, and (iii) the certificate of formation of each Company.

Authorization to Commence Chapter 11 Proceedings;
Authorization to Employ and Retain Requisite Professionals

WHEREAS, the Managing Body of each Company has reviewed and analyzed the materials presented by such Company's management and such Company's financial, legal, and other advisors and has held numerous, extensive and vigorous discussions (including with management and such advisors) regarding such materials and the liabilities and liquidity situation of such Company, the short- and long-term prospects of such Company, the restructuring and strategic alternatives available to such Company, and the impact of the foregoing on such Company's business and operations and has consulted with management and such Company's financial, legal, and other advisors regarding the above; and

WHEREAS, the Managing Body of each Company has determined that it is necessary, advisable and in the best interests of such Company, its creditors, employees, shareholders and other interested parties, and necessary and convenient to the purpose, conduct, promotion, or attainment of the business and affairs of such Company, that a petition be filed by such Company seeking relief under chapter 11 of title 11 of the United States Code (the "***Bankruptcy Code***") and that such Company undertake related actions.

NOW THEREFORE BE IT:

RESOLVED, that the Managing Body of each Company, in its best judgment, and after consultation with management and such Company's financial, legal, and other advisors, has determined that it is desirable and in the best interests of such Company, its creditors, employees, shareholders and other interested parties that a voluntary petition for relief under chapter 11 of the Bankruptcy Code be filed and directs that such Company file or cause to be filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code;

RESOLVED FURTHER, that the "***Authorized Officers***" referenced in these resolutions shall be, with respect to each Company, the Chief Executive Officer, the Chief Financial Officer, the General Counsel, the Chief Compliance Officer and/or the Secretary of such Company or, where applicable, the Chief Executive Officer, the Chief Financial Officer, the General Counsel, the Chief Compliance Officer and/or the Secretary of a Company in such Company's capacity as the sole member of a Company;

RESOLVED FURTHER, that each Authorized Officer, be, and hereby is, authorized and empowered on behalf of, and in the name of, each Company to execute and verify or certify a petition under chapter 11 of the Bankruptcy Code and to cause the same to be filed in the United States Bankruptcy Court for the District of Delaware at such time as such officers shall determine;

RESOLVED FURTHER, that each Authorized Officer be, and hereby is, authorized and empowered on behalf of, and in the name of, each Company to execute and file all pleadings, schedules, lists, and other papers, and to take any and all actions that each such officer may deem necessary or proper in connection with the foregoing resolutions;

RESOLVED FURTHER, that each Authorized Officer be, and hereby is, authorized and empowered on behalf of, and in the name of, each Company to engage the law firm of Akin Gump Strauss Hauer & Feld LLP ("***Akin Gump***") as general bankruptcy counsel to represent and assist such Company in carrying out their duties under the Bankruptcy Code and to take any and all actions to advance such Company's rights and interests, including filing any pleadings and making any filings with regulatory agencies or other governmental authorities; and, in connection therewith, each Authorized Officer be, and hereby is, authorized and directed to execute appropriate retention agreements, pay appropriate retainers prior to and after the filing of each Company's chapter 11 case, and cause to be filed an appropriate application for authority to retain the services of Akin Gump;

RESOLVED FURTHER, that each Authorized Officer be, and hereby is, authorized and empowered on behalf of, and in the name of, each Company to engage the law firm of Young Conaway Stargatt & Taylor, LLP ("***Young Conaway***") as local counsel to represent and assist such Company in carrying out their duties under the Bankruptcy Code and to take any and all actions to advance such Company's rights and interests, including filing any pleadings and making any filings with regulatory agencies or other governmental authorities; and, in connection therewith, each Authorized Officer be, and hereby is, authorized and directed to execute appropriate retention agreements, pay appropriate retainers prior to and after the filing of each Company's chapter 11 case, and cause to be filed an appropriate application for authority to retain the services of Young Conaway;

RESOLVED FURTHER, that each Authorized Officer be, and hereby is, authorized and empowered on behalf of, and in the name of, each Company to engage Prime Clerk LLC ("***Prime Clerk***") as claims, notice and balloting agent to represent and assist such Company in carrying out its duties under the Bankruptcy Code and to take any and all actions to advance such Company's rights and interests; and, in connection therewith, each Authorized Officer be, and hereby is, authorized and directed to execute appropriate retention agreements, pay appropriate retainers prior to and after the filing of each Company's chapter 11 case, and cause to be filed an appropriate application for authority to retain the services of Prime Clerk;

