

**UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF LOUISIANA**

FEDERAL TRADE COMMISSION

Plaintiff,

v.

LOUISIANA CHILDREN'S  
MEDICAL CENTER

and

HCA HEALTHCARE, INC.

Defendants.

CIVIL ACTION

NO. 2:23-cv-01890-CJB-MBN

**THE STATE OF LOUISIANA'S MOTION TO INTERVENE**

The State of Louisiana (the "State"), by and through Attorney General Jeff Landry, moves to intervene in this action pursuant to Federal Rule of Civil Procedure 24. The Court should grant the State's motion to intervene because it satisfies the requirements for intervention as of right and the requirements for permissive intervention under Federal Rule of Civil Procedure 24.

**BACKGROUND**

The Federal Trade Commission ("FTC") has instituted this action for the purpose of enforcing certain federal antitrust laws, particularly provisions of the Clayton Antitrust Act enacted in the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Antitrust Act"), against Louisiana Children's Medical Center ("LCMC") and HCA Healthcare, Inc. ("HCA"), two entities that availed themselves of Louisiana's Certificate of Public Advantage ("COPA") laws, La. R.S. 40:2254.1 *et seq.*,

to accomplish a transfer of assets. As the FTC itself has consistently acknowledged for well over a decade, however, federal antitrust laws are inapplicable to transactions accomplished in conformity with a state's COPA laws as a result of the "state action immunity" doctrine announced by the United States Supreme Court in *Parker v. Brown*, 317 U.S. 341 (1943). As the FTC's action seeks to undermine clearly articulated policies adopted by the State to protect the health and welfare of its citizens, the pre-requisites for intervention stated in Rule 24 of the Federal Rules of Civil Procedure are satisfied.

Louisiana has, to the benefit of its citizens, chosen to regulate the issuance of a Certificate of Public Advantage ("COPA") in accordance with and in furtherance of the clearly articulated state interests set forth at La. R.S. 40:2254.1. The FTC filed this lawsuit – in the District of Columbia – more than one hundred days after the Louisiana Attorney General issued a COPA authorizing LCMC to acquire Tulane University Medical Center, Lakeview Regional Medical Center, and Tulane Lakeside Hospital from HCA—a for-profit provider network that previously operated the three hospitals through a joint venture with Louisiana's Tulane University ("Tulane").

Prior to issuance of the COPA, the Louisiana Department of Justice ("LADOJ") conducted a lengthy review of the proposed COPA application. Despite this comprehensive review, which included notice to the public that an application had been submitted and was being considered by the Louisiana Attorney General's office, an invitation for members of the public to comment on the proposed transaction, and a public hearing where any interested party could state their views, the FTC never contacted the LADOJ or Louisiana's Attorney General to express any concern or

issues with either this proposed COPA, or Louisiana's COPA laws in general. To this date, the FTC has still never reached out to the LADOJ or Louisiana Attorney General to express such concerns.

Even so, the FTC now demands that the acquisition overseen and approved by the State must be halted and subjected to the FTC's own review under the HSR Antitrust Act so that it may determine what is in the best interest of Louisiana's citizens. The FTC's complete disregard toward the State and its policies, accompanied by its abject failure to make any effort to communicate on the issues raised in its lawsuit, constitutes a blatant attack on the Louisiana's COPA laws and the State's sovereignty itself.

Under the state action immunity doctrine, LCMC and HCA are not subject to the Clayton Antitrust Act, including the amendments accomplished via the HSR Antitrust Act. The state action immunity doctrine, grounded in the sovereign rights of the states, exempts "from the federal antitrust laws" private parties who are "carrying out the State's regulatory program." *FTC v. Phoebe Putney Health Sys., Inc.*, 568 U.S. 216, 224-25 (2013). The FTC's suit is fatally flawed inasmuch as private conduct—including transactions like the acquisition at issue here—is exempted from enforcement of "the federal antitrust laws" when it is undertaken pursuant to a clearly articulated and affirmatively expressed state policy and is actively supervised by a state actor. *Id.*

## ARGUMENT

Federal Rule of Civil Procedure 24(a) requires a federal court to permit intervention of a non-party who “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24(a)(2). Rule 24(b) permits a federal court to allow intervention by non-parties that have “a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). “Rule 24 is to be liberally construed” in favor of intervention. *Brumfield v. Dodd*, 749 F.3d 339, 341 (5th Cir. 2014); accord *Wal-Mart Stores, Inc. v. Tex. Alcoholic Beverage Comm’n*, 834 F.3d 562, 565 (5th Cir. 2016). “The inquiry is a flexible one, and a practical analysis of the facts and circumstances of each case is appropriate.” *Brumfield*, 749 F.3d at 341 (internal quotation marks omitted). “Intervention should generally be allowed where no one would be hurt and greater justice could be attained.” *Ross v. Marshall*, 426 F.3d 745, 753 (5th Cir. 2005).

### **I. LOUISIANA SATISFIES THE REQUIREMENTS FOR INTERVENTION AS OF RIGHT.**

Under Rule 24, “[a] party seeking to intervene as of right must satisfy four requirements: (1) The application must be timely; (2) the applicant must have an interest relating to the property or transaction that is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede its ability to protect its interest; and (4) the applicant’s interest must be inadequately represented by the existing parties to the suit.”

*Brumfield*, 749 F.3d at 341 (citation omitted). The State satisfies each of these elements.

**A. The State’s Application Is Timely.**

This motion to intervene is timely. While the FTC filed its Complaint on April 20, 2023, it did so in the United States District Court for the District of Columbia the day *after* LCMC and HCA filed their own declaratory judgment actions in *this* Court.<sup>1</sup> After LCMC’s and HCA’s cases were consolidated, the State was allowed to intervene and currently remains a party to those proceedings.<sup>2</sup> The D.C. District Court in which the FTC chose to file this action later granted a motion to transfer the case to this Court, which was very recently accomplished on June 5, 2023.<sup>3</sup>

As a result of the transfer, responsive pleadings have not yet been filed, and no substantive rulings on the merits of the case have yet occurred. As a result, “timeliness is not at issue.” *Brumfield*, 749 F.3d at 342; *see also Edwards v. City of Houston*, 78 F.3d 983, 1000 (5th Cir. 1996) (finding that delays of “only 37 and 47 days . . . are not unreasonable”); *Ross*, 426 F.3d at 755 (permitting post-judgment intervention); *United States v. Virginia*, 282 F.R.D. 403, 405 (E.D. Va. 2012) (“[w]here a case has not progressed beyond the initial pleading stage, a motion to intervene is timely.”); *Mullins v. De Soto Securities Co.*, 3 F.R.D. 432, 433 (W.D. La. 1944) (finding motion to intervene timely during the initial pleading stage).

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<sup>1</sup> See Case Nos. 2:23-cv-1311-LMA-MBN *consolidated with* Case No. 2:23-cv-01311-LMA-MBN (E.D. La.), filed April 19, 2023.

<sup>2</sup> [Doc. 46], Case No. 23-1305 c/w 23-1311 (E.D. La.).

<sup>3</sup> See Case No. 1:23-cv-01103-ABJ (D.D.C.).

**B. The State Has the Requisite Interest in the Subject of this Case.**

The State “has a ‘direct, substantial, legally protectable interest in the proceedings.’” *See Edwards*, 78 F.3d at 1004 (quoting *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 463 (5th Cir. 1984)). “A ‘legally protectable’ right” for intervention purposes “is not identical to a ‘legally enforceable’ right, such that ‘an interest is sufficient if it is of the type that the law deems worthy of protection, even if the intervenor . . . would not have standing to pursue her own claim.’” *DeOtte v. Nevada*, 20 F.4th 1055, 1068 (5th Cir. 2021) (citations omitted); *accord Wal-Mart Stores*, 834 F.3d at 566. Rather, “[a] movant found to be a ‘real party in interest’ generally establishes sufficient interest.” *League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 884 F.2d 185, 187 (5th Cir. 1989) (“LULAC, Council No. 4434”). “[A] ‘real party in interest’ may be ascertained by determining whether that party caused the injury and, if so, whether it has the power to comply with a remedial order of the court.” *Id.* at 187.

Notably, in granting the motion to transfer this case to the Eastern District of Louisiana, Judge Amy Berman Jackson of the USDC for the District of Columbia stated:

There is a significant local interest in the state hospital merger approval process in Louisiana and how it bears on the enforcement of the antitrust laws with respect to hospitals in that state. Indeed, the Louisiana Attorney General has intervened as a party in the Louisiana actions. Interpretation of the COPA statute will affect not only respondent hospitals in this case, but also other entities in Louisiana and may indeed trigger action by the state’s legislature and regulatory bodies, depending on the outcome.

