

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

**LOUISIANA CHILDREN’S MEDICAL
CENTER, d/b/a LCMC HEALTH,**

Plaintiff

v.

**MERRICK GARLAND, in his official capacity
as ATTORNEY GENERAL OF THE
UNITED STATES,**

**UNITED STATES DEPARTMENT OF
JUSTICE,**

FEDERAL TRADE COMMISSION,

and

UNITED STATES OF AMERICA,

Defendants

CIVIL ACTION

No. 23-1305

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Louisiana Children’s Medical Center (“LCMC”), by and through its undersigned attorneys, alleges as follows:

INTRODUCTION

1. This action seeks a declaratory judgment that the Hart-Scott-Rodino Antitrust Improvements Act (“HSR Antitrust Act”) does not apply to transactions that are immune from federal antitrust laws under the doctrine of state action immunity. A declaratory judgment is needed to vindicate an important policy choice of the State of Louisiana concerning the health care services available to its citizens.

2. The State Legislature and Attorney General have expressly and unequivocally authorized LCMC to acquire Tulane University Medical Center, Lakeview Regional Medical Center, and Tulane Lakeside Hospital (the “Acquisition”) from HCA Healthcare, Inc. (“HCA”), a for-profit provider network that previously operated the three hospitals through a joint venture with the Tulane University of Louisiana (“Tulane”).

3. The State Legislature and Attorney General have expressly and unequivocally concluded that the Acquisition furthers the State’s policy goals for the health and welfare of its citizens.

4. The State Legislature and Attorney General have expressly and unequivocally provided for active supervision by the Attorney General of the Acquisition’s implementation and subsequent operations of the merged entity.

5. As a result, the Acquisition is clearly and indisputably immune from the federal antitrust laws—including the HSR Antitrust Act—consistent with a long line of Supreme Court precedent affirming the state-action antitrust immunity, as well as the HSR Antitrust Act’s plain text.

6. The Federal Trade Commission (“FTC”) has nevertheless demanded that the Acquisition must be halted and submitted to a costly HSR review and approval, on pain of crushing daily penalties for noncompliance, to be enforced by the United States in a civil action.

7. LCMC respectfully requests a judgment declaring that, under the state action immunity doctrine, LCMC and the other parties to the Acquisition, including HCA, are not subject to (1) a requirement to submit a notification providing notice of the Acquisition and observe a waiting period under the HSR Antitrust Act, with the filing fee defined at 16 C.F.R. § 803.9; or (2) penalties under the HSR Antitrust Act, 15 U.S.C. § 18a(g)(1), for consummating the

Acquisition without the submission of a notification and expiration or termination of a waiting period under the HSR Antitrust Act.

8. 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). Private conduct—including transactions like the Acquisition—is exempted from enforcement of “the federal antitrust laws” where the conduct is authorized by clearly articulated and affirmatively expressed state policy and actively supervised by a state actor. *Id.* The HSR Antitrust Act enacted Section 7A of the Clayton Antitrust Act and is indisputably a federal antitrust law. Were it otherwise, HSR could not be reconciled with the state-action doctrine because HSR imposes substantive waiting periods on mergers—mergers that are indisputably immune from Section 7 of the Clayton Antitrust Act. Consistent with the state action immunity doctrine, the HSR Antitrust Act itself excludes transactions that are exempt from the antitrust laws. 15 U.S.C. § 18a(c)(4), (5).

9. Pursuant to this doctrine, the Louisiana Legislature has established a process for exempting certain health care acquisitions from enforcement of the antitrust laws in order to promote public health:

The legislature finds that the goals of controlling health care costs and improving the quality of and access to health care will be significantly enhanced in some cases by . . . mergers and consolidations among health care facilities. The purpose of this Part is to provide the state . . . with direct supervision and control over the implementation of cooperative agreements, mergers, joint ventures, and consolidations among health care facilities for which certificates of public advantage are granted. ***It is the intent of the legislature*** that supervision and control

over the implementation of these agreements, mergers, joint ventures, and consolidations substitute state regulation of facilities for competition between facilities and that this regulation 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 (emphasis added).