RESOLVED FURTHER, that each Authorized Officer, be, and hereby is authorized and empowered on behalf of, and in the name of, each Company to engage Houlihan Lokey, Inc. ("***Houlihan***") as financial advisor to represent and assist such Company in carrying out its duties under the Bankruptcy Code and to take any and all actions to advance such Company's rights and interests; and, in connection therewith, each Authorized Officer be, and hereby is, authorized

and directed to execute appropriate retention agreements, pay appropriate retainers prior to and after the filing of each Company's chapter 11 case, and cause to be filed an appropriate application for authority to retain the services of Houlihan;

RESOLVED FURTHER, that each Authorized Officer be, and hereby is, authorized and empowered on behalf of, and in the name of, each Company to engage BRG Capital Advisors, LLC ("***BRG***") as investment banker to represent and assist such Company in carrying out its duties under the Bankruptcy Code and to take any and all actions to advance such Company's rights and interests; and, in connection therewith, each Authorized Officer be, and hereby is, authorized and directed to execute appropriate retention agreements, pay appropriate retainers prior to and after the filing of each Company's chapter 11 case, and cause to be filed an appropriate application for authority to retain the services of BRG; and

RESOLVED FURTHER, that each Authorized Officer be, and hereby is, authorized and empowered on behalf of, and in the name of, each Company to engage any other professionals as deemed necessary or appropriate in their respective sole discretion to assist such Company subsidiaries in carrying out its duties under the Bankruptcy Code, including executing appropriate retention agreements, paying appropriate retainers prior to or after the filing of the Company's chapter 11 case, and filing appropriate applications for authority to retain the services of any other professionals as any Authorized Officer shall in their sole discretion deem necessary or desirable.

DIP Financing and Related Matters

RESOLVED FURTHER, that in the judgment of the Managing Body of each Company, it is desirable and in the best interests of such Company, their creditors and other parties in interest, that such Company shall be, and hereby is, authorized to obtain senior secured superpriority post-petition financing (the "***DIP Financing***") on the terms and conditions of the proposed debtor-in-possession financing agreement or term sheet between the applicable Companies, as borrowers or guarantors, as applicable, the financial institutions from time to time party thereto as lenders (the "***DIP Lenders***"), the administrative agent and collateral agent (in such capacities, the "***DIP Agent***"), and other agents and entities from time to time party thereto, substantially in the form presented to the Managing Body of each Company on or in advance of the date hereof, with such changes, additions, and modifications thereto as any Authorized Officer executing the same shall approve, such approval to be conclusively evidenced by an Authorized Officer's execution and delivery thereof and to grant to the DIP Agent for itself and for the benefit of the DIP Lenders liens on substantially all of the Companies' assets with priority under sections 364(c) and (d) of the Bankruptcy Code;

RESOLVED FURTHER, that each Company will obtain benefits from the use of collateral, including cash collateral, as that term is defined in section 363(a) of the Bankruptcy Code (the "***Cash Collateral***"), which is security for certain prepetition secured lenders (collectively, the "***Secured Lenders***") party to (i) that certain Credit Agreement dated as of May 31, 2013, as amended, among certain Companies as "Borrowers" and "Guarantors" thereunder as applicable, the lenders party thereto from time to time, Seaport Loan Products LLC, as administrative agent, and Wilmington Trust, National Association, as co-administrative agent and co-collateral agent for the such lenders and/or (ii) and that certain Credit Agreement dated as

of August 10, 2018, as amended, among certain Companies as "Borrowers" and "Guarantors" thereunder as applicable, the lenders party thereto from time to time, and GLAS Trust Company LLC as administrative agent and collateral agent for the such lenders;

RESOLVED FURTHER, that in order to use and obtain the benefits of the Cash Collateral, and in accordance with section 363 of the Bankruptcy Code, each Company will provide certain adequate protection to the Secured Lenders (the "***Adequate Protection Obligations***"), as documented in a proposed interim DIP order substantially in the form presented to the Managing Body of each Company on or in advance of the date hereof, with such changes, additions, and modifications thereto as any Authorized Officer executing the same shall approve, such approval to be conclusively evidenced by an Authorized Officer's execution and delivery thereof (the "***Interim DIP Order***") to be submitted for approval to the Bankruptcy Court;

