



STATE OF TENNESSEE
DEPARTMENT OF HEALTH

JOHN J. DREYZEHNER, MD, MPH
COMMISSIONER

BILL HASLAM
GOVERNOR

March 28, 2016

Alan Levine
President & CEO, Mountain States Health Alliance
303 Med Tech Parkway, Suite 300
Johnson City, Tennessee 37604

Bart Hove
President & CEO, Wellmont Health System
1905 American Way
Kingsport, Tennessee 37660

Re: Request for Additional Information (#1)

Dear Mr. Levine and Mr. Hove:

The Tennessee Department of Health (department) is currently reviewing the information submitted on February 16, 2016, in the application for a Certificate of Public Advantage (COPA) submitted by Mountain States Health Alliance and Wellmont Health System (collectively referred to as the parties, individually, a party).

According to state law, a COPA shall be issued if the department “*determines that the applicants have demonstrated by clear and convincing evidence that the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement.*”¹ Further, department rule authorizes the department to “*request additional information from the parties prior to deeming the application complete.*”²

While the department is reviewing the application in its entirety, the department has elected to engage consultants, as authorized by state law, to ensure the department has the specialized expertise required to conduct due diligence in a manner that adequately protects all who may be affected by the proposed merger.³ Prior to the conclusion of the department’s completion review (which will incorporate feedback from the consultant), the department will periodically notify the parties of sections that are incomplete to allow the parties time to prepare supplemental materials.

¹ T.C.A. § 68-11-1303(e)(1).

² Tenn. Comp. R. & Reg. 1200-38-01-.02(3)(a).

³ T.C.A. § 68-11-1307(2)(b).

As you know, it is the responsibility of the parties to provide sufficient information for the department to evaluate the application. During the department's preliminary review, the department found the level of detail and specificity provided by the parties to be insufficient. In this and subsequent letters, the department will identify sections of the application as complete or incomplete. Incomplete shall have one of the following meanings and shall be identified as such:

Incomplete (1): The section is deemed incomplete because the section does not meet the letter of the rule; or

Incomplete (2): The section is deemed incomplete because the information provided is insufficient to determine the advantages and disadvantages of the proposed merger.

INCOMPLETE SECTIONS

1. Cooperative Agreement – Incomplete (1)

Tenn. Comp. R. & Reg. 1200-38-01-.02(2)(a)13

The “Master Affiliation Agreement and Plan of Integration” by and between Wellmont Health System and Mountain States Health Alliance, dated as of February 15, 2016, (which serves as the Cooperative Agreement required by department rule), does not meet the letter of the rule for the following two reasons:⁴

A. *Counsel Memoranda – Incomplete (1)*

Not included in the application are the “Wellmont Counsel Memorandum” and the “MSHA Counsel Memorandum,” (collectively referred to herein as the Counsel Memoranda), referenced by the Cooperative Agreement in Exhibit 11.1. The Counsel Memoranda likely includes, but is not limited to, information related to subsidiaries, financial statements, liabilities, contracts, tax matters, title to properties, litigation, compliance with law, permits and licenses, real property, environmental protection, insurance, and employees and benefit plans. The department cannot assess the potential impact of the Cooperative Agreement in the absence of the Counsel Memoranda that contains information necessary to understand the potential impact of the Cooperative Agreement.

Please provide a copy of the Wellmont Counsel Memorandum mentioned in the Cooperative Agreement in Article III Sections 3.05 through 3.17 and a copy of the MSHA Counsel Memorandum mentioned in Article IV Sections 4.05 through 4.17.

⁴ *Tenn. Comp. R. & Reg. 1200-38-01-.02(2)(a)13*

B. Excluded Information – Incomplete (1)

The Cooperative Agreement lacks information required by department rule.⁵ At a minimum, the following information was not included in the executed copy of the Cooperative Agreement:

(v) A description of the competitive environment in the parties' geographic service area, including:

(I) Identification of all services and products likely to be affected by the Cooperative Agreement and the locations of the affected services and products;

(II) The parties' estimate of their current market shares for services and products and the projected market shares if the COPA is granted;

(III) A statement of how competition among health care providers or health care facilities will be reduced for the services and products included in the Cooperative Agreement; and

(IV) A statement regarding the requirement(s) for any Certificate(s) of Need resulting from the Cooperative Agreement.

