

May 7, 2025

BY E-MAIL

Dr. Lindsay Weaver
State Health Commissioner
Indiana Department of Health
2 N Meridian St.
Indianapolis, IN 46204

Re: Application for Certificate of Public Advantage Submitted by Union Hospital, Inc.
and Terre Haute Regional Hospital, L.P.

Dear Commissioner Weaver,

On behalf of Terre Haute Regional Hospital, L.P. (“THRH”) and HCA Healthcare Inc. (“HCA”) we respectfully submit this letter to the Indiana Department of Health (“IDOH”) in response to the April 17, 2025 letter from the Indiana Attorney General (“Indiana AG Letter”) to the IDOH regarding the Certificate of Public Advantage (“COPA”) application submitted by Union Hospital, Inc. (“Union”) and THRH.

The Indiana AG Letter incorrectly asserts that without the COPA, HCA will merely find an alternative buyer or continue to operate what the Attorney General claims is a profitable hospital. On the contrary, without the COPA, market conditions are such that HCA will need to seriously consider ending services or closing the hospital. More specifically, we write to confirm that: (1) THRH is not profitable and will not become profitable; (2) HCA has engaged in multiple sales process attempts and Union Hospital emerged as the only option; and (3) the sale to Union Hospital is the only option to ensure jobs and services are preserved in the Wabash Valley.

I. THRH is Not Profitable and Will Not Become Profitable.

Contrary to assertions in the Indiana AG Letter, THRH is not profitable. The analysis cited in the Indiana AG Letter relies on data that does not accurately portray THRH’s declining financial position. HCA assesses the financial performance of its hospitals by evaluating each hospital’s earnings before interest, taxes, depreciation, and amortization (“EBITDA”). A review of THRH’s EBITDA demonstrates that THRH is in a clear financial decline. In 2022, THRH’s EBITDA was negative (\$2,770,000). EBITDA further declined to negative (\$5,624,000) in 2023. THRH projected a negative EBITDA of (\$1,574,788) in 2024. Due to unexpected, non-recurring income items, THRH ended 2024 with an EBITDA of \$3,472,002.¹ Once these non-recurring income items are removed, **THRH’s 2024 EBITDA**

¹ Specifically, in the course of 2024, THRH received two non-recurring true-ups: a one-time \$2,536,305 favorable expense HAF/HIP assessment true up from SFY2022, and a one-time \$1,340,914 favorable DSH

is **again squarely negative**. In addition to EBITDA, HCA must also consider the capital expenditures that are necessary to maintain THRH's facility, equipment, and technology, beyond standard operating expenses. Such capital expenditures, which are and will continue to be substantial given THRH's aging facility, further reflect THRH's challenging cash flow and inability to independently operate.

Ranked by net patient revenue per bed, THRH is among the bottom tenth percentile of hospitals within Indiana. The Indiana AG Letter cites to CMS cost report data to conclude that THRH has greater net income than other hospitals in Indiana. This data cannot be reliably used to compare metrics across hospitals because what is recorded as hospital income and operating costs can vary greatly across hospitals. Instead, net patient revenue per bed captures differences in hospital size, which impacts operational costs and differences in revenue that reflects a hospital's payer mix and utilization level. THRH ranked 8th lowest of 118 Indiana hospitals for net patient revenue per bed in 2022.

THRH's financial condition will not reverse given its declining operational trajectory. THRH's key operating metrics demonstrate the hospital's declining viability. A review of THRH's operating indicators reveals that THRH has continued to experience decreased admissions, decreased inpatient surgeries, and decreased outpatient surgeries since 2018. This declining trajectory has continued from 2023 to 2024. Births, typically supported by OB-GYNs, declined 23%, inpatient surgeries decreased by 25.5%, and surgical minutes were reduced by 14.8%. While volumes declined, THRH's labor costs and capital needs grew; the average hourly rate increased 7.3% and reliance on stop-gap contract labor rose 13.4%. Additionally, *over the last twelve months, THRH has been regularly operating at an average occupancy below 30%, which is likely unsustainable.* Finally, THRH's commercial market share has fallen by more than half from 16% to less than 7% between 2019 and 2023.