RESOLVED FURTHER, that the form, terms, and provisions of the Interim DIP Order to which each Company is or will be subject, and the actions and transactions contemplated thereby be, and hereby are, authorized, adopted, ratified and approved, and each Authorized Officer be, and hereby is, authorized and empowered, in the name of and on behalf of each Company, to take such actions and negotiate or cause to be prepared and negotiated and to execute, deliver, perform, and cause the performance of, the Interim DIP Order, and such other agreements, certificates, instruments, receipts, petitions, motions, or other papers or documents to which such Company is or will be a party, including, but not limited to, any security and pledge agreement or guaranty agreement (collectively with the Interim DIP Order, the "***DIP Documents***"), incur and pay or cause to be paid all fees and expenses and engage such persons, in each case, in the form or substantially in the form thereof presented to the Managing Body of each Company on or in advance of the date hereof, with such changes, additions, and modifications thereto as any Authorized Officer executing the same shall approve, such approval to be conclusively evidenced by an Authorized Officer's execution and delivery thereof;

RESOLVED FURTHER, that each Company, as debtor and debtor-in-possession under the Bankruptcy Code be, and hereby is, authorized to negotiate and incur the Adequate Protection Obligations, grant liens, make periodic payments, and to undertake any and all related transactions on substantially the same terms as contemplated under the DIP Documents (collectively, the "***Adequate Protection Transactions***");

RESOLVED FURTHER, that each of the Authorized Officers be, and hereby is, authorized and directed, and empowered in the name of, and on behalf of, each Company, as debtor and debtor-in-possession, to take such actions as in his or her reasonable discretion is determined to be necessary, desirable, or appropriate and execute the Adequate Protection Transactions, including delivery of (a) the DIP Documents and such agreements, certificates, instruments, guaranties, notices, and any and all other documents, including, without limitation, any amendments to any DIP Documents (collectively, the "***Adequate Protection Documents***"); (b) such other instruments, certificates, notices, assignments, and documents as may be reasonably requested by the DIP Agent; and (c) such forms of deposit, account control agreements, officer's certificates, and compliance certificates as may be required by the DIP Documents or any other Adequate Protection Document;

RESOLVED FURTHER, that each of the Authorized Officers be, and hereby is, authorized, directed, and empowered in the name of, and on behalf of, each Company to file or to authorize the DIP Agent to file any Uniform Commercial Code (the "***UCC***") financing statements, any other equivalent filings, any intellectual property filings and recordations and any necessary assignments for security or other documents in the name of each Company that the DIP Agent deems necessary or appropriate to perfect any lien or security interest granted under the Interim DIP Order, including any such UCC financing statement containing a generic description of collateral, such as "all assets," "all property now or hereafter acquired" and other similar descriptions of like import, and to execute and deliver, and to record or authorize the recording of, such mortgages and deeds of trust in respect of real property of each Company and such other filings in respect of intellectual and other property of each Company, in each case, as the DIP Agent may reasonably request to perfect the security interests of the DIP Agent under the Interim DIP Order; and

RESOLVED FURTHER, that each of the Authorized Officers be, and hereby is, authorized, directed, and empowered in the name of, and on behalf of, each Company to take all such further actions, including, without limitation, to pay or approve the payment of adequate protection, appropriate fees and expenses payable in connection with the Adequate Protection Transactions and appropriate fees and expenses incurred by or on behalf of such Company in connection with the foregoing resolutions, in accordance with the terms of the Adequate Protection Documents, which shall in his or her sole judgement be necessary, proper, or advisable to perform any of such Company's obligations under or in connection with the Interim DIP Order or any of the other Adequate Protection Documents and the transactions contemplated therein and to carry out fully the intent of the foregoing resolutions.

General

RESOLVED FURTHER, that each Authorized Officer be, and hereby is, authorized and empowered on behalf of, and in the name of, each Company to (i) take or cause to be taken any and all such further actions and to prepare, execute and deliver or cause to be prepared, executed and delivered and, where necessary or appropriate, file or cause to be filed with the appropriate governmental authorities, all such necessary or appropriate instruments and documents, (ii) incur and pay or cause to be paid all fees and expenses associated with or arising out of the actions authorized herein, and (iii) engage such persons as any Authorized Officer shall in their sole discretion deem necessary or desirable to carry out fully the intent and purposes of the foregoing resolutions and each of the transactions contemplated thereby, such determination to be conclusively established by the taking or causing of any such further action;

RESOLVED FURTHER, that all lawful actions of any kind taken prior to the date hereof by the Authorized Officers, or any person or persons designated or authorized to act by an Authorized Officer, which acts would have been authorized by the foregoing resolutions, except that such acts were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted as acts of the Company;

RESOLVED FURTHER**,** that the signature of any Authorized Officer on any document, instrument, certificate, agreement or other writing shall constitute conclusive evidence that such officer deemed such act or thing to be necessary, advisable or appropriate; and

RESOLVED FURTHER, that any Authorized Officer be, and hereby is, authorized and empowered to certify and to furnish such copies of these resolutions as may be necessary and such statements of incumbency of the corporate officers of each Company as may be requested.