10. The process for approving an exemption is a lengthy one that requires voluminous submissions by applicants, notice to the public, input from a wide range of stakeholders, a public hearing, and consideration by numerous State officials. The rigorous review process ensures that only applications that clearly benefit the public are approved; indeed, upon information and belief, prior to the Acquisition, the State of Louisiana had never approved an application since the statute was enacted in 1997.

11. On December 28, 2022, in response to a comprehensive application submitted by LCMC and HCA, and following a public notice-and-comment period and a public hearing, the State Attorney General issued a Certificate of Public Advantage (“COPA”) authorizing the Acquisition and adopting a set of terms and conditions establishing active supervision of the Acquisition by the Attorney General.

12. In issuing the COPA, the State of Louisiana expressly and unequivocally adopted a State policy authorizing the Acquisition and removing it from regulation under the antitrust laws, including the HSR Antitrust Act on which Defendants seek to rely. In other words, the Acquisition is entirely shielded by the state action immunity doctrine.

13. 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 pay a filing fee. The FTC’s directive that LCMC must submit notice of the Acquisition is an immediate threat of imposition of a statutory penalty of tens of thousands of dollars *each day* until the FTC “clears” the Acquisition—which it may never do.

14. The FTC has informed LCMC of its view that LCMC is in the penalty period, which began on January 1, 2023, and that the penalty is accruing daily. The FTC has threatened LCMC with enforcement of this penalty in a civil suit brought by the Department of Justice on behalf of the United States.

15. None of this action is necessary or lawful. The Acquisition is exempt from the federal antitrust laws as a result of the Louisiana COPA. Contrary to the FTC’s directive, the parties to the Acquisition, including LCMC and HCA, have no obligation to halt the implementation of the Acquisition, submit a filing pursuant to the HSR Antitrust Act (an “HSR Filing”), observe a waiting period, or pay the associated filing fee, and the United States may not impose a civil monetary penalty on LCMC or HCA for the failure to submit such a filing. LCMC brings this action to remove the threat created by the FTC’s unlawful demand, to obtain a declaration rejecting the FTC’s determination that LCMC and HCA must submit an HSR Filing, and to obtain a declaration that LCMC and HCA are not subject to penalties in an action brought by the United States under 15 U.S.C. § 18a(g)(1).

16. The HSR Antitrust Act, which amended the Clayton Antitrust Act to add Section 7A, 15 U.S.C. § 18a, is indisputably a federal antitrust law. Section 7A(g)(1), when it applies, mandates that “no person shall acquire, directly or indirectly, any voting securities or assets of any

other person,” unless the parties “file notification” with the FTC and obtain administrative preclearance for the transaction. 15 U.S.C. § 18a. Parties that consummate a covered transaction without preclearance are subject to daily penalties, which are currently at least \$46,517 per day.¹ *Id.* § 18a(g)(1). This “penalty may be recovered in a civil action brought by the United States.” *Id.* “[T]here can be no reasonable dispute that an HSR Act civil penalty action arises ‘under the antitrust laws.’” *United States v. Blavatnik*, 168 F. Supp. 3d 36, 41 (D.D.C. 2016).

17. Accordingly, the HSA Antitrust Act is a “federal antitrust law[]” subject to state action immunity. *Phoebe Putney*, 568 U.S. at 225; *see also City of Columbia v. Omni Outdoor Advert., Inc.*, 499 U.S. 365, 384 (1991); *Parker v. Brown*, 317 U.S. 341, 351-52 (1943).

18. Requiring payment of a fee or imposing a fine for failure to file a notification and observe a waiting period pursuant to the HSR Antitrust Act is a form of antitrust liability, which— if imposed on a merging party whose transaction is subject to the state action immunity doctrine— would negate the purpose of that doctrine. Put differently, the parties to the Acquisition are exempt from antitrust liability in all forms, whether such liability would arise under the HSR Antitrust Act (Section 7A of the Clayton Act) or under the substantive Section 7 of the Clayton Act.