THRH's increasing reliance on solo physicians also has a significant impact on its financials as THRH is faced with either paying for expensive locums coverage or temporarily ceasing to provide services whenever solo physicians require time off. Further, THRH's volume will only continue to decline given its substantial physician retention and recruitment challenges, which threaten THRH's ability to maintain several of the service lines supported by solo physicians nearing retirement age—including OB-GYN and urology. Despite significant recruiting efforts, THRH has been unable to recruit physicians into these service lines, among others. For instance, in 2023, HCA identified and contacted around 1,200 OB-GYN candidates to recruit one to THRH, but received **no interest**. These efforts, which are in addition to THRH's posts on numerous physician websites and email outreach, failed to yield even an initial remote screening interview for any candidates. THRH has only **six employed physicians**, and when these practitioners retire, THRH will find it nearly impossible to recruit a specialist to run a solo-supported service line. Consequently, when these physicians depart, these service lines will likely cease resulting in further decreased revenues and the removal of these services from the community.

revenue true up from SFY2022. Without these non-recurring payments, 2024 EBITDA is negative. No additional one-time payments are forthcoming.

THRH discontinued its trauma center accreditation because the service line was failing. The Attorney General is incorrect to assert that HCA's difficult decision to discontinue the THRH trauma center accreditation in 2024 is a demonstration of consolidation before the potential merger has even closed. To the contrary, this was an ordinary course business decision made because a struggling hospital was unable to support a declining service line. HCA decided to discontinue the trauma accreditation at THRH in August 2024 because of continuing financial losses and staffing challenges. THRH's trauma services experienced financial losses for several years before the decision. THRH's business plans demonstrate that the discontinuation of the trauma accreditation was being continuously evaluated as a potential option several years before the proposed transaction with Union. A continued decline and loss of services, like the loss of the trauma accreditation at THRH, is what residents of the Wabash Valley will likely experience without the COPA, not because of it.

II. Union Hospital is the Only Interested Buyer for THRH.

Without the COPA, there are no viable alternatives to maintaining services at THRH. The Indiana AG Letter asserts that absent the COPA, "it is *likely* that THRH will be able to find another buyer" because "THRH is *likely* an appealing target for another buyer that is not a rival competitor in the same community." See Indiana AG Ltr. at 5 (emphasis added). Yet, HCA's extensive search process and system outreach demonstrates that the Attorney General's contention is inconsistent with reality. HCA has already made repeated, unsuccessful attempts to sell THRH to alternative buyers through multiple processes over the last several years. HCA's extensive search included Morgan Stanley approaching at least six potential purchasers beginning in 2019–2020. Specifically, outreach was conducted to solicit interest from: Indiana University Health, Ascension Health, Franciscan Health, Community Health Network, Hendricks Regional, and OSF Healthcare. None of these health systems expressed interest in a transaction.

Before reaching an agreement with Union Hospital, HCA also pursued letters of intent with two alternative buyers, Prime Healthcare and Anther Health Services, in 2022. Both declined to move forward after conducting diligence. HCA's understanding is that neither could justify the purchase in light of the hospital's declining financials. HCA only then re-engaged with Union about a transaction when it was clear there were no alternative purchasers. ***Union Hospital is the only viable option to purchase THRH and the only path forward that will maintain THRH's services in Indiana and allow it to continue serving the Wabash Valley.***

III. The Closure of THRH is a Serious Possibility if the COPA is Not Granted.

Union Hospital is the only option to ensure jobs and services are preserved in the Wabash Valley. If the COPA application is denied, then market conditions are such that HCA will need to seriously consider ending services or closing the hospital. As discussed above, key service lines at THRH have experienced a notable decline in annual volume since 2019, a trend that has only worsened in the post-pandemic years. Without a steady, predictable volume of patients, and given THRH's significant recruiting challenges, safely and appropriately staffing services will become challenging, making it difficult to maintain crucial

service lines capable of delivering the high-quality care that the community has come to expect and deserves.

Closing the hospital and selling the real estate to Union Hospital is not a viable alternative or in the public interest. Without the COPA, there is no viable path to maintain jobs and services in the community. Closing THRH would cause a major disruption to hundreds of jobs and healthcare services in the Wabash Valley community. THRH would need to terminate employees and gradually shut down services in stages, a process that would likely take several months. The few physicians that THRH currently employs would likely either retire or seek employment outside of the community. While they could potentially seek employment at Union Hospital, Union does not currently have the operating room or bed capacity to take on additional patient volumes. Further, because Union Hospital is regularly operating at 99% capacity, there is no other inpatient bed capacity in the community that would be able to absorb those patient volumes during any extended period while THRH is closed. THRH's current patients would be forced to seek care outside of the community. Critically, Union could not accommodate the 21,000 annual emergency room visits at THRH. Shutting down THRH for any period of time would have highly detrimental impacts on access to healthcare services in the community. This clearly is not the answer.