(vi) Impact on the service area's health care industry workforce, including long term employment and wage levels and recruitment and retention of health professionals;

(vii) Description of financial performance, including:

(I) A description and summary of all aspects of the financial performance of each party to the transaction for the preceding five (5) years including debt, bond rating and debt service and copies of external certified public accountants annual reports;

(II) A copy of the current annual budget for each party to the Cooperative Agreement and a three (3) year projected budget for all parties after the initiation of the Cooperative Agreement. The budgets must be in sufficient detail so as to determine the fiscal impact of the Cooperative Agreement on each party. The budgets must be prepared in conformity with generally accepted accounting principles (GAAP) and all assumptions used must be documented;

⁵ Tenn. Comp. R. & Reg. 1200-38-01-.02(2)(a)13

- (IV) *Identification of existing or future business plans, reports, studies or other documents of each party that:*
 - I. *Discuss each party's projected performance in the market, business strategies, capital investment plans, competitive analyses and financial projections including any documents prepared in anticipation of the Cooperative Agreement; and*
 - II. *Identification of plans that will be altered, eliminated or combined under the Cooperative Agreement or subsequent COPA.*

- (ix) *A description of the plan, including economic metrics, that details anticipated efficiencies in operational costs and shared services to be gained through the Cooperative Agreement including:*
 - (I) *Proposed use of any cost savings to reduce prices borne by insurers and consumers;*
 - (II) *Proposed use of cost savings to fund low or no-cost services such as immunizations, mammograms, chronic disease management and drug and alcohol abuse services to achieve long-term population health improvements; and*
 - (III) *Other proposed uses of savings to benefit advancement of health and quality of care and outcomes.*

- (x) *Proposed Measures and suggested baseline values with rationale for each Measure to be considered by the department in development of an Index. Proposed Measures are to be used to continuously evaluate the Public Advantage of the results of actions approved in the COPA through the Cooperative Agreements under active supervision of the department. Measures should include source and projected trajectory over each of the first five (5) years of the Cooperative Agreement and the trajectory if the COPA was not granted; Proposed Measures may include:*
 - (I) *Improvements in the service area population's health that exceed Measures of national and state improvement;*
 - (II) *Continuity in availability of services throughout the service area;*
 - (III) *Access and use of preventive and treatment health care services throughout the service area;*
 - (IV) *Operational savings projected to lower health care costs to payers and consumers; and*

(IV) *Improvements in quality of services as defined by surveys of the Joint Commission.*

The department expects parties to a potential merger to be accountable to each other and to the State for the commitments detailed and promised in the application. To this end, these commitments should be included in the Cooperative Agreement pursuant to department rule.

2. Plan of Separation – Incomplete (1)
Tenn. Comp. R. & Reg. 1200-38-01-.02(2)(a)17

The department's requirement for a plan of separation is to specifically ensure that if a COPA is issued and the New Health System (as defined in the application) fails to live up to the promised commitments and understanding reached by the department and the parties, the department may terminate the COPA and require a clear plan of action to return the parties to a pre-consolidation state. The minimal framework presented in the application does not provide the level of detail necessary to meet the department's requirement to outline a clear, actionable plan to separate a merged entity.

The department will continue its on-going and active review of the application materials submitted thus far, including the recently submitted addendum, while the department waits for a response to this letter and for information considered by the parties to be confidential or competitively sensitive.

Sincerely,

A handwritten signature in blue ink, appearing to read "John J. Dreyzehner", with a small "MD" written to the right.

John J. Dreyzehner, MD, MPH, FACOEM
Commissioner

cc: J. Richard Lodge
Richard G. Cowart