19. The plain text of the HSR Antitrust Act—properly interpreted— is consistent with the state action immunity doctrine. It includes a number of exceptions to the Act’s applicability, including for transactions that are “specifically exempted from the antitrust laws by Federal statute,” 15 U.S.C. § 18a(c)(5), and those which are “transfers to or from . . . a State or political subdivision thereof,” 15 U.S.C. § 18a(c)(4). Read in light of Supreme Court precedent, this extends to mergers among private parties who qualify for state action immunity because a merger

¹ *See* <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-publishes-inflation-adjusted-civil-penalty-amounts-2023>.

that qualifies for immunity is not attributable to private parties, but is instead “the State’s own” conduct. *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621, 635 (1992).

20. Despite issuance of the COPA, which is expressly intended to grant and 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 and observe a waiting period pursuant to the HSR Antitrust Act and to pay the HSR Filing fee. The FTC has threatened enforcement by the United States for penalties under 15 U.S.C. § 18a(g)(1), notwithstanding the fact that the parties to the Acquisition, including LCMC, are immune from those penalties.

21. The FTC’s actions constitute a significant violation of federal law and Louisiana’s sovereignty. Left unchecked, this agency overreach would not only offend important principles of federalism, but also harm the people of Louisiana who are well-served by the Acquisition—as Louisiana itself concluded when it issued a COPA to approve the transaction.

JURISDICTION AND VENUE

22. This Court has jurisdiction over this case under 28 U.S.C. §§ 1331 and 1337.

23. This Court has the authority to grant the declaratory relief sought pursuant to the Declaratory Judgment Act. *See* 28 U.S.C. §§ 1361, 2201, 2202.

24. Venue is proper in this district under 28 U.S.C. § 1391(e)(1).

25. Defendants lack sovereign immunity in a declaratory judgment action challenging their threatened violation of federal law. *See* 5 U.S.C. 702; *Larson v. Domestic and Foreign Commerce Corp.*, 337 U.S. 682, 691, n. 11 (1949); *Dugan v. Rank*, 372 U.S. 609, 621–622 (1963).

PARTIES

26. LCMC is a non-profit health system operating as an Organized Health Care Arrangement under Louisiana law. It is a nonprofit network of health care providers, which

operates nine hospitals and a number of other locations in Louisiana and Mississippi. Its principal place of business is 1100 Poydras Street, New Orleans, LA 70163.

27. Defendant Merrick Garland is the Attorney General of the United States. He is sued in his official capacity.

28. Co-Defendant United States Department of Justice is an Executive Department of the United States.

29. Co-Defendant 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.

30. Co-Defendant is the United States of America.

ALLEGATIONS

I. LCMC's Role in the Community

31. LCMC was formed in 2009 through a partnership between Children's Hospital and the Touro Infirmary in New Orleans.

32. LCMC is a non-profit health system dedicated to providing the best possible care for every person and parish in Louisiana and beyond. It operates nine hospitals and also provides a network of urgent care centers across the greater New Orleans area, as well as other health care services.

33. LCMC also plays an important role in developing the next generation of health care professionals. It partners with local universities to provide training for medical, dentistry, nursing, and other students.

34. The State of Louisiana has long trusted LCMC as a critical part of its public health policy. For example, in 2012-2013, LCMC partnered with the State to operate the Interim LSU

Hospital, which preserved services and access to care in New Orleans, and also averted a significant disruption in university teaching programs. Likewise in 2015, the State contracted with LCMC to operate the new University Medical Center New Orleans.

35. Prior to the Acquisition, LCMC operated Children’s Hospital New Orleans, East Jefferson General Hospital, New Orleans East Hospital, Touro Infirmary, University Medical Center New Orleans, and West Jefferson Medical Center. These hospitals have been recognized with a number of awards and accreditations for their high standard of care.²

II. The 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. *Ticor*, 504 U.S. at 635 (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 statute and the COPA concerning the Acquisition does just that. *See* La. R.S. § 40:2254.1 *et seq.*

38. This 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*, 317 U.S. at 351.

² <https://www.lcmchealth.org/about-us/awards-accreditations/>.