* * * * * * * * *

Schedule I

Companies

Company	Jurisdiction	Managing Body
Hospital Acquisition Intermediate Sub LLC ("***Intermediate Sub***")	Delaware	**Sole Member**: Hospital Acquisition LLC
LifeCare Holdings LLC ("***Parent***")	Delaware	**Sole Member**: Intermediate Sub
LifeCare Behavioral Health Hospital of Pittsburgh LLC	Delaware	**Sole Member**: Parent
New LifeCare Hospitals LLC	Delaware	**Sole Member**: Parent
New LifeCare Hospitals of Dayton LLC	Delaware	**Sole Member**: Parent
New LifeCare Hospitals of Milwaukee LLC	Delaware	**Sole Member**: Parent
New LifeCare Hospitals of South Texas LLC	Delaware	**Sole Member**: Parent
Hospital Acquisition Sub II LLC	Delaware	**Sole Member**: Parent
New LifeCare Management Services LLC	Delaware	**Sole Member**: Parent
New LifeCare REIT 1 LLC	Delaware	**Sole Member**: Parent
New LifeCare Hospitals of Mechanicsburg LLC	Delaware	**Sole Member**: Parent
New Pittsburgh Specialty Hospital LLC	Delaware	**Sole Member**: Parent
LifeCare Vascular Services, LLC	Delaware	**Sole Member**: Parent
New LifeCare Hospitals of North Texas LLC	Delaware	**Sole Member**: Parent
New LifeCare Hospitals of Chester County LLC	Delaware	**Sole Member**: Parent
New LifeCare Hospitals of Northern Nevada LLC	Delaware	**Sole Member**: Parent
New San Antonio Specialty Hospital LLC	Delaware	**Sole Member**: Parent

New LifeCare Hospitals of North Carolina LLC	Delaware	**Sole Member**: Parent
New LifeCare Hospitals of Pittsburgh LLC	Delaware	**Sole Member**: Parent
New Nextcare Specialty Hospital of Denver LLC	Delaware	**Sole Member**: Parent
Hospital Acquisition MI LLC	Delaware	**Sole Member**: Parent
LifeCare Pharmacy Services LLC	Delaware	**Sole Member**: Parent
New LifeCare REIT 2 LLC	Delaware	**Sole Member**: Parent
New LifeCare Hospitals at Tenaya LLC	Delaware	**Sole Member**: Parent
New LifeCare Hospitals of Sarasota LLC	Delaware	**Sole Member**: Parent

Fill in this information to identify the case:
Debtor name: Hospital Acquisition LLC, et al.
United States Bankruptcy Court for the: District of Delaware
Case number (if known): _____

□ Check if this is an amended filing

Official Form 204

Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders

12/15

A list of creditors holding the 30 largest unsecured claims must be filed in a Chapter 11 or Chapter 9 case. Include claims which the debtor disputes. Do not include claims by any person or entity who is an insider, as defined in 11 U.S.C. § 101(31). Also, do not include claims by secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 30 largest unsecured claims.