If Union opted to purchase the assets and real estate once the hospital is closed, it is likely services would not be able to resume at the THRH locations for at least several months, if not longer. Acquiring a closed hospital is entirely different from acquiring ongoing hospital operations. Union would need to take time-consuming steps to obtain new contracts or amend existing contracts, obtain new licenses, permits, and accreditations (as opposed to a change of ownership for the existing licenses, permits, and accreditations), and hire all new employees to resume operations at the THRH locations. The steps to reopen the THRH location include the following: **First**, the THRH locations could be required to undergo a full architectural plan review by the IDOH. This step, alone, could take a year or more. Once plan approval is received, Union would need a new state survey to be eligible to obtain a hospital license. **Second**, because Union would not be assuming THRH's current Medicare provider number, it would need to meet current Life Safety Code ("LSC") requirements to achieve certification from CMS. The LSC deficiencies that are identified in the initial survey process could take several months or more to correct. **Third**, Union would need to ensure all services at the former THRH locations fall under Union's existing licenses, to the extent allowed by law (e.g., pharmacy, radiology, FCC, etc.) or obtain new licenses and permits. **Fourth**, Union would need to put in place an EMR system at the THRH locations, which is extremely costly and also would take several months. **Finally**, Union would then need to hire all new employees and staff for the hospital, which could prove challenging as many of them likely would have moved on and found new opportunities by the time operations at the former THRH locations are ready to resume.

Without the COPA, nothing would obligate Union to purchase the closed hospital or take the burdensome steps to resume services at THRH. Nor would Union need to meet any of the more than 45 commitments proposed in the COPA application to ensure that price increases are limited, quality of care is preserved, and access to healthcare services is maintained. Notably, any decision by THRH to discontinue services or close the hospital must be made **independently**, without any agreement or commitment from Union to later purchase

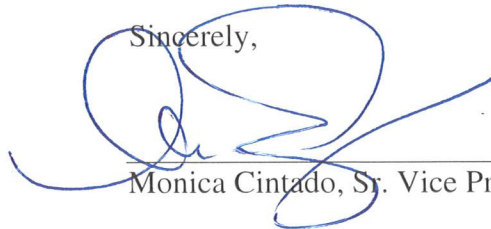
real estate or assets, in order to comply with antitrust laws. If the COPA is denied and THRH closes, Union would not be required to purchase the hospital, resume services, or take any of the extensive steps to ensure the community benefits outlined in the COPA application. There would be no certainty that THRH's jobs or services would ever return to the Wabash Valley Community, and no opportunity for state supervision to ensure the benefits offered by the COPA.

Respectfully, the Indiana AG Letter focuses on the alleged anticompetitive effects of the COPA and overly discounts the negative effects of **rejecting** the COPA and preventing these hospitals from merging. The Wabash Valley is a small rural community that cannot support two hospital systems. Rural hospitals throughout the country have faced significant financial challenges, including low patient volumes, difficulties attracting and retaining healthcare workers, and rising labor and supply costs.² According to the UNC Cecil G. Sheps Center for Health Services Research, 194 rural hospitals have closed or converted since January 2005. Indiana has not escaped the epidemic facing rural hospitals. Since 2019, Fayette Regional Health in Connersville (2019) and Ascension St. Vincent Dunn Hospital in Bedford (2022) have closed and the Indiana University Health Blackford Hospital's emergency room and in-patient services in Hartford City (2023) closed. Wabash Valley simply cannot support two independent hospitals any longer, and residents of the Wabash Valley will be better served if the COPA is granted. **The COPA is the best opportunity to guarantee the continuity of care and ongoing patient access to the hospital's existing service lines.**

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We remain available to discuss any of these points.

Sincerely,



Monica Cintado, Sr. Vice President

cc: Amy Kent, *Deputy Commissioner and Chief of Staff, IDOH*
Kelly MacKinnon, *Chief Legal Counsel, IDOH*
Scott L. Barnhart, *Chief Counsel and Director of Consumer Protection, Office of Indiana Attorney General*
Theodore E. Rokita, *Indiana Attorney General*
Jesse Moore, *Deputy Attorney General, Office of Indiana Attorney General*
Chadd Tierney, *HCA Healthcare*
Sara Y. Razi, *Simpson Thacher & Bartlett LLP*
Lindsey C. Bohl, *Simpson Thacher & Bartlett LLP*

² Scott Hulver, et al., *10 Things to Know About Rural Hospitals*, KFF (Apr. 16, 2025), available at <https://www.kff.org/health-costs/issue-brief/10-things-to-know-about-rural-hospitals/>.