39. The doctrine vindicates the States’ sovereign authority to regulate certain matters without interference from the antitrust laws, which the federal government has improperly brought to bear against LCMC (and Louisiana) in this case.

40. Pursuant to this doctrine, a number of States—including Louisiana—have enacted statutes by which hospital mergers like the Acquisition can be exempted from the antitrust laws in instances where the State issues a COPA.

III. The Louisiana COPA Statute

41. Louisiana enacted a COPA statute, reflecting legislative recognition that “the goals of controlling health care costs and improving the quality of and access to health care 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.

42. The statute’s purpose is “to provide the state . . . with direct supervision and control over the implementation of cooperative agreements, mergers, joint ventures, and consolidations among health care facilities for which certificates of public advantage are granted.” *Id.*

43. The statute expressly declares the “intent of the legislature that supervision and control over the implementation of these agreements, mergers, joint ventures, and consolidations substitute state regulation of facilities for competition between facilities and that *this regulation 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.” *Id.* (emphasis added).

44. The State Attorney General authorizes and issues COPAs in Louisiana. The COPA statute provides that a COPA is “a written certificate issued by the [State Department of Justice] as evidence of the department's intention that the implementation of a cooperative agreement, when actively supervised by the department, receive state action immunity from prosecution by

the state or by any district attorney in the state as a violation of state or federal antitrust laws.” La. R.S. § 40:2254.2.

45. The statute also provides that the State Department of Justice “may not issue a [COPA] unless the department 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. If the department denies an application for a certificate for an executed agreement, the parties may submit a new application for a certificate based upon a cooperative agreement, merger, joint venture, or consolidation different from the original application.” La. R.S. § 40:2254.4.

46. The statute provides for the State Attorney General to enforce the COPA, permitting that office to “bring an action in the name of the state against a person or persons to whom a certificate has been issued in order to enforce any terms or conditions imposed by the [State Department of Justice] upon the issuance of the certificate, to enjoin the violation of the terms or conditions, or to enjoin any material violation of or deviation from the terms of the cooperative, merger, joint venture, or consolidation agreement submitted to and approved by the department.” La. R.S. § 40:2254.10.

47. The statute requires the merging entities subject to a COPA to “submit a report to the [State Department of Justice] 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.” La. R.S. § 40:2254.11. The statute requires this report to be “submitted annually

or more frequently if required by the department,” which “shall in turn issue findings as to whether the terms and conditions are being met or otherwise satisfied.” *Id.*

IV. The Acquisition and Louisiana’s Decision to Exempt it From the Antitrust Laws

48. The Acquisition is a transaction designed to increase access to clinical services and high-quality health care in the New Orleans region and create expanded hubs for specialty care, innovation, and academic medicine in the region.

49. HCA previously operated the three hospitals acquired in the Acquisition—Tulane University Medical Center, Lakeview Regional Medical Center, and Tulane Lakeside Hospital (the “UHS Hospitals”) through University Healthcare System, L.C. (“UHS”), a joint venture between Tulane and affiliates of HCA.

50. The Acquisition was structured such that HCA transferred its ownership interest in UHS to Tulane, and LCMC then acquired the membership interests of UHS and related equity interests in certain physician clinics from Tulane.

51. The Acquisition also contemplates a partnership between LCMC and Tulane that will provide significant benefits to the greater New Orleans community, even beyond the improvements in access to health care. For example, the Acquisition (1) represents an approximately \$600 million commitment from Tulane to further develop downtown New Orleans, including new construction and enhancements; (2) includes the establishment of new nursing, clinical research, and graduate scholarship programs; and (3) has the potential to establish new Centers of Excellence in Louisiana.

52. In addition, as part of the Acquisition, LCMC agreed to commit at least \$220 million in capital investments to improve multiple hospitals in the first five years following the close of the transaction.

53. On December 28, 2022, the State of Louisiana granted a COPA approving the agreements and merger effectuating the Acquisition.³ The COPA reflects Louisiana’s clearly articulated and affirmatively expressed intent that the Acquisition should be exempt from the federal antitrust laws. It is an important aspect of the State’s health care policy, and an area of regulation constitutionally reserved for State—not federal—oversight.