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
1	CANTU CONSTRUCTION GREGORY TURLEY, ESQ. LAW OFFICE OF GREGORY TURLEY 504 E. DOVE AVE, SUITE B MCALLEN, TX 78504	CANTU CONSTRUCTION GREGORY TURLEY, ESQ. PHONE: 956-682-2600 FAX: EMAIL:	LITIGATION	C/U/D			UNLIQUIDATED
2	WELLTOWER INC KATHERINE BEHR ATTN ACCOUNTING 4500 DORR ST TOLEDO, OH 43615-4040	WELLTOWER INC KATHERINE BEHR PHONE: FAX: EMAIL: NHAM@WELLTOWER.COM	TRADE				$1,917,324.96
3	DOC - LIFECARE JOHN T. THOMAS, PRESIDENT AND CHIEF EXECUTIVE OFFICER 309 N. WATER ST STE 500 MILWAUKEE, WI 53202	DOC - LIFECARE JOHN T. THOMAS, PRESIDENT AND CHIEF EXECUTIVE OFFICER PHONE: FAX: EMAIL: JTT@DOCREIT.COM	TRADE				$753,205.68
4	WILLIS-KNIGHTON MEDICAL CENTER JAMES K. ELROD, PRESIDENT AND CHIEF EXECUTIVE OFFICER 2751 ALBERT L BICKNELL DR SHREVEPORT, LA 71130	WILLIS-KNIGHTON MEDICAL CENTER JAMES K. ELROD, PRESIDENT AND CHIEF EXECUTIVE OFFICER PHONE: FAX: EMAIL: MWARD@WKHS.COM	TRADE				$644,224.53
5	MEDASSETS INC JULIANNE BROOKS 100 NORTH POINT CENTER SUITE 200 ATLANTA, GA 30022	MEDASSETS INC JULIANNE BROOKS PHONE: 678-323-2500 FAX: EMAIL: CRYSTAL.AUSTIN@VIZIENT.COM	TRADE				$603,661.32
6	LOWELL17 LLC BOB SCHENDL C/O THE PROPERTY MANAGEMENT GROUP LLC 1601 LOWELL BLVD DENVER, CO 80204	LOWELL17 LLC BOB SCHENDL PHONE: FAX: EMAIL: BOB@LOWELL17.COM	TRADE				$558,450.44
7	KETTERING HEALTH NETWORK FRED M. MANCHUR, CEO 3535 SOUTHERN BOULEVARD KETTERING, OH 45429	KETTERING HEALTH NETWORK FRED M. MANCHUR, CEO PHONE: 937-395-3963 FAX: 937-395-8327 EMAIL: MIKE.RABUKA@KETTERINGHEALTH.ORG	TRADE				$528,759.90
8	ARAMARK HEALTHCARE TECHNOLOGIES JEFF BURNS ATTN: ARAMARK CTS 12483 COLLECTIONS CENTER DR CHICAGO, IL 60693	ARAMARK HEALTHCARE TECHNOLOGIES JEFF BURNS PHONE: FAX: EMAIL: FERRER-ALDO@ARAMARK.COM	TRADE				$474,931.08
9	BEACH CONSTRUCTION INC. PRESIDENT 1271 RECORD CROSSING ROAD DALLAS, TX 75235	BEACH CONSTRUCTION INC. PRESIDENT PHONE: FAX: EMAIL: MICHELLE@BCCOMMERCIALTX.COM	TRADE				$414,317.52
10	RENOWN SOUTH MEADOWS MEDICAL CENTER ATTN: GENERAL COUNSEL 1155 MILL STREET, Z-4 RENO, NV 89521	RENOWN SOUTH MEADOWS MEDICAL CENTER ATTN: GENERAL COUNSEL PHONE: FAX: EMAIL: NFLEMING@RENOWN.ORG	TRADE				$358,016.33
11	OWENS & MINOR EDWARD A. PESICKA, PRESIDENT 9120 LOCKWOOD BOULEVARD MECHANICSVILLE, VA 23116	OWENS & MINOR EDWARD A. PESICKA, PRESIDENT PHONE: FAX: EMAIL: MICHELLE.THOMAS@OWENS-MINOR.COM	TRADE				$332,354.19
12	MPT OF DALLAS LTACH LP DRAYTON GREEN 1000 URBAN CTR DRIVE STE 501 BIRMINGHAM, AL 35242	MPT OF DALLAS LTACH LP DRAYTON GREEN PHONE: FAX: EMAIL: SHEALD@MEDICALPROPERTIESTRUST.COM	TRADE				$311,251.00
13	NEW SOURCE MEDICAL CHAD FISCHESSER 9913 SHELBYVILLE RD STE203 LOUISVILLE, KY 40223	NEW SOURCE MEDICAL CHAD FISCHESSER PHONE: FAX: EMAIL: KEVIN@NEWSOURCEMED.COM	TRADE				$310,871.91
14	FROEDERT HEALTH CATHERINE JACOBSON, PRESIDENT AND CEO 9200 W. WISCONSIN AVE. MILWAUKEE, WI 53226	FROEDERT HEALTH CATHERINE JACOBSON, PRESIDENT AND CEO PHONE: FAX: EMAIL: DARCY.ALATALO@FROEDTERT.COM	TRADE				$304,833.34

