

Brian Rath (Attorney I.D. 350311999)
BUCHANAN INGERSOLL & ROONEY PC
Incorporated in Pennsylvania
700 Alexander Park, Suite 300
Phone: (609) 987-6827
Fax: (609) 520-3630
brian.rath@bipc.com
Attorneys for Petitioner
Salem County Hospital Corp. dba Salem Medical Center

IN THE MATTER OF THE APPROVAL OF
A TRANSACTION WHEREBY INSPIRA
HEALTH NETWORK, INC. WILL BECOME
THE SOLE CORPORATE MEMBER OF
SALEM COUNTY HOSPITAL CORP., dba
SALEM MEDICAL CENTER PURSUANT
TO N.J.S.A. 26:2H-7.10, *et seq.*

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: SALEM
COUNTY

DOCKET NO.

CIVIL ACTION

VERIFIED COMPLAINT

Petitioner, Salem County Hospital Corp. dba Salem Medical Center ("SMC" or the "Petitioner"), a New Jersey nonprofit corporation, by way of verified complaint states as follows:

Introduction

1. The proceeding is an application under the Community Health Care Assets Protection Act, N.J.S.A. 26:2H-7.10 *et seq.* ("CHAPA") for approval of a transaction (the "Proposed Transaction") as described in the Membership Transfer Agreement (the "Agreement") between SMC and Inspira Health Network, Inc. ("Inspira"), wherein Inspira will become the sole member/parent corporation of SMC. The Agreement is attached hereto at Exhibit A.

2. As required by CHAPA, SMC sought a recommendation from the Attorney General of the State of New Jersey (the "Attorney General") to this Court to approve the Proposed Transaction.

3. By letter dated October 15, 2021 SMC submitted an initial application to the Attorney General as required by CHAPA and, over the course of approximately nine months, provided additional documentation as requested by the Attorney General (the "CHAPA Application").

4. The Attorney General has conducted a public hearing as required by CHAPA and has completed his review of the CHAPA Application, in consultation with the Commissioner of the New Jersey Department of Health.

5. Ultimately, the Attorney General has found, in accordance with N.J.S.A. 26:2H-7.11(b), that the Proposed Transaction is in the public's interest. The Attorney General announced his recommendation to the Court to approve the Proposed Transaction in a written report dated October 4, 2022 (the "Attorney General's Report"), a copy of which is attached hereto as Exhibit B.

6. Pursuant to N.J.S.A. 26:2H-6.1, *et seq.* and N.J.A.C. 8:33-3.3(h)3, a Certificate of Need is not required with respect to a transaction involving a change in the membership of a nonprofit corporation, where the members are individuals or nonprofit corporations, and there is no purchase or sale of assets, such as the Proposed Transaction. Only prior written notice is required to be provided to the Department of Health. A copy of the August 25, 2022 letter from Inspira to the Department of Health containing notice of the Proposed Transaction is attached hereto as Exhibit C.

7. Pursuant to N.J.S.A. 26:2H-7.11, Petitioner now requests this Court's approval of the Proposed Transaction following completion of the Attorney General's review.

Parties to the Proposed Transaction

8. SMC is a New Jersey nonprofit corporation and is recognized as an organization described under Section 501(c)(3) of the Internal Revenue Code ("Code"). SMC is organized to engage in the delivery of and to carry on, sponsor or participate, directly or through one or more affiliates, any activities related to delivering high quality, compassionate healthcare to Greater Salem County. SMC is the operator of Salem Medical Center, a licensed acute care hospital in Salem County, New Jersey (the "Hospital"). The Hospital an important provider of health care to residents of Salem County and Southern New Jersey.

9. SMC is affiliated with Salem Medical Center Foundation (the "Foundation"), a New Jersey nonprofit organization and with certain health care related taxable subsidiaries including Salem ASC, LLC and Muhlenberg ASC, LLC.

10. The Hospital, General Acute Care Hospital License No. 71702, is a regional hospital in Salem, Salem County with 87 ICU and Medical/Surgical beds and a 26 bed Behavioral Health Unit. The Hospital treats approximately 200 inpatients every month, and more than 1600 patients go through the Hospital's emergency department in a year. SMC employs more than 500 people and is one of the largest employers in the area.

