

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Joseph J. Simons, Chairman
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

In the Matter of

Hackensack Meridian Health, Inc.,
a corporation,

and

Englewood Healthcare Foundation,
a corporation.

Docket No. 9399

5 (' \$ & 7 (' PUBLIC VERSION

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission ("FTC Act"), and by the virtue of the authority vested in it by the FTC Act, the Federal Trade Commission ("Commission"), having reason to believe that Respondents Hackensack Meridian Health

services in Bergen County and competes head-to-head with HMH for patients and inclusion in insurance networks. The Proposed Transaction would result in higher healthcare prices and higher costs to payers.

3. Access to HMH's Board minutes:

[REDACTED] As HMH's Chief Executive Officer recognized, [REDACTED] Another HMH executive shared that view: [REDACTED]

4. The Proposed Transaction will substantially lessen competition in the market for inpatient GAC hospital services sold and provided to commercial insurers and their enrollees (including self-insured employers and self-insured health plans) in the relevant geographic market for Bergen County.

5. If the Proposed Transaction were to consummate, it would result in a concentration of inpatient GAC hospital services sold and provided to commercial insurers and their enrollees in Bergen County. The Proposed Transaction would serve the market post-transaction, Holy Name Medical Center ("Holy Name") and The Valley Hospital ("Valley"), both of which are significantly smaller entities than Respondents.

6. Under the 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("2010 Merger Guidelines"), a post-acquisition concentration level above 2300 points, as measured by the Herfindahl-Hirschman Index ("HHI"), and an increase in market concentration are presumptive indicators that a Transaction would significantly increase concentration and result in a highly concentrated market for inpatient GAC hospital services sold and provided to commercial insurers and their enrollees. The Proposed Transaction results in an increase in concentration above the thresholds set forth in the 2010 Merger Guidelines and therefore is presumptively anticompetitive.

7. HMH and Englewood compete to provide inpatient GAC hospital services to patients in Bergen County. For HMH, Englewood is consistently identified as a top competitor in Bergen County. Both parties routinely track each other's market share performance on quality, patient transfers to each other's hospitals, and other competitive metrics. Quantitative metrics are used to compare the two hospitals to their competitors.

8. Today, Holy Name and Valley are able to secure high reimbursement rates and burdensome contract terms in

with insurers that other hospitals providing inpatient GAC hospital services in Bergen County are not able to obtain.

9. Englewood is a high quality, independent alternative to HMH in Bergen County because it is proximately located to both of HMH's Bergen County facilities—Hackensack University Medical Center (“HUMC”) and Pascack Valley Medical Center (“PVMC”) and offers very similar services as HMH's flagship facility, HUMC. If HMH were to acquire Englewood, insurers would have few alternatives for inpatient GAC hospital services in Bergen County. HMH would be able to demand higher rates from insurers for the combined entity's services, which, in turn, may lead to higher insurance premiums, co-pays, deductibles, or other out-of-pocket costs and/or fewer benefits for plan enrollees.

10. HMH and Englewood also compete on price factors such as facility improvements and service line expansion, and the Proposed Transaction would eliminate competition between the Respondents on these price factors.

11. Entry or expansion by other GAC hospitals will not be likely, timely, or sufficient to offset the adverse competitive effects that likely result from the Proposed Transaction. New hospital construction or expansion is costly and takes many years to complete. New Jersey's Certificate of Need (“CON”) process also requires hospitals to seek regulatory approval before adding any new licensed beds.

12. Respondents have not demonstrated cognizable, specific efficiencies that would be sufficient to rebut the strong presumption of harm and evidence that the Proposed Transaction likely will lead to significant anticompetitive effects in the relevant market.

II.

JURISDICTION

13. Respondents, and each of their relevant operating entities and parent entities are, and at all relevant times have been, engaged in commerce activities affecting “commerce” as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

14. The Proposed Transaction constitutes an acquisition subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

III.

RESPONDENTS

15. Respondent HMH, a New Jersey nonprofit corporation, operates the largest health system in New Jersey. Headquartered in Edison, New Jersey HMH is the largest employer in Bergen County and reported \$5.9 billion in revenue in 2019.