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
15	WEST PENN ALLEGHENY HEALTH MARK RIPPOLE ALLEGHENY SPECIALTY PRACTICE NETWORK TWO ALLEGHENY CENTER 6TH FLOOR PITTSBURGH, PA 15212	WEST PENN ALLEGHENY HEALTH MARK RIPPOLE PHONE: FAX: EMAIL: JEFFREY.CRUDELE@AHN.ORG	TRADE				$277,496.98
16	SENTRY INSURANCE ATTN: ERICKA SCHAEFER 1800 NORTH POINT DRIVE STEVENS POINT, WI 54481	SENTRY INSURANCE ATTN: ERICKA SCHAEFER PHONE: FAX: EMAIL: NATACCTSPREMIUMSERVICES@SENTRY.COM	TRADE				$266,743.69
17	NASH COMMUNITY HEALTH SERVICES INC JOAN T CALHOUN 2460 CURTIS ELLIS DR ROCKY MOUNT, NC 27804	NASH COMMUNITY HEALTH SERVICES INC JOAN T CALHOUN PHONE: FAX: EMAIL: SHAWN.HARTLEY@UNCHEALTH.UNC.EDU	TRADE				$248,091.89
18	CARDINAL HEALTH MIKE KAUFMAN, CHIEF EXECUTIVE OFFICER 7000 CARDINAL PL. DUBLIN, OH 43017	CARDINAL HEALTH 7000 CARDINAL PL. PHONE: FAX: EMAIL: AILEEN.LAWAS@CARDINALHEALTH.COM	TRADE				$237,543.57
19	MMODAL SERVICES LTD MICHAEL FINKE, PRESIDENT 5000 MERIDIAN BOULEVARD SUITE 200 FRANKLIN, TN 37067	MMODAL SERVICES LTD MICHAEL FINKE, PRESIDENT PHONE: FAX: 866-796-5127 EMAIL: TONIA.PHILLIPS@MMODAL.COM; MICHAEL.FINKE@MMODAL.COM	TRADE				$233,142.56
20	CAREFUSION SOLUTIONS CAROL WHITE 25082 NETWORK PLACE CHICAGO, IL 60673-1250	CAREFUSION SOLUTIONS CAROL WHITE PHONE: FAX: EMAIL: HARSHENDRA.SINGH@BD.COM	TRADE				$228,907.50
21	JONES LANG LASALLE INC (JLL) AMPHA CARDENAS 200 EAST RANDOLPH DRIVE STE 4300 CHICAGO, IL 60601	JONES LANG LASALLE INC (JLL) AMPHA CARDENAS PHONE: FAX: EMAIL: EDWARD.RICARD@AM.JLL.COM	TRADE				$226,146.47
22	NORTHERN NEVADA MEDICAL CENTER JENNIFER FLORIO NORTHERN NEVADA HOSPITAL FILE 50689 LOS ANGELES, CA 90074	NORTHERN NEVADA MEDICAL CENTER JENNIFER FLORIO PHONE: FAX: EMAIL: HYAN.HEIT@UHSINC.COM	TRADE				$213,509.21
23	HILL-ROM JOHN P. GROETELAARS, PRESIDENT AND CHIEF EXECUTIVE OFFICER 130 E. RANDOLPH STREET SUITE 1000 CHICAGO, IL 60601	HILL-ROM JOHN P. GROETELAARS, PRESIDENT AND CHIEF EXECUTIVE OFFICER PHONE: 312-819-7200 FAX: EMAIL: AR.ACHPNC@HILL-ROM.COM	TRADE				$212,495.18
24	NTT DATA SERVICES LLC PETER MACK, CORPORATE COUNSEL 2300 W. PLANO PKWY PLANO, TX 75075-8427	NTT DATA SERVICES LLC PETER MACK, CORPORATE COUNSEL PHONE: 972-624-7902 FAX: EMAIL: ABHIMANYU.CHAUHAN@NTTDATA.COM	TRADE				$201,981.11
25	UNC HEALTHCARE SHAWN HARTLEY, SENIOR VICE PRESIDENT, CHIEF FINANCIAL OFFICER 2460 CURTIS ELLIS DR ROCKY MOUNT, NC 27804	UNC HEALTHCARE SHAWN HARTLEY, SENIOR VICE PRESIDENT, CHIEF FINANCIAL OFFICER PHONE: FAX: EMAIL: SHAWN.HARTLEY@UNCHEALTH.UNC.EDU	TRADE				$196,418.41
26	HEALOGICS WOUND CARE & HYPERBARICS SERVICES LISA WILSON 28525 NETWORK CHICAGO, IL 60673-1285	HEALOGICS WOUND CARE & HYPERBARICS SERVICES LISA WILSON PHONE: FAX: EMAIL: AR@HEALOGICS.COM	TRADE				$182,505.17
27	TURNER WINDHAM LLC WILLIAM C. WINDHAM JR, MEMBER 820 GARRETT DR BOSSIER CITY, LA 71111-2500	TURNER WINDHAM LLC WILLIAM C. WINDHAM JR, MEMBER PHONE: FAX: EMAIL: WCW@TURNERWINDHAM.COM	TRADE				$171,650.00
28	WHETSTONE LEGACY CAMPUS JOSHUA COOK 5340 LEGACY DR. SUITE 125 PLANO, TX 75024	WHETSTONE LEGACY CAMPUS JOSHUA COOK PHONE: FAX: (972)473-2555 EMAIL: LAUREN.MCCALLON@AM.JII.COM; JOSH.COOK@AM.JLL.COM	TRADE				$157,491.68
29	AHA RICHARD J. POLLACK, PRESIDENT AND CHIEF EXECUTIVE OFFICER PO BOX 92247 CHICAGO, IL 60675-2247	AHA RICHARD J. POLLACK, PRESIDENT AND CHIEF EXECUTIVE OFFICER PHONE: 202626-2363 FAX: EMAIL: MEMBREL@AHA.ORG; RICK@AHA.ORG	TRADE				$156,977.00
30	BAXTER HEALTHCARE CORP. JOSE E. ALMEIDA, CHIEF EXECUTIVE OFFICER PO BOX 70564 CHICAGO, IL 60673-0564	BAXTER HEALTHCARE CORP. JOSE E. ALMEIDA, CHIEF EXECUTIVE OFFICER PHONE: FAX: 224-948-4498 EMAIL: NEIL.KOZEROWITZ@BAXTER.COM	TRADE				$155,440.03