[Doc. 31].

Louisiana regulates the issuance of a COPA in accordance with and in furtherance of the articulated state interest set forth at La. R.S. 40:2254.1. Louisiana's goal in authorizing COPAs is to control health care costs and improve the quality of and access to health care, which the State acknowledges will be significantly enhanced in some cases by cooperative agreements and by mergers and consolidations among health care facilities. La. R.S. 40:2254.1.

The State, through Attorney General Jeff Landry and the Louisiana Department of Justice ("LADOJ"), has direct supervision and control over the implementation of cooperative agreements, mergers, joint ventures, and consolidations among healthcare facilities for which a COPA is granted. La. R.S. 40:2254.1, *et seq.* The process for approving a COPA requires voluminous submissions by applicants, consultation with experts, notice to the public, input from a wide range of stakeholders, a public hearing, and consideration by State officials. Only applications that clearly benefit the public are approved.

On December 28, 2022, the State issued a COPA approving the transaction at issue in this suit. The State determined that LCMC and HCA exceeded the statutory burden of proof required to issue a COPA. The merger will enhance competition, lead to greater access to health care, result in higher quality health care, and will likely not result in undue increases to costs. The agreement guarantees ongoing oversight by the State to ensure fair prices for consumers. What's more: it will provide a world-class medical education program for both medical students and nursing students, at a time when the State and the nation are faced with a nursing shortage.

The State intended for LADOJ's supervision and control over the COPA to have the effect of granting the parties to the agreements, mergers, joint ventures, or consolidations state action immunity for actions that might otherwise be considered to be in violation of state antitrust laws, *federal antitrust laws*, or both. La. R.S. 40:2254.1. As a result, the State undeniably has sufficient interests at stake in this litigation to warrant intervention.

**C. The Disposition of this Case May Substantially Impair or Impede the State's Interests.**

Without intervention, the disposition of this case will impair the State of Louisiana's ability to protect its interests, and will also impair and impede the Louisiana Attorney General's ability to carry out his constitutional duty to defend and uphold the State's laws.

Louisiana Revised Statute 40:2254.4 authorizes issuance of a COPA if the Louisiana Department of Justice "finds that an agreement is likely to result in lower health care costs or is likely to result in improved access to health care or higher quality health care without any undue increase in health care costs." Louisiana's COPA statute requires active supervision by the LADOJ, oversight which does not cease upon approval of a COPA, but requires regular post-approval reporting and a detailed review of the effects of the transaction, including the actual effects on prices. Pursuant to the terms of the COPA, LCMC has already satisfied the first reporting deadline imposed by the State. However, the FTC wants to halt the transaction and impede the ability for LCMC to make progress relative to the transaction approved



in the COPA. This interferes with the States' ability to provide active state supervision, and it is an infringement of the State's rights.

The Supreme Court has made clear that where private parties are actively supervised in carrying out a clearly articulated anticompetitive policy of the State, they are treated as the State for purposes of state action immunity. *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621, 635 (1992) (the private anticompetitive conduct is the "State's own"). For the doctrine to apply, the State must have clearly articulated and affirmatively expressed as state policy the alleged restraint on competition, and must actively supervise the anticompetitive act. Here, Louisiana's COPA statute and the COPA addressing acquisition at issue in the FTC's suit does just that. *See* La. R.S. 40:2254.1 *et seq.* This state action immunity doctrine is firmly grounded in constitutional principles of federalism, and is in accordance with the "dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority." *Parker v. Brown*, 317 U.S.341 at 351 (1943).

Despite the State's issuance of a COPA, which was expressly intended to grant (and which does grant) state action immunity from liability under state and federal antitrust laws to approved transactions, the FTC is unlawfully attempting to force LCMC and HCA to not only submit a notification of the proposed acquisition and observe a waiting period pursuant to the HSR Antitrust Act, but also to require these entities to remit payment of a hefty filing fee to the FTC in order to subsidize the

agency's unauthorized scrutiny. The FTC's actions constitute a significant violation of both well-settled federal law and Louisiana's sovereignty.

**D. The State's Interests are Inadequately Represented by the Existing Parties.**

The State's interests are inadequately represented by the existing parties to the suit. The Attorney General has an interest in defending the injuries to the State that would result if the State is prevented from implementing its COPA statutes. If the FTC subjects state-authorized mergers to Section 7A of the Clayton Act, it will impede the ability for *all* states to authorize COPAs and other time-sensitive mergers, even where a state approved the transaction long before the FTC announces any purported objection.

In *Miller v. Vilsack*, the Fifth Circuit recently discussed two presumptions of adequate representation that must be considered when determining if representation by the current parties is, in fact, inadequate. No. 21-11271, 2022 WL 851782 (5th Cir. Mar. 22, 2022) (unpublished). The burden for a proposed intervenor to demonstrate inadequate representation is minimal. *Id.* (citing *Sierra Club v. Espy*, 18 F.3d 1202, 1207 (5th Cir. 1994)). The burden, however, "cannot be treated as so minimal as to write the requirement completely out of the rule." *Id.* The first presumption applies "when the would-be intervenor has the same ultimate objective as a party to the lawsuit." *Id.* The second presumption applies in cases where a party "is presumed to represent the interests of all of its citizens," *Hopwood v. Texas*, 21 F.3d 603, 605 (5th Cir. 1994) (per curiam), such as "when the putative representative is a governmental body or officer charged by law with representing the interests of the

[intervenor].” *Texas*, 805 F.3d at 661 (internal quotation omitted). This presumption is limited, however, to “suits involving matters of sovereign interest.” *Edwards*, 78 F.3d at 1005. Neither presumption applies here.

There is no reason to believe that the State’s sovereign interests will be represented by the existing parties to this litigation. This is not a case where “the would-be intervenor has the same ultimate objective as a party to the lawsuit.” See *Entergy Gulf States Louisiana, L.L.C. v. U.S. E.P.A.*, 817 F.3d 198, 203 (5th Cir. 2016) (citation omitted). The State has unique sovereign interests not shared by LCMC or HCA. Any proposed judgment or federal oversight would have future consequences for the State and any COPAs it approves that may be applied to different entities at some point in the future, issues that necessarily implicate the State’s sovereign interests.

## **II. IN THE ALTERNATIVE, THE STATE SHOULD BE GRANTED PERMISSIVE INTERVENTION.**

The requirements for permissive intervention are also met in this case. Federal Rule of Civil Procedure 24(b)(1) provides that “[o]n timely motion, the court may permit anyone to intervene who: (A) is given a conditional right to intervene by a federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact.” “In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3). Permissive intervention under Rule 24(b) “is wholly discretionary with the [district] court . . . even though there is a common question of law or fact, or the requirements of Rule 24(b) are otherwise

satisfied.” *Kneeland v. Nat’l Collegiate Athletic Ass’n*, 806 F.2d 1285, 1289 (5th Cir. 1987). Intervention is appropriate when: “(1) timely application is made by the intervenor, (2) the intervenor's claim or defense and the main action have a question of law or fact in common, and (3) intervention will not unduly delay or prejudice the adjudication of the rights of the original parties.” See *Frazier v. Wireline Solutions, LLC*, 2010 WL 2352058, at \*4 (S.D. Tex. June 10, 2010) (citation omitted); *In re Enron Corp. Sec., Derivative & “ERISA” Litig.*, 229 F.R.D. 126, 131 (S.D. Tex. 2005).

As discussed above, the intervention is timely; the State’s claims and defenses implicate questions of both law and fact that are also at stake in the main action; and the intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. Moreover, the State’s intervention will facilitate an equitable result. The State can provide a crucial perspective on the important issues raised by the FTC’s Complaint, and is uniquely positioned to address implications that extend beyond the existing parties. These implications could potentially be substantial, and it is therefore essential that all arguments directed to the viability of the particular COPA issued to LCMC and HCA, or Louisiana’s COPA laws in general, are properly considered with input from all who will be impacted by the ultimate resolution. For the reasons stated above, this Court should grant this motion to intervene permissively, if it does not grant intervention as of right.

## CONCLUSION

The Court should grant the State of Louisiana's Motion to Intervene, and Louisiana Attorney General Jeff Landry should be allowed to fulfill his constitutional duty to represent the State's interests.