16. HMH is the largest health system in New Jersey as a result of a series of recent acquisitions. On July 1, 2016, Hackensack University Health Network (“HUHN”) merged with

Meridian Health to form HMH, which was at the time the second largest health system in the state. The merged system combined 11 GAC hospitals across seven counties. Following the HUH-N-Meridian Health transaction, on January 3, 2018, HMH merged with the JFK Health System expanding HMH to 16 hospitals and over 450 patient care locations and physicians offices. On January 3, 2019, HMH added yet another facility: the behavioral health provider Carrier Clinic.

17. Today, HMH operates 12 GAC hospitals, two children’s hospitals, two rehabilitation hospitals, and one behavioral health hospital spanning across eight counties in Northern and Central New Jersey. It employs over 7,000 physicians. In Bergen County, HMH operates HUMC, its 781-bed flagship academic medical center, and partially owns and operates as part of a joint venture PVMC. Both HUMC and PVMC are GAC hospitals located within Bergen County. HMH also operates Palisades Medical Center (“Palisades”) and partially owns and operates as part of a joint venture Mountainside Medical Center (“Mountainside”)—both located within fifteen miles of HUMC in counties adjacent to Bergen. PVMC, Palisades, and Mountainside are community hospitals that provide primary and secondary inpatient GAC hospital services and generally refer patients to HUMC for more complex services.

18. HMH Medical Group is a healthcare network consisting of over 1,000 physicians and advanced providers. The HMH Medical Group offers primary and specialty care at over 300 locations spanning eight counties in New Jersey. The HMH Medical Group primary care physicians provide internal medicine, family medicine, pediatrics and geriatrics among other services. The HMH Medical Group also employs specialists that provide care in a variety of specialty fields including cardiology, oncology, breast surgery, vascular surgery, neurology, neurosurgery, OB/GYN care, and orthopedics, as well as more than 25 pediatric subspecialties.

19. Respondent Englewood, a New Jersey non-profit corporation, is an independent hospital and healthcare network in Northern New Jersey. It is headquartered in Englewood, New Jersey. It is composed of Englewood Hospital and Medical Center, the Englewood Physician Network, and the Englewood Healthcare Foundation. In 2019, Englewood accumulated approximately \$768.9 million in revenue.

20. Englewood Hospital is an inpatient GAC services hospital located in Bergen County. Englewood’s services include cardiac surgery and care, cancer care, orthopedic surgery, spine surgery, vascular surgery, women’s health, and bloodless medicine and surgery. Englewood Hospital has 531 licensed beds and currently operates 318 beds.

21. The Englewood Health Physician Network includes over 500 physicians who offer primary care and specialty services at more than 100 locations in six counties in New Jersey and New York. Englewood also operates two outpatient imaging centers in Bergen County and one outpatient imaging center in Essex County. Englewood has minority interests in two joint-venture outpatient surgical facilities.

IV.

THE PROPOSED TRANSACTION

22. Englewood initiated a search for a larger health system partner beginning in 2018. Through its consultant, the Charter Group, Englewood principally engaged with five potential health system partners and after receiving initial bids, continued discussions with HMH,

23. In February 2019, Englewood's Board of Trustees narrowed the pool of potential partners to HMH and [redacted] both of which submitted final bids in early April 2019. Englewood's Board selected HMH and the parties ultimately entered into a definitive affiliation agreement on September 23, 2019 (the Proposed Transaction).

24. Pursuant to the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a, and a modified timing agreement entered into between the Respondents and Commission staff, this Court's action, Respondents would be free to close the Proposed Transaction at 11:59 p.m. EST on December 7, 2020.

V.

RELEVANT SERVICE MARKET

25. Inpatient GAC hospital services sold and provided to insured their enrollees is a relevant service market in which to analyze the Proposed Transaction. Inpatient GAC hospital services include a broad cluster of hospital services, medical, surgical, and diagnostic services requiring an overnight hospital stay, of which competitive conditions are substantially similar. Here, inpatient GAC hospital services cover all such services where both HMH and Englewood sell and provide to commercial insurers and their enrollees overlapping services. Non-overlapping services are not included in the relevant service market, as the Proposed Transaction will not substantially lessen competition.