54. Moreover, the issuance of this COPA necessarily means that the State found “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 an undue increase of health care costs.” La. R.S. § 40:2254.4.

55. The COPA expressly provides for Louisiana’s active supervision of the Acquisition’s implementation and the subsequent operations of the merged entity. In this way, Louisiana actively supervises the Acquisition and the subsequent operations of the merged entity.

56. The COPA was also subject to terms and conditions issued by the State Attorney General, which further provide for active supervision of the Acquisition and the subsequent operations of the merged entity.

57. In addition, the Louisiana COPA statute itself provides for active supervision of the Acquisition and the subsequent operations of the merged entity by permitting the State Attorney General to enforce the terms of the COPA, La. R.S. § 40:2254.10, and via the annual reporting requirements for the merged entity subject to the COPA, La. R.S. § 40:2254.11.

58. 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 on the promised benefits for the people of Louisiana.

³ See Exhibits A-B.

V. Because of the COPA, the Acquisition is Exempt From the Antitrust Laws, including the HSR Antitrust Act

59. By issuing a COPA for the Acquisition, Louisiana asserted its sovereign authority under the state action immunity doctrine to exempt the transaction from Defendants’ oversight under the antitrust laws.

60. By its clearly articulated and affirmatively expressed assertion that the Acquisition is a matter of its own policy and not subject to the antitrust laws, together with active supervision of the transaction, Louisiana has stripped Defendants’ authority to regulate the Acquisition under the federal antitrust laws.

61. The HSR Antitrust Act, which amended the Clayton Act and pursuant to which Defendants seek to require LCMC to submit an HSR Filing and pay the associated filing fee and penalty, is a federal antitrust law subject to the state action immunity doctrine.

VI. The FTC’s Order that LCMC Submit an HSR Filing

62. On March 3, 2023, counsel from the FTC’s Premerger Notification Office contacted LCMC’s counsel, asking to be “walk[e]d . . . through the HSR analysis” for the Acquisition. Counsel for LCMC responded that “Attorney General Jeff Landry of Louisiana approved a Certificate of Public Advantage (COPA) under Louisiana Revised Statute [40:2254.1], et seq., for LCMC Health’s below-referenced partnership with Tulane University. The COPA was granted prior to the closing of the transaction.”⁴

63. The FTC’s response stated in part that LCMC’s email “is not sufficient to explain why [LCMC] didn’t file an HSR notification prior to its January 2023 acquisition.” The FTC continued, “Please explain your HSR analysis as to why the acquisition did not require an HSR

⁴ The relevant email correspondence with the FTC is appended to this Complaint as Exhibit C.

notification. Additionally, please provide more detail on how the Louisiana COPA analysis exempts the acquisition from HSR notification.”⁵

64. Following a more detailed reply from LCMC’s counsel, the FTC signaled its definitive disagreement with LCMC’s position and ordered LCMC to submit an HSR Filing (the “FTC’s Order”). The FTC stated, “We disagree with your analysis below. Assuming your transaction met the statutory thresholds, you should have submitted an HSR filing. Please submit your HSR filing as soon as possible.”⁶

65. The FTC’s Order that LCMC submit an HSR Filing would impose on LCMC a filing fee of at least \$30,000. Moreover, the FTC’s Order poses an even greater threat to LCMC because LCMC is subject to a daily penalty for the putatively delayed HSR Filing. For each relevant day up to and including January 10, 2023, the penalty could be up to \$46,517 per day. For each day thereafter, it could be up to \$50,120 per day.

66. By threatening LCMC with these penalties, notwithstanding Louisiana’s decision to authorize the Acquisition, the FTC’s apparent goal is to prevent States from enacting or implementing COPA statutes. The HSR antitrust review process is costly and enables the FTC to impose substantial delays to the closing of an acquisition. If the FTC succeeds in subjecting state-authorized mergers to Section 7A of the Clayton Act, it will permanently hamper the ability of States to authorize and approve time-sensitive mergers, even in instances where, as here, the State has concluded that a given transaction serves its critical interest in providing affordable, quality health care to its citizens.