11. Inspira is a New Jersey nonprofit corporation formed pursuant to the New Jersey Nonprofit Corporation Act, N.J.S.A. §§ 15A: 1-1 *et seq.* and is recognized as an organization described under Section 501(c)(3) of the Code. Inspira is the parent corporation of a nonprofit integrated health care delivery system that includes three hospitals, Inspira Medical Center - Elmer, Inspira Medical Center – Mullica Hill, and Inspira Medical Center - Vineland and various other ancillary service providers.

Background to the Proposed Transaction

12. Throughout its existence, SMC has and continues to provide outstanding health care to in the Salem County community; however, for a number of years, SMC has been financially vulnerable. Beginning in 2020, SMC suffered a substantial financial setback as a result of COVID-19. SMC determined that the unforeseen financial deterioration caused by the pandemic created an immediate need to transfer ownership of SMC in the most expeditious way possible.

13. On June 7, 2021, SMC's Board of Trustees (the "Board") began deliberations regarding the necessity of securing a potential transfer of ownership, and its direct relation to enabling SMC to continue to fulfill its mission and purpose, or run the risk of SMC's closure due to lack of funds. Moreover, the Board determined that a bankruptcy was not a viable alternative to proceeding with a potential transfer of ownership transaction.

14. The SMC Board of Trustees decided to pursue the Proposed Transaction based upon: (1) the conclusions reached in a December 21, 2020 Community Needs Assessment Report conducted by ECG Consulting (the "ECG Report"); (2) the institutional knowledge of the principals of SMC obtained from the acquisition of SMC less than 3 years prior; and (3) weighing the risks of losing staff during an unprecedented industry-wide shortage of healthcare workers.

15. The Board determined that a transfer of ownership transaction was necessary to enable SMC to remain open and satisfy its mission and purpose, and recognized that conducting discussions about a transaction with a limited number of parties was the only viable path to keeping SMC open. In short, an immediate transaction affiliating with another health care entity was necessary in order to avoid the reduction of services to the Hospital's community or, at worst, closure of the Hospital.

16. The process of selecting a limited number of suitors was determined by the limited expressions of interest by Inspira and two other potential suitors in response to direct queries by SMC.

17. Representatives from the Board established contact with the executive leadership of each potential transaction partner, and engaged in a series of discussions regarding a possible transaction with SMC, including the evaluation of various possible acquisition or affiliation structures. The result of these discussions was the ultimate selection of Inspira as being the best suited partner with which to close the proposed transaction in the form of a single-member substitution.

18. On September 13, 2021, the Board authorized SMC to negotiate and execute a Memorandum of Understanding (“MOU”) with Inspira. The MOU was fully executed September 20, 2021, after which negotiations on a definitive agreement began.

19. On December 17, 2021, the parties executed a Membership Transfer Agreement (“MTA”) in which Inspira will substitute for SMC’s individual corporate members as the sole corporate member of SMC.

Structure of the Proposed Transaction

20. In accordance with the terms of the MTA, upon receipt of all required approvals and the satisfaction of other conditions to closing, SMC will file a Certificate of Amendment of the Certificate of Incorporation with the State of New Jersey and amend its Bylaws establishing Inspira as its sole member. Immediately following the consummation of the Proposed Transaction, Inspira will become the sole member of SMC and the operator of the Hospital.

21. As of the effective date of the Proposed Transaction, SMC will continue to: (1) maintain its own existing licenses, provider numbers and accreditations, as applicable; (2) furnish

all services they are currently furnishing; and (3) continue to operate as an organization exempt from federal income taxation under Section 501(c)(3) of the Code. The tax identification number of SMC will not change. Further, the entity currently licensed by the New Jersey Department of Health will remain the same with no change in location.

22. Inspira has committed that, in order to ensure the continuity and sustainability of care and services provided by SMC, Inspira will abide by the terms and conditions of that certain Certificate of Need approval letter issued to SMC by the New Jersey Department of Health, dated January 31, 2019, or as modified by the New Jersey Department of Health, and any and all conditions of approval placed upon Inspira becoming the sole member of SMC by the New Jersey Department of Health pursuant to any Certificate of Need approval letter issued with respect to the Transaction.

23. Inspira has committed that the medical staff, admitting privileges and medical staff bylaws of SMC will remain in place unless and until amended or changed according to the terms of the medical staff bylaws of SMC.