Dated: June 9, 2023

Respectfully Submitted,

**JEFF LANDRY**  
**LOUISIANA ATTORNEY GENERAL**

*s/ Terrence J. Donahue, Jr.*

Elizabeth B. Murrill (LSBA No. 20685)

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## **CERTIFICATE PURSUANT TO LR 7.6**

I do hereby certify that, on the 7<sup>th</sup> day of June 2023, counsel for the State of Louisiana reached out to counsel for plaintiffs and defendants in this matter and was informed that no party objected to the filing of the State's intervention.

*s/ Terrence J. Donahue, Jr.*

Terrence J. Donahue, Jr.

**CERTIFICATE OF SERVICE**

I do hereby certify that, on this 9<sup>th</sup> day of June 2023, the foregoing Motion to Intervene was electronically filed with the Clerk of Court using the CM/ECF system, which gives notice of filing to all counsel of record.

s/ Terrence J. Donahue, Jr.  
Terrence J. Donahue, Jr.

**UNITED STATES DISTRICT COURT FOR THE  
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FEDERAL TRADE COMMISSION

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**ORDER**

Upon consideration of the State of Louisiana's motion to intervene and the grounds presented therein,

IT IS HEREBY ORDERED that the motion is GRANTED and the State of Louisiana is permitted to participate in the above captioned matter as Intervenor-Defendant.

This \_\_\_\_ day of \_\_\_\_\_ 2023.

\_\_\_\_\_  
United States District Court Judge

**UNITED STATES DISTRICT COURT FOR THE  
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NO. 2:23-cv-01890-CJB-MBN

**LOUISIANA'S ORIGINAL PETITION OF INTERVENTION**

The State of Louisiana, appearing through Attorney General Jeff Landry, respectfully sets forth the factual and legal basis of its right to intervene in these proceedings as Defendant-Intervenor, as follows:

**INTRODUCTION**

1.

The Federal Trade Commission ("FTC") instituted this action to enforce provisions of the Clayton Antitrust Act, particularly those enacted by the Hart-Scott-Rodino Antitrust Improvements Act ("HSR Antitrust Act"). Under the doctrine of state action immunity, federal antitrust laws, including the Clayton Antitrust Act and the amendments made by the HSR Antitrust Act do not apply to transactions undertaken pursuant to a clearly articulated state policy and which are also actively supervised by the state. The FTC's suit is therefore unjustified and contrary to law.



## PARTIES

2.

Defendant-Intervenor, State of Louisiana (“State”), through Attorney General Jeff Landry and the Louisiana Department of Justice (“LADOJ”), has direct supervision and control over the implementation of cooperative agreements, mergers, joint ventures, and consolidations among healthcare facilities for which a Certificate of Public Advantage (“COPA”) is granted. La. R.S. 40:2254.1 *et seq.* Moreover, the Attorney General is the chief legal officer of the State of Louisiana and is charged with the assertion and protection of the rights and interests of the State, its taxpayers and citizens. La. Const. art. IV, § 8. The Attorney General has a sworn duty to uphold the Constitution and laws of this State. The Attorney General also serves as executive head and chief administrative officer of the LADOJ. *Id.*

3.

Plaintiff Federal Trade Commission (“FTC”) is an administrative agency of the United States government, established by the FTC Act, 15, U.S.C. §§ 41-58, with its principal offices at 600 Pennsylvania Avenue, N.W., Washington D.C. 20580.

4.

Defendant Louisiana Children’s Medical Center (“LCMC”) is a non-profit health system operating as an Organized Health Care Arrangement under Louisiana law. It is a non-profit network of health care providers, which operates several hospitals and a number of other locations in Louisiana and Mississippi. Its principal place of business is 1100 Poydras Street, New Orleans, LA.

5.

Defendant HCA Healthcare, Inc. (“HCA”) is a healthcare provider network. Prior to being acquired by Louisiana Children’s Medical Center, Tulane University Medical Center, Lakeview Regional Medical Center, and Tulane Lakeside Hospital were affiliated with HCA. Its principal place of business is Oak Park Plaza, Nashville, TN, 37202.

**CERTIFICATES OF PUBLIC ADVANTAGE**

6.

Louisiana has, to the benefit of its citizens, chosen to regulate the issuance of Certificates of Public Advantage (“COPAs”) in accordance with and in furtherance of the clearly articulated state interests set forth in La. R.S. 40:2254.1.

7.

Louisiana’s goal in authorizing COPAs is to control health care costs and improve the quality of and access to health care, which the State acknowledges will be significantly enhanced in some cases by cooperative agreements and by mergers and consolidations among health care facilities. La. R.S. 40:2254.1.

8.

The purpose of Louisiana’s regulatory scheme is to provide the State, through the LADOJ, with direct supervision and control over the implementation of cooperative agreements, mergers, joint ventures, and consolidations among health care facilities for which a COPA is granted. La. R.S. 40:2254.1.

9.

The State also intends for LADOJ's supervision and control over these agreements, mergers, joint ventures, and consolidations to serve as a substitute for other methods of regulating the subject facilities with respect to competition with similar facilities, and that this supervision and control has the effect of granting the parties to the agreements, mergers, joint ventures, or consolidations state action immunity for actions that might otherwise be considered to violate state antitrust laws, federal antitrust laws, or both. La. R.S. 40:2254.1

10.

The process for approving a COPA requires voluminous submissions by applicants, consultation with experts, notice to the public, input from a wide range of stakeholders, a public hearing, and consideration by State officials. Only applications that clearly benefit the public are approved

11.

Parties to a cooperative agreement, merger, joint venture, or consolidation may apply to the LADOJ for a COPA. La. R.S. 40:2254.4.

12.

The LADOJ is required to publish notice of the COPA application, allow for public comment, and hold a public hearing before acting upon a COPA application. La. R.S. 40:2254.4.

13.

The LADOJ may not issue a COPA unless it finds that the agreement is likely to result in lower health care costs or is likely to result in improved access to health

care or higher quality health care without any undue increase in health care costs. La. R.S. 40:2254.4.

14.

The LADOJ shall deny the application for a COPA or issue a COPA within ninety days after receipt of a completed application or within one ninety-day extension, which may be granted by the LADOJ upon a showing of good cause by the applicants. If the LADOJ does not issue a COPA within that time, the application is considered to have been denied. La. R.S. 40:2254.4.

15.

A COPA may be issued subject to terms and conditions, as the LADOJ determines to be appropriate, in order to best achieve lower health care costs or greater access to or quality of health care. La. R.S. 40:2254.4.

16.

Any amendment to a cooperative, merger, joint venture, or consolidation agreement and any material change in the operations or conduct of any party to a cooperative, merger, joint venture, or consolidation agreement shall be considered to be a new agreement and shall not take effect or occur until the LADOJ has issued a new certificate of public advantage approving the amendment or change. La. R.S. 40:2254.4.

**COPA APPLICATION SUBMITTED BY LCMC AND HCA**

17.

The LADOJ received an application for a COPA regarding a proposed transaction between HCA Healthcare, Inc. (“HCA”), Tulane University (“Tulane”), University Healthcare System, L.C. (“UHS”), and LCMC on October 10, 2022.

18.

The LADOJ required supplementation of the application before deeming the application complete on November 18, 2022. Once the application was deemed complete, it triggered the time period set forth in the law by which the Attorney General provided notice to the public, requested public comment, held a public hearing, and made a determination on the application.

19.

Notice of the pending COPA application, instructions to provide public comment relative to the proposed acquisition, and notice of a public hearing in connection with the COPA was timely published in the St. Tammany Farmer. The notice first ran on November 24, 2022. It also ran on November 30, 2022. (Exhibits 1, 2, 3, and 4).

20.

Notice of the pending COPA application, instructions to provide public comment relative to the proposed acquisition, and notice of the hearing in connection with the COPA was timely published in the Times- Picayune/The New Orleans Advocate. The notice ran in in the Times Picayune/The New Orleans Advocate on November 21, 22, and 23, 2022. (Exhibits 5 and 6).

21.

Notice of the hearing on the COPA application was posted on the LADOJ website on December 5, 2022 at: <https://agjefflandry.com/Article/13095> . (Exhibit 7).

22.

Notice of the hearing on the COPA application was also posted at the Claiborne Building 1201 N. 3<sup>rd</sup> St., Baton Rouge, Louisiana on December 5, 2022. (Exhibit 8).

23.

Written comments were submitted to the LADOJ in advance of the public hearing.

24.

A public hearing on the COPA application was held on December 8, 2022. All interested persons were allowed to present testimony, facts, or evidence related to the COPA application, and attendees were also permitted to ask questions.

25.