⁵ *Id.*

⁶ *Id.*

CLAIMS FOR RELIEF

Count I—Declaratory Judgment Pursuant to the Hart-Scott-Rodino Antitrust Act

67. LCMC incorporates by reference the allegations contained in the previous paragraphs as though set forth fully herein.

68. LCMC is entitled to a declaration of its rights with respect to an actual and ongoing controversy over the applicability of state-action immunity to the HSR Antitrust Act, 15 U.S.C. § 18a.

69. The state-action immunity doctrine applies to the “federal antitrust laws,” *Phoebe Putney*, 568 U.S. at 225, including the HSR Antitrust Act.

70. The Acquisition is immune from the federal antitrust laws, including the HSR Antitrust Act. The Acquisition was expressly authorized by the Louisiana State Legislature and the Louisiana Attorney General, and the implementation of the Acquisition is actively supervised by the Louisiana Attorney General.

71. The FTC’s Order improperly exceeds Defendants’ authority under the HSR Antitrust Act in violation of the state action immunity doctrine.

72. Compliance with the FTC’s Order would impose economic costs on LCMC, including the HSR Filing fee.

73. The FTC has threatened enforcement by the United States for penalties under 15 U.S.C. § 18a(g)(1), notwithstanding the fact that the parties to the Acquisition, including LCMC, are immune from those penalties. According to the FTC, the penalties are currently accruing daily.

74. Because of the FTC’s directive to halt the Acquisition and submit to a costly notice and review process, and because of the ongoing threat of crushing penalties enforced by the U.S.

Department of Justice, a declaratory judgment is immediately necessary to resolve the rights and obligations of the parties.

PRAYER FOR RELIEF

Wherefore, LCMC prays for the following relief:

- a. 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 a related filing fee as defined at 16 C.F.R. § 803.9;
- b. 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;
- c. Any other relief this Court deems just and proper.

Dated: April 19, 2023

Respectfully submitted,

/s/ Diana Cole Surprenant

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Exhibit A



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December 28, 2022

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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
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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 28th 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,



Jeff Landry

Encl.: Terms and Conditions of Compliance

Exhibit B



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”)

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**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,¹ 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.

¹ 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.

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- 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.

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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.

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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:

- 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.
- 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.
- 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.
- 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

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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.

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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:

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- 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

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- 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

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- 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.

Exhibit C

From: Walsh, Kathryn E. <kwalsh@ftc.gov>
Sent: Tuesday, April 4, 2023 6:31 PM
To: Field, Ken
Cc: Jones, Robert L.; Petrizzi, Maribeth; Seidman, Mark
Subject: RE: HSR Question

[EXTERNAL]

Ken:

We disagree with your analysis below. Assuming your transaction met the statutory thresholds, you should have submitted an HSR filing. Please submit your HSR filing as soon as possible.

Thanks,
Kate

From: Field, Ken <ken.field@hoganlovells.com>
Sent: Monday, April 3, 2023 10:41 AM
To: Walsh, Kathryn E. <kwalsh@ftc.gov>
Subject: RE: HSR Question

Hi Kate,

On December 28, 2022, the State of Louisiana granted a Certificate of Public Advantage under La. R.S. 40:2254.1, et seq., approving the agreements and merger through which Tulane Medical Center, Lakeview Regional Medical Center, and Tulane Lakeside Hospital joined LCMC Health.

You asked whether Section 7A of the Clayton Antitrust Act of 1914, as amended by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 USC 18(a), required the filing of a pre-merger notification and report form ("HSR" filing) prior to closing despite the transaction being approved under La. R.S. 40:2254.1.

The Louisiana legislature expressly and clearly articulated the purpose and intent of La. R.S. 40:2254.1 in the language of the statute: "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."