24. Inspira has committed to continue operating SMC and the Hospital in its current location as a licensed acute care hospital and maintaining core services for the benefit of the community and serve the poor and medically underserved consistent with Inspira's mission.

25. Additionally, and to the extent consistent with the changing needs of the communities served, the changing environment in which healthcare is provided, applicable Law, and if consistent with Inspira's mission, vision, priorities, and strategic plan, Inspira has committed to continue operating SMC and the Hospital to continue, either directly or through SMC Affiliates: (i) supporting wellness, health education and other community programs; (ii) participating in medical research programs and innovation activities to the extent feasible and sustainable; (iii)

participating in governmental healthcare programs; (iv) identifying community needs in the service area and potential clinical improvements or enhancements; (v) supporting and enhancing education and community programs; (vi) maintaining access to community physicians in SMC's service area, (vii) supporting access to behavioral health needs of the community; and (viii) positioning SMC to be a leader in population health management in the communities served by SMC.

Review by the Department of Health

26. The Department of Health has issued a recommendation pursuant to CHAPA, specifically N.J.S.A. 26:2H-7.11(b).

In a letter from Judith M. Persichilli, the Commissioner of the Department of Health, to Mathew T. Platkin, Acting Attorney General of New Jersey, dated September 13, 2022 (Exhibit D), the Commissioner stated that “the Department does not believe the proposed transactions will result in the deterioration of the quality, availability, or accessibility of health care services in the impacted community.”

Review by the Attorney General

27. By letter dated October 15, 2021, counsel for SMC notified the Office of the New Jersey Attorney General of the Proposed Transaction involving SMC, the Hospital and Inspira and inquired whether review under CHAPA by the Attorney General is necessary.

28. In a letter dated November 2, 2021, the Attorney General's office advised counsel that the Proposed Transaction required review under CHAPA and provided a list of questions and requests for materials designed to elicit the information needed to review the Proposed Transaction pursuant to CHAPA.

29. On January 21, 2022, the Attorney General's office acknowledged receipt of SMC's documents constituting SMC's initial application under CHAPA. The submission included copies of the Agreement, board minutes, consultants' reports, and a comprehensive description of the Proposed Transaction and the process leading to SMC's decision to pursue the substitution of Inspira to become its sole member.

30. As required under N.J.S.A. 26:2H-7.11(a)(1), notice of the proposed transaction was published in English and Spanish in the South Jersey Times, the main newspaper of general circulation in Salem County, on January 26, 2022, February 2, 2022 and February 9, 2022 and was posted at each of the Hospitals and on their websites. Affidavits of Publication of such notice is attached hereto as Exhibit E.

31. By letter dated February 18, 2022, the Attorney General's office posed twenty-six (26) supplemental questions to SMC. Upon review of the answers to those questions, which were submitted by SMC on March 9, 2022, the Attorney General's office issued a final set of supplemental questions on April 14, 2022. SMC responded to this final set of questions on April 26, 2022.

32. The Attorney General's office deemed the CHAPA application complete on July 7, 2022 pursuant to N.J.S.A. 26:2H-7.11(a)(2). In accordance with N.J.S.A. 26:2H -7.11(f), the application was available for public inspection at the Office of the Attorney General.

33. On August 10, 2022, in accordance with N.J.S.A. 26:2H-7.11(f), representatives of the Attorney General and the Commissioner of Health conducted a joint public hearing in the community served by the Hospital. The hearing was held at the Salem County College, Salem County at 11:00 a.m. The hearing provided members of the affected community with the opportunity to comment on the Proposed Transaction. The public hearing was conducted by

Deputy Director Kavin K. Mistry on behalf of the Acting Attorney General Mathew T. Platkin and by Assistant Commissioner Stefanie Mozgai on behalf of Commissioner of Health Judith M. Persichilli.

34. As required under N.J.S.A. 26:2H-7.11(f), notice of the public hearing was published in advance of the hearing in English and Spanish in the South Jersey Times, the main newspaper of general circulation in Salem County, and was posted at each of the Hospitals and on their websites. Affidavits of Publication of such notice is attached hereto as Exhibit F.