At the public hearing, the Director of the Civil Division of LADOJ announced that comments on the COPA application would continue to be accepted through Tuesday, December 13, 2022.

26.

The FTC did not provide any public comment, express any concerns, or identify any issues with the COPA application.

27.

On December 28, 2022, in response to the comprehensive application submitted by LCMC and HCA, and following the public notice-and-comment period

and public hearing, the State's Attorney General issued a COPA authorizing the acquisition and adopting a set of terms and conditions establishing active supervision of the acquisition by the Attorney General and the LADOJ. (See Exhibit 9 and 10)

28.

By enacting Louisiana's COPA laws and in issuing a COPA for the transaction between LCMC and HCA, the State of Louisiana expressly and unequivocally adopted a State policy authorizing the acquisition and removing the transaction from regulation under state and federal antitrust laws.

29.

The State determined that the acquisition is likely to result in lower health care costs or is likely to result in improved access to health care or higher quality health care without an undue increase of health care costs. La. R.S. 40:2254.4.

30.

The COPA expressly provides for Louisiana's active supervision of the acquisition's implementation and the subsequent operations of the merged entity.

31.

Louisiana's COPA laws themselves provide for active supervision of both the acquisition and the subsequent operations of the merged entity by permitting the State Attorney General to enforce the terms of the COPA, and via the annual reporting requirements for the merged entity subject to the COPA. La. R.S. 40:2254.10 and La. R.S. 40:2254.11. Additionally, the LADOJ has authority to revoke the COPA. La. R.S. 40:2254.6.

32.

On January 1, 2023, the parties to the acquisition closed the transaction. Since then, LCMC has been integrating the UHS Hospitals and physician clinics into its health care network to deliver the promised benefits to the people of Louisiana.

33.

The first round of reports required by the COPA has already been submitted by LCMC to the LADOJ pursuant to the terms and conditions imposed by the Attorney General.

34.

Upon information and belief, despite Louisiana's express authorization and supervision of the acquisition, and the applicability of state action immunity, the FTC has ordered LCMC to halt the acquisition, submit notice of the acquisition under the HSR Antitrust Act, and to pay a filing fee.

35.

The FTC's action is interfering with the State's right to implement and actively supervise the COPA and ensure the health and welfare of its citizens.

#### **STATE ACTION IMMUNITY DOCTRINE**

36.

The Supreme Court has made clear that where private parties are actively supervised in carrying out a clearly articulated anticompetitive policy of the State, they are treated as the State for purposes of state action immunity. *FTC v. Ticor Title*



*Ins. Co.*, 504 U.S. 621, 635 (1992) (the private anticompetitive conduct is the “State’s own”).

37.

For the doctrine to apply, the State must have clearly articulated and affirmatively expressed as State policy the alleged restraint on competition, and must actively supervise the anticompetitive act. Here, the Louisiana COPA laws and the particular COPA authorizing the acquisition does precisely that. *See* La. R.S. 40:2254.1 *et seq.*

38.

The state action immunity doctrine is grounded in constitutional principles of federalism, in accordance with the “dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority.” *Parker v. Brown*, 317 U.S. 341 at 351 (1943).

39.

Despite the State’s issuance of the COPA, which is expressly intended to grant (and which does grant) state action immunity from liability under the antitrust laws, the FTC is unlawfully attempting to force LCMC and HCA to submit a notification of the acquisition, to observe a waiting period pursuant to the HSR Antitrust Act, and to pay the HSR Antitrust Act filing fee.

40.

The FTC’s actions constitute a significant violation of federal law and Louisiana’s sovereignty.

## STANDARD FOR INTERVENTION

41.

Federal Rules of Civil Procedure Rule 24(a) (1) gives an intervention of right to any party who “is given an unconditional right to intervene by a federal statute.” Under Rule 24 “[a] party seeking to intervene as of right must satisfy four requirements: (1) The application must be timely; (2) the applicant must have an interest relating to the property or transaction that is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede its ability to protect its interest; and (4) the applicant’s interest must be inadequately represented by the existing parties to the suit.” *Brumfield v. Dodd*, 749 F.3d at 341 (5<sup>th</sup> Cir. 2014) (citation omitted). The State satisfies each of these elements.

42.

This intervention motion is timely. The FTC originally filed its Complaint in the United States District Court for the District of Columbia on April 20, 2023, the day after LCMC and HCA filed declaratory judgment actions in the United States District Court for the Eastern District of Louisiana. After the LCMC and HCA actions were consolidated, the State was allowed to intervene and currently remains a party to those proceedings. The D.C. District Court in which the FTC chose to file this action later granted a motion to transfer the case to the Eastern District of Louisiana, which was accomplished on June 5, 2023.

Responsive pleadings have not yet been filed and no substantive rulings on the merits of the case have yet occurred. As a result, “timeliness is not at issue.” *Brumfield*, 749 F.3d at 342; *see also Edwards v. City of Houston*, 78 F.3d 983, 1000 (5th Cir. 1996) (finding that delays of “only 37 and 47 days . . . are not unreasonable”); *Ross*, 426 F.3d at 755 (permitting post-judgment intervention); *United States v. Virginia*, 282 F.R.D. 403, 405 (E.D. Va. 2012) (“Where a case has not progressed beyond the initial pleading stage, a motion to intervene is timely.”); *Mullins v. De Soto Securities Co.*, 3 F.R.D. 432, 433 (W.D. La. 1944) (finding motion to intervene timely during the initial pleading stage).

43.

The State “has a ‘direct, substantial, legally protectable interest in the proceedings.’” *Edwards*, 78 F.3d at 1004 (quoting *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 463 (5th Cir. 1984)).

44.

The State found the goals of controlling health care costs and improving the quality of and access to health care will be significantly enhanced in certain cases by approving COPA applications.

45.

The State determined that LCMC and HCA exceeded the statutory burden of proof required to issue a COPA.

46.

The acquisition authorized by the COPA will enhance competition, lead to greater access to health care, result in higher quality health care, and will likely not result in undue increases to costs.

47.

The COPA and its accompanying terms and conditions guarantee ongoing active state supervision to ensure fair prices for consumers. It will also provide a world-class medical education program for both medical students and nursing students at a time when the State and the nation are faced with a nursing shortage.

48.

Without intervention, the disposition of this case will impair the State's ability to protect its interests and impair and impede the Attorney General from carrying out his constitutional duties to defend and uphold the laws of the State of Louisiana, including the actively supervising the transaction authorized by the COPA.

49.

The State's interests are inadequately represented by the existing parties to the suit. The Attorney General has an interest in defending the injury to the State that would result if the State is prevented from implementing its COPA statutes or providing ongoing active supervision of the transactions authorized thereby.

50.

The State has unique sovereign interests not shared by the other parties. Any proposed judgment or federal oversight would have future consequences for the State and necessarily implicate the State's sovereign interests.

51.

Alternatively, the Attorney General fulfills the requirements for permissive intervention. Federal Rule of Civil Procedure 24(b)(1) provides that “[o]n timely motion, the court may permit anyone to intervene who: (A) is given a conditional right to intervene by a federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact.” “In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.” Fed. R. Civ. P. 24(b) (3).

52.

Permissive intervention under Rule 24(b) “is wholly discretionary with the [district] court . . . even though there is a common question of law or fact, or the requirements of Rule 24(b) are otherwise satisfied.” *Kneeland v. Nat’l Collegiate Athletic Ass’n*, 806 F.2d 1285, 1289 (5th Cir. 1987). Intervention is appropriate when: “(1) timely application is made by the intervenor, (2) the intervenor's claim or defense and the main action have a question of law or fact in common, and (3) intervention will not unduly delay or prejudice the adjudication of the rights of the original parties.” See *Frazier v. Wireline Solutions, LLC*, 2010 WL 2352058, at \*4 (S.D. Tex. June 10, 2010) (citation omitted); *In re Enron Corp. Sec., Derivative & “ERISA” Litig.*, 229 F.R.D. 126, 131 (S.D. Tex. 2005).

53.

As discussed above, the intervention is timely; the State’s claims or defenses and the main action have a question of law or fact in common; and the intervention

will not unduly delay or prejudice the adjudication of the rights of the original parties. Moreover, the State's intervention will facilitate an equitable result. The State can provide a crucial perspective on the important issues implicated by the FTC's Complaint. This case has significant implications; therefore, it is essential that all arguments related to the continued viability of Louisiana's COPA laws and the transactions approved thereunder receive proper consideration.

