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FEDERAL TRADE COMMISSION

[File No. 101 0142]

Universal Health Services, Inc. and Psychiatric Solutions, Inc.; Analysis of Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis To Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 15, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should be received by December 15, 2010. Comments that are received after December 15, 2010 will be considered, but will not be included in the administrative record or public docket of this proceeding.

The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis To Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

Because comments will be made public, they should not include any sensitive personal information, such as an individual’s Social Security Number; date of birth; driver’s license number or other State identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. As provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following Web link: https://ftcpublic.commentworks.com/ftc/psychsolutions and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the Web link: https://ftcpublic.commentworks.com/ftc/psychsolutions. If this Notice appears at http://www.regulations.gov/search/index.jsp, you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Web site at http://www.ftc.gov/ to read the Notice and the news release describing it.

A comment filed in paper form should include the “Universal Health Services, File No. 101 0142” reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–135 (Annex D), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (“FTC Act”) and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at http://www.ftc.gov/os/publiccomments.shtm. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC’s privacy policy.

The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See FTC Rule 4.9(c), 16 CFR 4.9(c).

The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record.

Robert deV. Frierson,
Deputy Secretary of the Board.

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standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 17, 2010.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106–2204:

1. Brookline Bancorp, Inc., Brookline, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of First Ipswich Bancorp, and thereby acquire First National Bank of Ipswich, both of Ipswich, Massachusetts.

In connection with this application, Applicant also has applied to retain voting shares of Brookline Bank, Brookline, Massachusetts and thereby continue to operate a savings association, and Eastern Funding, LLC, New York, New York, which will continue to operate an equipment finance company, pursuant to sections 225.28(b)(1), (b)(3), and (b)(4)(ii), of Regulation Y.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. River Holding Company, Stoddard, Wisconsin; to acquire 51 percent of the voting shares of Community Business Bancshares, Inc., and thereby indirectly acquire voting shares of Community Business Bank, both of Sauk City, Wisconsin.

C. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Commercial Bancshares, Inc., El Campo, Texas; to become a bank holding company by acquiring 60 percent of the voting shares of El Campo Bancshares, Inc., and thereby indirectly acquire voting shares of Commercial State Bank, both of El Campo, Texas.

Board of Governors of the Federal Reserve System, November 18, 2010.

Robert deV. Frierson,
Deputy Secretary of the Board.
mandates the behavioral health programs for 109 general acute care hospitals owned by third parties. PSI’s revenue for the twelve months ending December 31, 2009 was approximately $1.8 billion. Behavioral health facilities and residential treatment centers generated 93% of 2009 revenues and the contract management business accounted for the remaining 7%.

Acute Inpatient Psychiatric Services

UHS’s proposed acquisition of PSI poses substantial antitrust concerns in the relevant product market of acute inpatient psychiatric services. Acute inpatient psychiatric services are those provided for the diagnosis, treatment, and care of patients deemed to be a threat to themselves or others or unable to perform basic life functions, due to an acute psychiatric condition.

The three acute inpatient psychiatric services markets are local in nature. Analysis of patient flow data and evidence gathered from market participants indicate that patients and their families prefer to find care close to home in order to facilitate visits or participation in family therapy. Also, emergency responders typically transport patients in acute psychiatric distress to the nearest emergency room for treatment or placement. The three acute inpatient psychiatric services markets affected by the proposed acquisition are: the State of Delaware; the Las Vegas, Nevada metropolitan statistical area; and the Commonwealth of Puerto Rico.