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
Hospital Acquisition LLC, *et al.*[1]	)	Case No. 19-_____ ( )
Debtors.	)	Joint Administration Requested

CONSOLIDATED CORPORATE OWNERSHIP STATEMENT AND LIST OF EQUITY INTEREST HOLDERS PURSUANT TO BANKRUPTCY RULES 1007(a)(1) 1007((a)(3), AND 7007.1

Pursuant to Rules 1007(a)(1), 1007(a)(3), and 7007.1 of the Federal Rules of Bankruptcy Procedure, the above-captioned debtors and debtors in possession (each, a "***Debtor***") hereby state as follows:

1. A list of Debtor Hospital Acquisition LLC's equity interest holders, their addresses, and the nature of their equity interests is attached hereto as Exhibit A.

2. Hospital Acquisition LLC whose address is 5340 Legacy Drive, Suite 150, Plano, TX 75024, is the sole member of Debtor Hospital Acquisition Intermediate Sub LLC.

3. Hospital Acquisition Intermediate Sub LLC, whose address is 5340 Legacy Drive, Suite 150, Plano, TX 75024, is the sole member of Debtor LifeCare Holdings LLC (formerly known as Hospital Acquisition Sub I LLC).

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Hospital Acquisition LLC (3232); Hospital Acquisition Intermediate Sub LLC (9609); LifeCare Holdings LLC (f/k/a Hospital Acquisition Sub I LLC) (6612); LifeCare Behavioral Health Hospital of Pittsburgh LLC (9835); New LifeCare Hospitals LLC (7959); New LifeCare Hospitals of Dayton LLC (2592); New LifeCare Hospitals of Milwaukee LLC (2428); New LifeCare Hospitals of South Texas LLC (4237); Hospital Acquisition Sub II LLC (7920); New LifeCare Management Services LLC (4310); New LifeCare REIT 1 LLC (9849); New LifeCare Hospitals of Mechanicsburg LLC (0174); New Pittsburgh Specialty Hospital LLC (7592); LifeCare Vascular Services, LLC (5864); New LifeCare Hospitals of North Texas LLC (4279); New LifeCare Hospitals of Chester County LLC (1116); New LifeCare Hospitals of Northern Nevada LLC (4534); New San Antonio Specialty Hospital LLC (2614); New LifeCare Hospitals of North Carolina LLC (7257); New LifeCare Hospitals of Pittsburgh LLC (8759); New NextCare Specialty Hospital of Denver LLC (6416); Hospital Acquisition MI LLC (4982); LifeCare Pharmacy Services LLC (3733); New LifeCare REIT 2 LLC (1315); New LifeCare Hospitals at Tenaya LLC (6891); and New LifeCare Hospitals of Sarasota LLC (8094). The Debtors' address is 5340 Legacy Drive, Suite 150, Plano, Texas 75024.