WHEREFORE, the State of Louisiana respectfully prays for the following relief:

- I. An appearance for the State of Louisiana be entered in this matter;
- II. Dismissal of the FTC's enforcement action against LCMC and HCA;
- III. A declaration, order, and judgment holding that the parties to the acquisition, including LCMC and HCA, are not obligated to submit an HSR Filing concerning the acquisition or to pay the related filing fee referenced in 16 C.F.R. § 803.9;
- IV. A declaration, order, and judgment holding that the parties to the acquisition, including LCMC and HCA, are not subject to any fine or penalty under 15 U.S.C. § 18a(g)(1) or any other antitrust law in connection with the acquisition;
- V. A declaration, order, and judgment holding that the state action immunity doctrine shields transactions approved under the State's COPA laws from liability under federal antitrust laws and FTC enforcement actions;

VI. The award of any further relief that the Court may deem proper in law or equity.

Dated: June 9, 2023

Respectfully Submitted,

**JEFF LANDRY**  
**LOUISIANA ATTORNEY GENERAL**

*s/ Terrence J. Donahue, Jr.*

Elizabeth B. Murrill (LSBA No. 20685)

SOLICITOR GENERAL

Angelique Duhon Freel (LSBA No. 28561)

Carey Tom Jones (LSBA No. 07474)

Terrence J. Donahue, Jr. (LSBA No. 32126)

ASSISTANT ATTORNEYS GENERAL

OFFICE OF THE ATTORNEY GENERAL

LOUISIANA DEPARTMENT OF JUSTICE

1885 N. Third St.

Baton Rouge, LA 70804

(225) 326-6000 phone

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[murrille@ag.louisiana.gov](mailto:murrille@ag.louisiana.gov)

[freela@ag.louisiana.gov](mailto:freela@ag.louisiana.gov)

[jonescar@ag.louisiana.gov](mailto:jonescar@ag.louisiana.gov)

[donahuet@ag.louisiana.gov](mailto:donahuet@ag.louisiana.gov)

**CERTIFICATE PURSUANT TO LR 7.6**

I do hereby certify that, on the 7<sup>th</sup> day of June 2023, undersigned counsel reached out to counsel for plaintiffs and defendants in this matter and was informed that no party objected to the filing the State's intervention.

*s/ Terrence J. Donahue, Jr.*

Terrence J. Donahue, Jr.

**CERTIFICATE OF SERVICE**

I do hereby certify that, on this 9<sup>th</sup> day of June 2023, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which gives notice of filing to all counsel of record.

*s/ Terrence J. Donahue, Jr.*  
Terrence J. Donahue, Jr.



# Exhibit 1

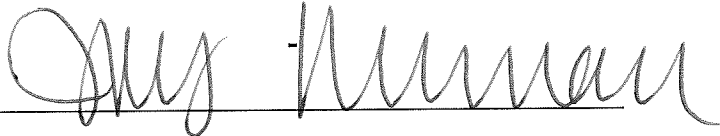
**ST. TAMMANY FARMER**

**STATE OF LOUISIANA PARISH OF ST. TAMMANY**

**PROOF OF PUBLICATION**

The hereto attached notice was published in **ST. TAMMANY FARMER**, a weekly newspaper of general circulation within the Parish of St. Tammany, in the following issues:


11/24/2022



Joy Newman, Public Notices Representative

Sworn and subscribed before me, by the person whose signature appears above

29 Nov 2022



M. Monic McChristian,

Notary Public ID#88293

State of Louisiana

My Commission Expires: Indefinite



Ad No: 14609

Brett Robinson  
Louisiana Department of Justice  
1885 North 3rd Street  
BATON ROUGE, LA 70802

PUBLIC NOTICE

NOTICE OF HEARING FOR AN APPLICATION FOR A CERTIFICATE OF PUBLIC ADVANTAGE REGARDING A PROPOSED TRANSACTION BETWEEN HCA HEALTHCARE, INC., TULANE UNIVERSITY, UNIVERSITY HEALTHCARE SYSTEM, L.C., AND LOUISIANA CHILDREN'S MEDICAL CENTER d/b/a LCMC HEALTH

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THE PUBLIC IS INVITED TO ATTEND A HEARING ON THIS MATTER THAT WILL TAKE PLACE ON DECEMBER 8, 2022 AT 10:00 A.M. AT:

CLAIBORNE BUILDING  
1201 NORTH THIRD STREET  
LOUISIANA PURCHASE ROOM, 1-100  
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Office of the Attorney General  
Louisiana Department of Justice  
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14603 STF NOV 24,30  
TP NOV 22

# Exhibit 2

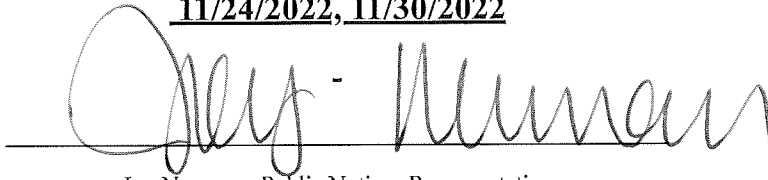
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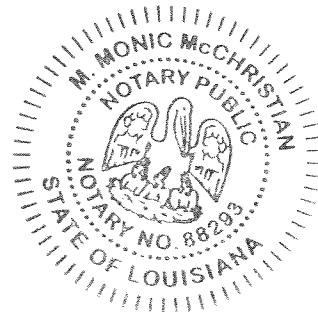


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# Exhibit 3

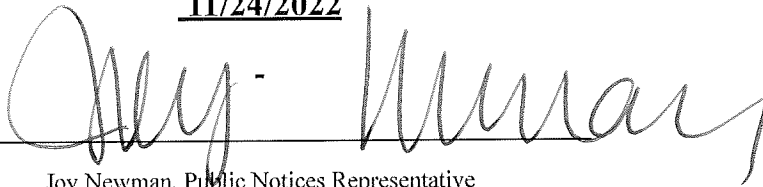
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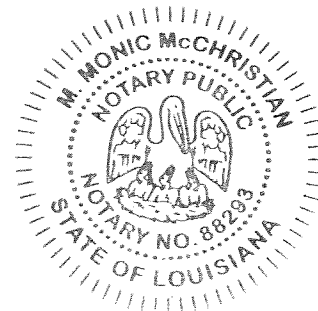


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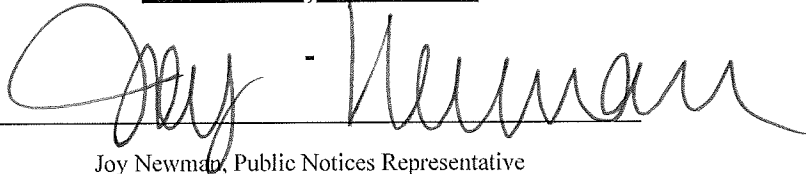
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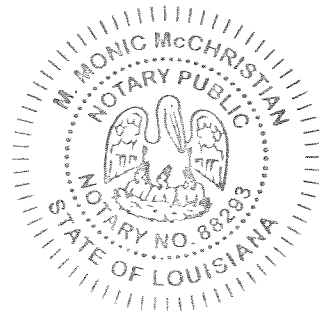
  
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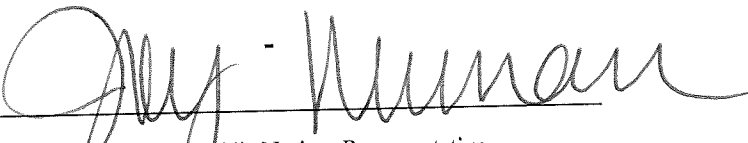
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Publisher of  
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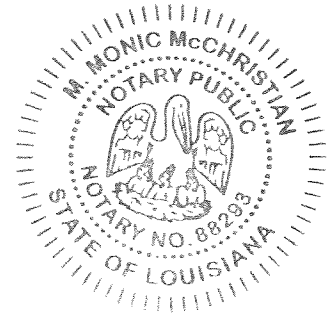


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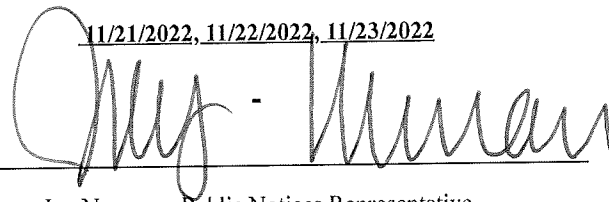
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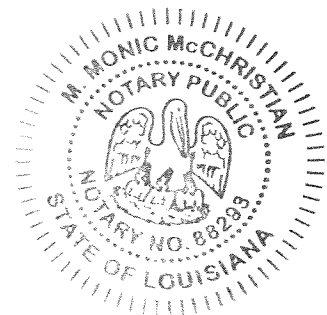