35. The twenty-four (24) individuals set forth on the service list at Exhibit G participated in the public hearing.

36. A transcript of the public hearing is attached at Exhibit H:

37. In the Attorney General's Report dated October 4, 2022, the Attorney General concluded that the Proposed Transaction is in the public interest and recommended that that the Court approve the Proposed Transaction with the following condition:

1. The adoption by the governing bodies of Salem County Hospital Corporation, d/b/a Salem Medical Center, Inspira Health Network, Inc., and the Salem Medical Center Foundation, Inc., of the amendments to their respective Certificates of Incorporation and Bylaws, substantially in the form submitted with the CHAPA application, effectuating the changes resulting from the Proposed Transaction, provided that there be thirty (30) days prior written notice to and approval by the Attorney General of any material changes to the proposed forms of governing documents that were submitted in the CHAPA application process;
2. Salem County Hospital Corporation, d/b/a Salem Medical Center, Inspira Health Network, Inc., and the Salem Medical Center Foundation, Inc., along with any subsidiaries or affiliates of the foregoing, shall submit to the Attorney General for review and approval thirty (30) days prior to the adoption of any amended or restated Certificates of Incorporation and/or Bylaws related to and not previously submitted with the CHAPA application; and
3. Written confirmation from the Salem Health & Wellness Foundation Board of Trustees that it has approved the settlement of its outstanding loan to Salem County Hospital Corporation, d/b/a Salem Medical Center and the loan has been discharged.

Approval by the Superior Court

38. The Proposed Transaction meets the statutory criteria of CHAPA. Therefore, the New Jersey Office of the Attorney General, in consultation with the Commissioner of Health, has recommended that the Court approve the Proposed Transaction.

39. All persons who submitted written petitions or spoke at the open public hearing are joined as parties to this proceeding as required by N.J.S.A. 26:2H-7.11(1) and will be served pursuant to the form of Order to Show Cause included with this Verified Complaint.

40. Accordingly, Petitioner respectfully requests that this Court approve the Proposed Transaction.

WHEREFORE, Petitioner Salem County Hospital Corp. dba Salem Medical Center respectfully requests that judgment be entered as follows:

- (A) Declaring that the Proposed Transaction is in the public interest in accordance with the application requirements of the Community Healthcare Assets Protection Act, N.J.S.A. 26:2H-7.10 *et seq.*;
- (B) Granting approval of the Proposed Transaction that will substitute Inspira Health Network, Inc. as the sole corporate member of Salem County Hospital Corp. dba Salem Medical Center; and
- (C) For such other relief as the Court deems just and proper.

BUCHANAN INGERSOLL & ROONEY PC

Dated: October 14, 2022

By: _____
Brian Rath, Esq.
Attorney I.D. 350311999

Attorneys for Petitioner, Salem County Hospital
Corp. dba Salem Medical Center

CERTIFICATION OF COMPLIANCE

I certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

BUCHANAN INGERSOLL & ROONEY PC

Dated: _____

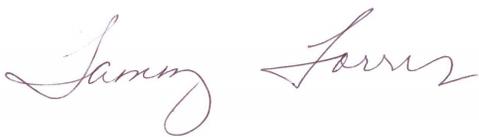
By: _____
Brian Rath, Esq.
Attorney I.D. 350311999

Attorneys for Petitioner, Salem County
Hospital Corp. dba Salem Medical Center

VERIFICATION

I, **Tammy Torres**, am the Chief Executive Officer of Salem County Hospital Corp. dba Salem Medical Center. I have carefully reviewed the foregoing Verified Complaint and certify that all of the allegations contained therein are true based on my personal knowledge. I am aware that if any of the foregoing statements is willfully false I am subject to punishment.

Dated: October 14, 2022


— **Tammy Torres, DNP, MSN, RN** —

CERTIFICATION

Pursuant to R 4:5-1 the undersigned attorney for Petitioner states that to the best of my knowledge, information and belief:

1. The matter in controversy is not the subject of any action pending in any court or arbitration proceedings, that no other action or arbitration proceeding is contemplated by Petitioner:
2. Pursuant to the CHAPA, “any person who filed a written comment or exhibit or appeared and made a statement in the public hearing held by the Attorney General pursuant to subsection f. of this section shall be considered a party to the proceeding, including consumers or community groups representing the citizens of the State.” A list of those parties has been submitted to the Court with the form of Order to Show Cause.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.

BUCHANAN INGERSOLL & ROONEY PC

Dated: _____

By: _____
Brian Rath, Esq.
Attorney I.D. 350311999

Attorneys for Petitioner, Salem County
Hospital Corp. dba Salem Medical Center