The proposed acquisition would dramatically increase market concentration in each of the relevant acute inpatient psychiatric markets. The markets already range from moderately to highly concentrated prior to the acquisition. In each market, the proposed acquisition would significantly increase market concentration and eliminate substantial, direct competition between two significant acute inpatient psychiatric care providers. Under the 2010 Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, an acquisition is presumed to enhance market power or facilitate its exercise if it increases the Hirschman-Herfindahl Index (AHHI) by more than 200 points and results in a post-acquisition HHI that exceeds 2,500 points. The proposed acquisition far exceeds these thresholds; the post-acquisition HHIs range from 3916 to 4942, and HHI levels would increase by 1420 to 2610 points above pre-acquisition levels. The proposed acquisition also would result in UHS controlling approximately 60 percent or
The proposed Consent Agreement wholly remedies the anticompetitive effects of the acquisition by requiring the divestiture of all of the PSI or UHS assets to a Commission-approved buyer (or buyers) within six months of the date the Consent Agreement becomes final in Delaware and Las Vegas, and within nine months in Puerto Rico. Specifically, the proposed Consent Agreement requires the divestiture of four facilities that provide acute inpatient psychiatric care, as well as related outpatient clinics, contracts, commercial trade names, and real property, in the three geographic markets. See Appendix A for a complete list of the divestiture assets. Each psychiatric facility and its associated clinics in Delaware and Puerto Rico is a stand-alone business, and includes all of the assets necessary for a Commission-approved buyer to independently and effectively operate each facility. The two facilities in Las Vegas are closely related and complementary businesses and were jointly managed within PSI; as such, the two facilities together constitute a stand-alone business, and include all of the assets necessary for a Commission-approved buyer to independently and effectively operate the business.

The proposed Consent Agreement contains several provisions designed to ensure that the divestitures are successful. First, the Commission will evaluate the suitability of possible purchasers of the divested assets to ensure that the competitive environment that would have existed but for the transaction is replicated by the required divestitures. If UHS fails to divest the assets within the required time period to a Commission-approved buyer, the Consent Agreement permits the Commission to appoint a trustee to divest the assets. Second, UHS is required to provide transitional services to the Commission-approved buyer. These services will facilitate a smooth transition of the assets to the acquirer, and ensure continued and uninterrupted operation of the assets during the transition. Third, the Consent Agreement requires UHS to remove any contractual impediments that may deter the current managers of the facilities to be divested from accepting offers of employment from any Commission-approved acquirer and to obtain all consents necessary to transfer the required assets. Finally, to ensure that the Commission will have an opportunity to review any future attempt by UHS to acquire any acute inpatient psychiatric services provider in any of the three geographic markets at issue, the proposed Consent Agreement contains a ten-year prior notice provision.

The Hold Separate Order requires the parties to maintain the viability of the divestiture assets as competitive operations until each facility is transferred to a Commission-approved buyer. Specifically, the parties must maintain the confidentiality of sensitive business information, and take all actions necessary to prevent the destruction or wasting of the divestiture assets. After UHS acquires PSI, the Hold Separate Order requires that UHS separately hold and maintain the divestiture assets and appoint a Hold Separate Manager to operate these assets pending their divestiture.

The sole purpose of this analysis is to facilitate public comment on the Consent Agreement. This analysis does not constitute an official interpretation of the Consent Agreement or modify its terms in any way.

By direction of the Commission.

Donald S. Clark,
Secretary.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Renewal of Charter for the Secretary’s Advisory Committee on Human Research Protections

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, as amended (5 U.S.C. App), the U.S. Department of Health and Human Services is hereby announcing renewal of the charter for the Secretary’s Advisory Committee on Human Research Protections (SACHRP).

FOR FURTHER INFORMATION CONTACT: Jerry Menikoff, M.D., J.D., Director, Office for Human Research Protections or Julia Gorey, J.D., Executive Director, SACHRP; U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852; Telephone: (240) 453–6900; Fax: (240) 453–6909; e-mail address: julia.gorey@hhs.gov.

SUPPLEMENTARY INFORMATION: SACHRP was established in October 2002. The Committee was established to enhance and expand the focus of the former National Human Research Protections Advisory Committee (NHRPAC), which was terminated in August 2002. SACHRP provides expert advice and recommendations to the Secretary, through the Assistant Secretary for Health, on the conduct of research involving human subjects with particular emphasis on special populations, such as neonates and children, prisoners, and the decisionally impaired; pregnant women, embryos, and fetuses; individuals and populations in international studies; populations in which there are individually identifiable samples, data, or information; and investigator conflicts of interest.

Since SACHRP was established, renewal of the Committee charter has been carried out at the appropriate intervals as stipulated by FACA. The current charter was scheduled to expire on October 1, 2010. On October 1, 2010, the Secretary of...