4. LifeCare Holdings LLC (formerly known as Hospital Acquisition Sub I LLC), whose address is 5340 Legacy Drive, Suite 150, Plano, TX 75024, is the sole member of:

a) LifeCare Behavioral Health Hospital of Pittsburgh LLC;

b) New LifeCare Hospitals LLC;

c) New LifeCare Hospitals of Dayton LLC;

d) New LifeCare Hospitals of Milwaukee LLC;

e) New LifeCare Hospitals of South Texas LLC;

f) Hospital Acquisition Sub II LLC;

g) New LifeCare Management Services LLC;

h) New LifeCare REIT 1 LLC;

i) New LifeCare Hospitals of Mechanicsburg LLC;

j) New Pittsburgh Speciality Hospital LLC;

k) LifeCare Vascular Services, LLC;

l) New LifeCare Hospitals of North Texas LLC;

m) New LifeCare Hospitals of Chester County LLC;

n) New LifeCare Hospitals of Northern Nevada LLC;

o) New San Antonio Specialty Hospital LLC;

p) New LifeCare Hospitals of North Carolina LLC;

q) New LifeCare Hospitals of Pittsburgh LLC;

r) New NextCare Specialty Hospital of Denver LLC;

s) Hospital Acquisition MI LLC;

t) LifeCare Pharmacy Services LLC;

u) New LifeCare REIT 2 LLC;

v) New LifeCare Hospitals at Tenaya LLC; and

w) New LifeCare Hospitals of Sarasota LLC.

EXHIBIT A

Name	Address	Shares of Common Stock	Common Share Percentage
Monarch Master Funding Ltd	535 Madison Avenue, 26th Floor New York, NY 10022	344,532	34.45%
Twin Haven Special Opportunities Fund IV, L.P.	33 Riverside Avenue, 3rd Floor Westport, CT 06880	162,251	16.23%
Blue Mountain Credit Alternatives Master Fund LP	280 Park Avenue, 5th Floor East New York, NY 10017	116,872	11.69%
Merrill Lynch, Pierce, Fenner & Smith Incorporated	214 North Tyron Street NC1-027-15-01 Charlotte, NC 28255	99,218	9.92%
BlueMountain Montenvers Master Fund SCA SICAV-SIV	280 Park Avenue, 5th Floor East New York, NY 10017	61,922	6.19%
BlueMountain Summit Trading, L.P.	280 Park Avenue, 5th Floor East New York, NY 10017	55,663	5.57%
BlueMountain Timberline Ltd.	280 Park Avenue, 5th Floor East New York, NY 10017	51,578	5.16%
BlueMountain Guadalupe Peak Fund L.P.	280 Park Avenue, 5th Floor East New York, NY 10017	31,616	3.16%
BlueMountain Foinaven Master Fund L.P.	280 Park Avenue, 5th Floor East New York, NY 10017	22,537	2.25%
BlueMountain Kicking Horse Fund L.P.	280 Park Avenue, 5th Floor East New York, NY 10017	14,618	1.46%
BlueMountain Distressed Master Fund L.P.	280 Park Avenue, 5th Floor East New York, NY 10017	14,421	1.44%
BlueMountain Logan Opportunities Master Fund L.P.	280 Park Avenue, 5th Floor East New York, NY 10017	12,736	1.27%
Oakstone Ventures, Inc.	1680 Capital One Drive McLean, VA 22102	12,036	1.20%
Total		**1,000,000**	**100.00%**[1]

[1] Rounded Common Share Percentages may not total 100%.

Fill in this information to identify the case:

Debtor name **Hospital Acquisition LLC**

United States Bankruptcy Court for the: DISTRICT OF DELAWARE

Case number (if known) _____

☐ Check if this is an amended filing

Official Form 202

Declaration Under Penalty of Perjury for Non-Individual Debtors

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Declaration and signature

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- ☐ *Schedule A/B: Assets–Real and Personal Property* (Official Form 206A/B)
- ☐ *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 206D)
- ☐ *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 206E/F)
- ☐ *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G)
- ☐ *Schedule H: Codebtors* (Official Form 206H)
- ☐ *Summary of Assets and Liabilities for Non-Individuals* (Official Form 206Sum)
- ☐ Amended *Schedule* _____
- ☒ *Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders* (Official Form 204)
- ☒ Other document that requires a declaration **Corporate Ownership Statement and List of Equity Security Holders**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on **05/06/2019**

X **/s/ James Murray**
Signature of individual signing on behalf of debtor

James Murray
Printed name

Chief Executive Officer and Manager
Position or relationship to debtor