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# Exhibit 7



# PUBLIC HEARING NOTICE

## APPLICATION FOR A CERTIFICATE OF PUBLIC ADVANTAGE (“COPA”) REGARDING A PROPOSED TRANSACTION BETWEEN HCA HEALTHCARE, INC., TULANE UNIVERSITY, UNIVERSITY HEALTHCARE SYSTEM, L.L.C., AND LOUISIANA CHILDREN’S MEDICAL CENTER d/b/a LCMC HEALTH

December 8, 2022

10:00 AM

Claiborne Building

1201 North Third Street

Louisiana Purchase Room, 1-100

Baton Rouge, LA 70802

### AGENDA

- I. Call to Order - Presiding, Angelique Freel, Director of the Civil Division, Louisiana Department of Justice, Representative of the Attorney General
- II. Opening Remarks and Introduction of the Parties by Angelique Freel
- III. Overview of COPA Process by Angelique Freel
- IV. History and General Description of HCA Healthcare, Inc., Tulane University, University Healthcare System, L.L.C., and LCMC Health, Description of Proposed Transaction, and Benefits of Joint Venture by Applicant

V. Comments and/or Questions by Representatives of

Attorney General

VI. Public Comment

VII. Closing Remarks by Applicant

VIII. Adjournment

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# Exhibit 8



Jeff Landry  
Attorney General

**State of Louisiana**  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
P.O. BOX 94005  
BATON ROUGE  
70804-9005

## **PUBLIC HEARING NOTICE**

APPLICATION FOR A CERTIFICATE OF PUBLIC ADVANTAGE (“COPA”)  
REGARDING A PROPOSED TRANSACTION BETWEEN  
HCA HEALTHCARE, INC.,  
TULANE UNIVERSITY, UNIVERSITY HEALTHCARE SYSTEM, L.L.C., AND  
LOUISIANA CHILDREN’S MEDICAL CENTER d/b/a LCMC HEALTH

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- V. Comments and/or Questions by Representatives of Attorney General
- VI. Public Comment
- VII. Closing Remarks by Applicant
- VIII. Adjournment

# Exhibit 9





Jeff Landry  
Attorney General

**State of Louisiana**  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
P.O. BOX 94005  
BATON ROUGE  
70804-9005

December 28, 2022

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Jones Day  
51 Louisiana Avenue N.W.  
Washington, D.C. 20001

Louisiana Children's Medical Center  
Attn: Jody Martin  
Senior Vice President, Chief Legal Officer  
1100 Poydras St., Suite 2500  
New Orleans, LA 70163

Tulane Educational Fund  
Tulane University  
Attn: Victoria D. Johnson  
General Counsel  
6823 St. Charles Ave.  
300 Gibson Hall  
New Orleans, LA 70118

HCA Healthcare, Inc.  
Attn: Joseph A. Sowell, III  
Senior VP and Chief Development Officer  
One Park Plaza, Bldg. 2  
Nashville, TN 37203

***Re: Application for Certificate of Public Advantage – Louisiana Children's Medical Center/LCMC Health; The Administrators of the Tulane Educational Fund; Columbia/HCA of New Orleans, Inc.; Medical Center of Baton Rouge, Inc.; Columbia Healthcare System of Louisiana, Inc.; HCA Inc.***

Dear Counsel:

This correspondence is intended to serve as notification that the above-referenced application for Certificate of Public Advantage, filed with this office pursuant to La. R.S. 40:2254.1, et seq. on October 10, 2022 and supplemented on November 2, 2022, November 4, 2022, November 10, 2022, November 15, 2022, and November 18, 2022 (collectively referred to herein as "COPA

COPA APPLICATION APPROVAL

December 28, 2022

Page-2-

Application”), is hereby approved. The approval is based on the representations and information contained in the COPA Application, criteria set forth in Louisiana law and regulations, testimony at the public hearing held on December 8, 2022, and the large number of public comments received.

The approval is subject to the following conditions:

1. The execution of all documents necessary to close the transaction as described in the COPA Application;
2. Pursuant to Louisiana Revised Statute 40:2254.11 and the regulations promulgated in accordance therewith, the submission of annual reports, as more specifically described in the Terms and Conditions of Compliance attached hereto;
3. Full compliance with all requirements described in the Terms and Conditions of Compliance attached hereto.

Please note that the annual reports will be due on or before December 28<sup>th</sup> of the applicable year (“Anniversary Date”), quarterly reports will be due in 90-day increments from the Anniversary Date, and semi-annual reports will be due in 180-day increments from the Anniversary Date.

Should you have any questions or comments, please let us know.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Landry', is written over the typed name 'Jeff Landry'.

Jeff Landry

Encl.: Terms and Conditions of Compliance

# Exhibit 10



Jeff Landry  
Attorney General

# State of Louisiana

DEPARTMENT OF JUSTICE  
CIVIL DIVISION  
P.O. BOX 94005  
BATON ROUGE  
70804-9005

## **CERTIFICATE OF PUBLIC ADVANTAGE**

### **TERMS AND CONDITIONS OF COMPLIANCE FOR:**

LOUISIANA CHILDREN’S MEDICAL CENTER/LCMC HEALTH; THE ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND; COLUMBIA/HCA OF NEW ORLEANS, INC.; MEDICAL CENTER OF BATON ROUGE, INC.; COLUMBIA HEALTHCARE SYSTEM OF LOUISIANA, INC.; HCA INC. (referred to herein as “Applicants”)

### Table of Contents

I. Legally Binding Effect of these Terms and Conditions and Corrective Action Plans.....	2
II. Purpose and Vision – Creating Value for Louisiana Citizens.....	3
III. Guiding Principles and Expectations for Monitoring .....	4
IV. Key Monitoring Elements in the Louisiana Statute .....	4
V. Structure of Monitoring .....	5
VI. Rate Review .....	6
VII. Notice.....	7
VIII. Report Elements – Quarterly Reports.....	7
IX. Report Elements – Semi-Annual Reports .....	8
X. Report Elements – Annual Reports.....	9
XI. Release of Liability.....	10

**CERTIFICATE OF PUBLIC ADVANTAGE  
TERMS AND CONDITIONS OF COMPLIANCE**

Effective: December 28, 2022

**I. Legally Binding Effect of these Terms and Conditions and Corrective Action Plans**

- A. Conditions of COPA Approval and Applicability of Terms and Conditions. The terms and conditions set forth herein (“Terms and Conditions”) are required as a condition for approval of the Certificate of Public Advantage (“COPA”) submitted by the above-named Applicants. The Louisiana Department of Justice, Office of the Attorney General (“DOJ”) may, at any time, alter these terms and conditions as it deems necessary to ensure that the COPA meets statutory and regulatory requirements. Pursuant to the terms of the proposed transaction among the Applicants for which a COPA application was submitted, LCMC Health will become the sole owner of Tulane University Medical Center, Tulane Lakeside Hospital, and Lakeview Regional Medical Center (collectively, the “UHS Hospitals”). As the sole owner of the UHS Hospitals and the operator of LCMC Health’s six hospitals (Children’s Hospital New Orleans, East Jefferson General Hospital, New Orleans East Hospital,<sup>1</sup> Touro Infirmary, University Medical Center New Orleans, and West Jefferson Medical Center) (together with the UHS Hospitals, the “Combined Entity”), LCMC Health (the “New Health System”) will serve as the sole continuing operator of the Combined Entity and the sole entity subject to these Terms and Conditions. The New Health System does not have the right to withdraw from these COPA Terms and Conditions during the term of the COPA. Further, pursuant to Louisiana Revised Statute 40:2254.4(D), any amendment to the terms of the transaction submitted by the Applicants or any material change in the operations or conduct of the New Health System shall be considered to be a new agreement and shall not take effect or occur until the DOJ has issued a new COPA approving such amendment or material change. The New Health System shall follow the timeframes and procedures set forth in the statutory and regulatory framework for COPA applications with regard to notifying the DOJ of any amendments or material changes.
- B. Corrective Action Plan. If, at any time, the DOJ determines that an activity of the New Health System is inconsistent with the policy goals described in Louisiana Revised Statute 40:2254.1, *et. seq.*, the DOJ will notify the New Health System that it must adopt a plan to correct any deficiency in its activities. Within thirty (30) calendar days of notification, the New Health System shall return a written corrective action plan to the DOJ responding to each cited deficiency, including timeframes for corrections, together with any additional evidence of compliance. If the DOJ determines that the corrective action plan does not sufficiently address each cited deficiency, it will notify the New Health System that it must submit a revised corrective action plan within twenty (20) days of notification. If the DOJ determines that the corrective action plan does sufficiently address each cited deficiency (“Corrective Action Plan”), the New Health System shall use best efforts to implement the Corrective Action Plan and submit progress reports to the DOJ as set forth therein.