26. Although the Proposed Transaction's likely effect on competition could be 0 Tc 0 Tw 20.52 0 Td

substitutes for, inpatient GAC hospital services. For example, inpatient GAC hospital services do not include services related to psychiatric care, substance abuse, and rehabilitation services.

29. The Proposed Transaction ~~is~~ ^{causes} significant harm to competition in a service market for inpatient GAC hospital services sold and provided to commercial insurers and their enrollees. As a result, this service market ~~is~~ ^{is} a relevant market for analyzing the Proposed Transaction.

V.

R

37. In a market no broader than Bergen County for inpatient GAC hospital services sold and provided to commercial insurers and their enrollees, the Proposed Transaction exceeds these thresholds and thus is presumptively unlawful.

38. HMH's market share would increase to approximately half the inpatient hospital services sold and provided to commercial insurers and their enrollees. The Proposed Transaction would combine the first- and third-largest providers of these services and increase the HHI for Bergen County by approximately 900 for a postmerger HHI of almost 3,000. The Proposed Transaction therefore is presumptively unlawful.

VII.

ANTICOMPETITIVE EFFECTS

39. HMH and Englewood compete closely today to the benefit of commercial insurers and their enrollees. The Proposed Transaction would eliminate this important head-to-head competition.

A.

Competition among Hospitals Benefits Consumers

40. Hospital competition for commercially insured patients occurs in two distinct but related stages. First, hospitals compete for inclusion in commercial insurers' networks. Second, in-network hospitals compete to attract patients, including commercial insurers' health enrollees.

41. In the first stage of hospital competition, hospitals compete to be included in commercial insurers' health networks. To become an "in-network" provider, a hospital negotiates with an insurer and enters into a contract if it can agree with the insurer on terms. The hospital's reimbursement terms for services rendered to a health plan's enrollees is a central component of those negotiations.

42. Insurers attempt to contract with local hospitals (and other healthcare providers) that offer services that current or prospective members of the health plan want. In-network hospitals are typically significantly less expensive for health plan enrollees to seek care from than a hospital that is not included in the health plan's network (an "out-of-network provider"). Unsurprisingly, a hospital likely will attract more of a health plan's enrollees when it is in-network. Hospitals therefore have an incentive to offer competitive terms and reimbursement rates to induce the insurer to include the hospital in its health plan network.

43. From the insurer's perspective, having hospitals in-network is beneficial because it enables the insurer to create a health plan provider network in a particular geographic area that is attractive to current and prospective enrollees, especially local employers and their employees.

44. A hospital has significant bargaining leverage if its absence would make the insurer's health plan network substantially less attractive (and therefore less marketable) to its current and prospective enrollees. This relative attractiveness to the insurer depends largely on whether

CONFIDENTIAL - This document contains information that is confidential, proprietary, or otherwise subject to legal protection. It is intended only for the individual(s) named in the distribution list. If you have received this document in error, please notify the sender immediately and delete this document from your system. Do not disseminate, distribute, or use this information in any way. If you are not the named addressee, you should not disseminate, distribute, or use this information. If you are not the named addressee, you should not disseminate, distribute, or use this information. If you are not the named addressee, you should not disseminate, distribute, or use this information.

50. HMH possesses significant bargaining leverage in negotiations with insurers, which it uses to demand high reimbursement rates and burdensome contractual terms. Englewood and HMH are important alternatives for insurers constructing networks in Bergen County. But if HMH were to acquire Englewood, HMH would own three out of the six hospitals that provide

B.

Efficiencies

56. Respondents have not demonstrated cognizable, measurable specific efficiencies that would be sufficient to rebut the strong presumption and evidence of the Proposed Transaction's likely significant anticompetitive effects in the relevant market.

IX.

VIOLATION

COUNT I – ILLEGAL AGREEMENT

57. The allegations of Paragraphs 1 through 56 are incorporated by reference as though fully set forth.

58. The Proposed Transaction constitutes an unfair method of competition in violation of TIG 80,1.

or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact

3. A requirement that, for a period of time, HMM and Englewood provide prior