We believe the state action immunity doctrine arising from *Parker v. Brown*, 317 U.S. 341 (1943) and subsequent cases effectively immunized and exempted the transaction from the Clayton Act and its HSR filing amendments given Louisiana's approval under La. R.S. 40:2254.1, et seq., prior to the merger date. While we understand that the Commission strongly disfavors Certificates of Public Advantage and assertions of state action immunity, we also understand our position here is consistent with prior Commission actions in Certificate of Public Advantage matters, including matters in which I was directly involved and specifically engaged with the Commission on this issue.

Should you disagree, please let us know and share your analysis. We are happy to discuss in more detail as necessary.

Thank you,
Ken

Ken Field

Antitrust Partner, Health Care Antitrust Practice Leader

Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004-1109
Office +1 202 637 5869
Cell +1 703 927 8631
ken.field@hoganlovells.com

From: Walsh, Kathryn E. <kwalsh@ftc.gov>
Sent: Thursday, March 23, 2023 5:24 PM
To: Field, Ken <ken.field@hoganlovells.com>
Subject: RE: HSR Question

[EXTERNAL]

Ken:

Your March 14, 2023, email is not sufficient to explain why your client didn't file an HSR notification prior to its January 2023 acquisition noted below. Please explain your HSR analysis as to why the acquisition did not require an HSR notification. Additionally, please provide more detail on how the Louisiana COPA analysis exempts the acquisition from HSR notification.

Thanks,

Kate

From: Field, Ken <ken.field@hoganlovells.com>
Sent: Tuesday, March 14, 2023 2:43 PM
To: Walsh, Kathryn E. <kwalsh@ftc.gov>
Subject: HSR Question

Hi Kate,

Thank you for taking the time to speak with me by phone. As we discussed, I have changed firms but I continue to represent LCMC Health in this matter.

By this email I also confirm, as you requested, that Attorney General Jeff Landry of Louisiana approved a Certificate of Public Advantage (COPA) under Louisiana Revised Statute 40:225411, et. seq., for LCMC Health's below referenced partnership with Tulane University. The COPA was granted prior to the closing of the transaction.

Thank you,
Ken

Ken Field

Partner

Hogan Lovells US LLP

Columbia Square

555 Thirteenth Street, NW

Washington, DC 20004-1109

Office: [+1 202 637 5869](tel:+12026375869)

Cell: [+1 703 927 8631](tel:+17039278631)

Email: ken.field@hoganlovells.com

www.hoganlovells.com

From: Walsh, Kathryn E. <kwalsh@ftc.gov>

Sent: Friday, March 3, 2023 11:49 AM

To: Field, Kenneth W. <kfield@jonesday.com>

Subject: HSR Question

**** External mail ****

Ken:

I understand Jones Day acted as Antitrust counsel to LCMC Health in the partnership with Tulane University in which Tulane Medical Center, Lakeview Regional Medical Center, and Tulane Lakeside Hospital were acquired from HCA Healthcare and joined LCMC Health. Could you walk me through the HSR analysis?

Thanks,
Kate

Kathryn E. Walsh
Deputy Assistant Director
Premerger Notification Office
Federal Trade Commission
(202) 326-2977

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JS 44 (Rev. 10/20)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Louisiana Children's Medical Center, d/b/a LCMC Health

(b) County of Residence of First Listed Plaintiff Orleans
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
E. Paige Sensenbrenner/Diana Cole Surprenant, Adams
and Reese LLP, 701 Poydras St., Suite 4500, New
Orleans, LA 70139: (504) 581-3234

DEFENDANTS

Merrick Garland, in his official capacity as Attorney General of the United States, et al.

County of Residence of First Listed Defendant Washington, D.C.
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(See Attachment to Civil Cover Sheet)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|---------------------------------------|---|---------------------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Recopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 18a

Brief description of cause:

A Complaint for Declaratory Judgment seeking a declaration that the Hart-Scott Rodino Antitrust Improvements Act does not apply.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

4/19/2023

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Attachment to Civil Cover Sheet

PLAINTIFF: Louisiana Children's Medical Center d/b/a LCMC Health

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DEFENDANTS

- 1) Merrick Garland, in his official capacity as Attorney General of the United States
- 2) United States Department of Justice
- 3) United States of America