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<sup>1</sup> New Orleans East Hospital (“NOEH”) is not owned by LCMC Health; LCMC Health manages NOEH, which is not financially integrated into LCMC Health. NOEH is a Hospital Service District hospital and a political subdivision of the state. Accordingly, NOEH contracts separately and is not part of the LCMC Health payor contracting process.

**CERTIFICATE OF PUBLIC ADVANTAGE  
TERMS AND CONDITIONS OF COMPLIANCE**

Effective: December 28, 2022

- C. Remedies. If the DOJ is not satisfied with any submitted corrective action plan, if the New Health System fails to comply with the terms and conditions set forth herein, fails to comply with any Corrective Action Plan, or if the DOJ otherwise determines that the transaction is not resulting in lower health care costs or greater access to or quality of health care, the DOJ reserves the right to revoke the COPA as provided for in Louisiana Revised Statute 40:2254.6. Additionally, the DOJ may pursue any other enforcement mechanisms available to it by law, including but not limited to injunctive relief.
- D. Court Costs and Attorney Fees. If it becomes necessary for the DOJ to file suit to enforce any provision of law, regulation, the terms and conditions of any Corrective Action Plan, or these terms and conditions, the New Health System shall be responsible for all costs associated with any such litigation, including but not limited to all court costs and attorneys' fees.
- E. Release of Liability for Corrective Action Plans. Subject to Louisiana Revised Statute 40:2254.7, the approval of any Corrective Action Plan does not confer any responsibility or liability for damages on the State of Louisiana or any of its officers, directors, employees, agents, or consultants. Applicants and their successors and assigns hereby RELEASE AND FOREVER DISCHARGE the State of Louisiana and all of its officers, directors, employees, agents, and consultants from any and all damages claims, debts, demands, losses, and liabilities whatsoever, known or unknown, whether in law or in equity, resulting from, respecting, relating to, or arising out of any Corrective Action Plan, which either party now has or may later discover. The New Health System may appeal a final decision on a corrective action plan or rate review decision in the manner provided in the Administrative Procedure Act.
- F. The New Health System may designate as "Confidential" and redact any document or material submitted to the DOJ that is exempt from disclosure under the Louisiana Public Records Act, including any document or material containing trade secret, proprietary, or competitively sensitive information. In accord with Louisiana Revised Statute 44:4 *et seq.* and other applicable statutes, rules, and regulations, nothing in the Terms and Conditions limits the New Health System from claiming any exceptions, exemptions, and limitations to the laws pertaining to public records.

**II. Purpose and Vision – Creating Value for Louisiana Citizens**

The purpose of COPA law and similar statute-regulated transactions is to better serve the citizens of Louisiana by pursuing and attaining the key aims of value-based healthcare, namely—

- Cost: Decreased costs of care
- Quality: Improved quality of care
- Access: Increased access to care

For COPA and other transactions, the State of Louisiana, through the Louisiana DOJ, aspires to work with healthcare organizations to help the DOJ and the nation to achieve these goals. For approval to be granted, the DOJ must have reasonable assurances that these goals will be met.

**CERTIFICATE OF PUBLIC ADVANTAGE  
TERMS AND CONDITIONS OF COMPLIANCE**

Effective: December 28, 2022

Ultimately, decreased costs, improved quality, and increased access to healthcare aim to create better patient engagement, higher patient satisfaction, and more value for patients.

**III. Guiding Principles and Expectations for Monitoring**

The New Health System agrees to pursue these goals and to employ these guiding principles, which will be key to monitoring the transaction and ensuring its future success.

- A. Relevant Metrics: The New Health System will be responsible for gathering, analyzing, and presenting its performance on relevant metrics to cost, quality, and access on a regular basis. The DOJ reserves the right to change, add, or remove metrics as it deems necessary to ensure that the COPA meets statutory and regulatory requirements.
- B. Competitive Benchmarking: The New Health System will be expected to measure and report its performance in cost, quality, and access compared to national benchmark or relevant peer competitors within the markets it serves, the State of Louisiana, or any other areas (such as neighboring states or similar metropolitan areas in other states, etc.) as appropriate and as may be added at the discretion of the DOJ as it deems necessary to ensure that the COPA meets statutory and regulatory requirements, to the extent that relevant information on such competitors is publicly available.
- C. Continuous Improvement: The New Health System should strive to create, build, and maintain a culture of excellence and continuous improvement. The DOJ expects the New Health System to show meaningful improvement in cost, quality, and access every year. The New Health System should improve beyond its baseline performance (past performance for the quarter and year prior to approval), and also relative to its peer group or competitive set.

**IV. Key Monitoring Elements in the Louisiana Statute**

Louisiana Revised Statute 40:2254.11 provides as follows:

If the department issues a certificate of public advantage, the facilities to whom the certificate has been issued shall submit a report to the department evaluating whether the cooperative, merger, joint venture, or consolidation agreement submitted to and approved by the department has been complied with during the preceding year and, if applicable, evaluating whether any terms and conditions imposed by the department when it issued the certificate have been met or otherwise satisfied during the preceding year. The report must be submitted annually or more frequently if required by the department. The department shall in turn issue findings as to whether the terms and conditions are being met or otherwise satisfied. The department shall keep copies of all reports and findings based on the reports.

**CERTIFICATE OF PUBLIC ADVANTAGE  
TERMS AND CONDITIONS OF COMPLIANCE**

Effective: December 28, 2022

Louisiana Admin. Code tit. 48, Part XXV, §517 outlines the information and supporting data that must be submitted by the New Health System. Annual reports following an approved COPA transaction shall include, but not be limited to, the following information:

- an update of all the information required in the COPA application;
- any change in the geographic territory that is served by the health care equipment, facilities, personnel, or services which are subject of the transaction;
- a detailed explanation of the actual effects of the transaction on each party, including any change in volume, market share, prices, and revenues;
- a detailed explanation of how the transaction has affected the cost, access, and quality of services provided by each party; and
- any additional information requested by the DOJ.

Louisiana Admin. Code tit. 48, Part XXV, §509 provides that the fee due with the filing of the reports required by Louisiana Revised Statute 40:2254.11 and described in Sections VIII-X shall be \$15,000. If the actual cost incurred by the DOJ is greater, the parties involved shall pay any additional amounts due as instructed by the DOJ.

**V. Structure of Monitoring**

The DOJ will direct the monitoring of an approved COPA application. At its discretion, the DOJ may assign another existing or new department within the State of Louisiana, or an external organization, to monitor the New Health System and the terms of the COPA application, or to provide monitoring support to the DOJ. (The DOJ or other organization that does the monitoring is hereafter referred to as the “Monitoring Agency” or together, the “Monitoring Agencies”).

The New Health System will be required to submit advanced written notice of certain events and reports that include specific information at the request of the Monitoring Agency. The Monitoring Agency will require reports according to the following schedule:

- A. Rate Review – During the term of the COPA, the New Health System will be required to submit information related to changes in rates to the Monitoring Agency as described in Section VI.
- B. Quarterly Reports – Quarterly reports will include an update on the transaction objectives as set forth in the COPA application and supplemental submission, with specific focus on updates on the investment and repurposing of facilities claims. Quarterly reports will be required for first three (3) years or until completion of application objectives, whichever is longer.
- C. Semi-Annual Reports – Semi-annual reports will require submission of a set of key metrics tied to cost, quality, and access. The reports will be submitted semi-annually for first five (5) years following the transaction.
- D. Annual Reports – During the term of the COPA, the New Health System will be required to submit annual reports that detail an update on its application, a description of any change



**CERTIFICATE OF PUBLIC ADVANTAGE  
TERMS AND CONDITIONS OF COMPLIANCE**

Effective: December 28, 2022

to geographic territory, any changes in volume, market share, prices, and revenues, and a detailed explanation of how the transaction has affected cost, quality, and access.

The time periods for which quarterly and semi-annual reports will be required may be shortened or extended at the discretion of the Monitoring Agency. All annual reports should be submitted on or before the anniversary of the COPA approval date. Quarterly reports are to be submitted in 90-day increments after the anniversary of the COPA approval date and semi-annual reports are to be submitted in 180-day increments, while applicable, after the anniversary of the COPA approval date. In the event of a hurricane, earthquake, flood, tornado, natural disaster, public health emergency, epidemic, pandemic or disease outbreak, or other force majeure event or “act of God” that affects the ability of the New Health System to submit a report during the time periods outlined herein, the New Health System must contact the DOJ to determine a late report submission date that is mutually agreed upon by the New Health System and the DOJ.

**VI. Rate Review**

A. The New Health System may not contract with a third-party payor for a change in rates for any services provided by such New Health System without the prior written approval of the DOJ. At least sixty (60) days before the proposed implementation of any change in rates for any services provided by the New Health System under a newly negotiated third-party payor contract, the New Health System shall submit any proposed changes in rates to the DOJ for approval. The information submitted to the DOJ must include, at a minimum:

- i. Completion of any Rate Review application form which may be adopted by the DOJ;
- ii. The proposed change in rate(s);
- iii. For an agreement with a third-party payor other than an agreement with a managed care organization that provides or arranges for the provision of services under the Medicare or Medicaid programs, information showing:
  - a. That the New Health System and the third-party payor have agreed to the proposed rates;
  - b. Whether the proposed rates are less than the corresponding amounts in a relevant price index published by the Bureau of Labor Statistics of the United States Department of Labor relating to services for which the rates are proposed, or a comparable price index chosen by the DOJ if the relevant price index is abolished; and
  - c. If the proposed rates are above the corresponding amount in the relevant price index, a justification for proposing rates above the corresponding amounts in such index.

**CERTIFICATE OF PUBLIC ADVANTAGE  
TERMS AND CONDITIONS OF COMPLIANCE**

Effective: December 28, 2022

iv. To the extent allowed by federal law, for an agreement with a managed care organization that provides or arranges for the provision of services under the Medicare or Medicaid programs, information showing:

a. Whether the proposed rates are different from rates under an agreement that was in effect before the date of the transaction;

b. Whether the proposed rates are different from the rates most recently approved by the DOJ for the New Health System, if the DOJ has previously approved rates following the issuance of the COPA; and

c. If the rates exceed the rates those described in subparagraphs (a) or (b) of this paragraph, a justification for proposing rates in excess; and

v. Any information concerning costs, patient volumes, acuity, payor mix, or other information requested by the DOJ.

a. To the extent that the DOJ requests such information, such information shall be provided no later than twenty (20) business days from the request.

B. The Monitoring Agency shall approve or deny the proposed rate change within sixty (60) days from receipt of a notice of proposed rate change.

C. The rate review process intends to ensure that rates remain at a level that is supported by economic, cost, or other growth trend indicators. The DOJ, in its sole discretion, may designate an individual or entity to review the provided materials and make a recommendation to the DOJ. The Monitoring Agency may evaluate proposed rate increases by comparing the proposed rates to: (1) price indexes, (2) cost report data and trends, (3) governmental program rates, and (4) other information as provided by the New Health System or as deemed necessary by Monitoring Agency. Based on evaluation, the DOJ shall approve the proposed rates unless the DOJ determines that rates inappropriately exceed competitive rates for comparable services in the New Health System's market area.

**VII. Notice**

The New Health System must provide written notice to the DOJ at least ninety (90) days in advance of any mergers, acquisitions, joint ventures, or other partnership arrangements.

**VIII. Report Elements – Quarterly Reports**

The New Health System must submit quarterly reports, in accordance with the schedule set forth in Section V, providing an update on the transaction objectives cited in the COPA application regarding the investments and repurposing of facilities, including but not limited to the following:

A. Changes in services at the Tulane University Medical Center New Orleans (“TUMC”) facility in Orleans Parish, to the extent available, related to:

**CERTIFICATE OF PUBLIC ADVANTAGE  
TERMS AND CONDITIONS OF COMPLIANCE**

Effective: December 28, 2022

- i. Creation of new nursing program in Orleans Parish;
  - ii. Development of downtown campus;
- B. Creation of a new, premier academic medical center and leading teaching institution in Jefferson Parish at East Jefferson General Hospital (“EJGH”), including:
  - i. Transition or relocation of advanced clinical services from TUMC to EJGH;
  - ii. Investment in capital improvements at EJGH, Tulane Lakeside, and Lakeview;
- C. Creation of Centers of Excellence;
- D. Engagement in medical research;
- E. Expansion of electronic medical record system to Tulane Lakeside and Lakeview;
- F. Access changes such as:
  - i. Material openings, closures, or mergers of outpatient facilities;
  - ii. Material openings, closures, or mergers of inpatient services; or
  - iii. Material service line changes.
- G. Any changes or events requiring reporting to The Joint Commission or other accrediting bodies, including any change in accreditation status.

**IX. Report Elements – Semi-Annual Reports**

The New Health System must submit semi-annual reports in accordance with the schedule set forth in Section V. To serve as long- and short-term baseline comparators, the New Health System should include data from one (1) year prior to the merger and one (1) quarter before the merger. Semi-annual reports should include data from these two (2) baseline comparators, in addition to the data from all preceding reports. Where possible, the New Health System should also compare the following measures to the top two (2) to four (4) competitors in the area. The semi-annual reports must include the following elements, to the extent available:

**Cost**

- Number of patients who benefited from charity care
- Description of capital investments
- Overall cost of agency nurses (details to be kept confidential)
- List of open care delivery positions
- Summary of charges billed and payments received for inpatient care, including drugs, from each facility
- Dollar value and service volume of programs and services for poor and underserved communities
- Final Medicare cost reports

**Quality**

- Patient satisfaction ratings

**CERTIFICATE OF PUBLIC ADVANTAGE  
TERMS AND CONDITIONS OF COMPLIANCE**

Effective: December 28, 2022

- Readmission rates
- A summary of quality improvement measures for each hospital
- CMS star ratings
- Leapfrog safety rating

**Access**

- Staffed bed changes greater than ten percent (10%) compared to the same period in the prior year.
- Inpatient volumes, broken down by major classifications such as pediatrics, women's health, Med Surg, ICU, etc.
- Outpatient volumes, broken down by each outpatient category, such as primary and specialty clinic visits, emergency department, outpatient surgery, etc.
- Emergency department times in minutes for each hospital
- Number of providers who have privileges to practice
- Current number of physicians, nurses, PAs in the market area and employed by the New Health System
- Number of newly recruited physicians seeing patients by the New Health System to the area in the past year

**X. Report Elements – Annual Reports**

In addition to the quarterly and semi-annual reports, the New Health System must submit annual reports as required by Louisiana law. The report must include all report elements listed for the quarterly and semi-annual reports, in addition to the following:

- A. An update of all the information required in the application. Provide an update on the claims made in the initial and supplemental COPA applications.
- B. Any change in the geographic territory that is served by the health care equipment, facilities, personnel, or services which are subject of the transaction. Provide detailed explanation of any change in geographic territory that is served by the health care equipment, facilities, personnel, or services which are subject to the transaction.
- C. A detailed explanation of the actual effects of the transaction on each party, including any change in volume, market share, prices, and revenues:
  - i. Volume: Provide a detailed account of how volumes have been impacted by the transaction.
  - ii. Market share: Provide a detailed account of how market share has been impacted by the transaction.
  - iii. Price: Provide a detailed account of how prices have been impacted by the transaction. Provide prices for a key group of services/procedures – recommend the most common

**CERTIFICATE OF PUBLIC ADVANTAGE  
TERMS AND CONDITIONS OF COMPLIANCE**

Effective: December 28, 2022

- ten (10) to thirty (30) procedures or services. Include charts that compare change in price to general inflation and health care inflation.
- iv. Revenue: Provide a detailed account of how revenues have been impacted by the transaction.
- D. A detailed explanation of how the transaction has affected the cost, access, and quality of services provided by each party. Provide a narrative explanation of the transaction's impact on cost, quality, and access.

**XI. Release of Liability**

Subject to Louisiana Revised Statute 40:2254.7, the granting of a COPA application does not confer any responsibility or liability for damages on the State of Louisiana or any of its officers, directors, employees, agents, or consultants. Applicants and their successors and assigns hereby **RELEASE AND FOREVER DISCHARGE** the State of Louisiana and all of its officers, directors, employees, agents, and consultants from any and all damages claims, debts, demands, losses, and liabilities whatsoever, known or unknown, whether in law or in equity, resulting from, respecting, relating to, or arising out of any COPA application or approval, which such party now has or may later discover.