ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT
In the Matter of Alan B. Miller and Universal Health Services, Inc.
File No. 121-0157, Docket No. C-4372

I. INTRODUCTION AND BACKGROUND

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Alan B. Miller and Universal Health Services, Inc. (collectively, "UHS"). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that otherwise would result from the merger of UHS with Ascend Health Corporation ("Ascend"). Under the terms of the proposed Consent Agreement, UHS is required to divest, within six months after the Decision and Order is issued, its Peak Behavioral Health Services facility ("Peak"), and all relevant assets and real property in the local market encompassing El Paso, Texas and its suburb, Santa Teresa, New Mexico ("El Paso/Santa Teresa"), to an acquirer that receives the approval of the Commission. UHS will acquire University Behavioral Health of El Paso, the Ascend facility, when the merger closes. To ensure that the divested assets attract a buyer that can adequately compete with UHS post-divestiture, the Consent Agreement requires a second UHS hospital, Mesilla Valley Hospital ("Mesilla Valley"), located in Las Cruces, New Mexico, to be divested if the original divestiture assets are not sold to an approved buyer within the six-month timeframe. UHS and Ascend have also agreed to hold the to-be-divested assets separate, and to maintain the economic viability, marketability, and competitiveness of both the Peak and Mesilla

II. THE PARTIES

UHS, headquartered in King of Prussia, Pennsylvania, owns or operates 25 general acute care hospitals and 198 behavioral health facilities located in 36 states, Washington, D.C., Puerto Rico, and the U.S. Virgin Islands. It is one of the largest hospital management companies in the United States, with 2011 revenues totaling approximately $7.5 billion. In 2011, UHS's 198

The proposed acquisition would lead to a virtual monopoly in the provision of acute inpatient psychiatric services provided to commercially insured patients in the El Paso/Santa Teresa market, which creates a strong presumption that the acquisition would create or enhance market power or facilitate its exercise. The presumption of anticompetitive harm is further supported by evidence of the close competition between the UHS- and Ascend-owned facilities that would be eliminated by the proposed merger. Consumers in El Paso/Santa Teresa have benefitted from the head-to-head competition in the form of lower health care costs, higher quality of care, and improved service offerings. Left unremedied, the proposed acquisition likely likely would cause anticompetitive harm by enabling UHS to profit by unilaterally raising the reimbursement rates negotiated with commercial health plans. These costs are ultimately borne by consumers in the form of higher premiums, co-pays, and other out-of-pocket costs. The loss of competition also reduces UHS=s incentive to improve quality and provide better service.

New entry or expansion is unlikely to deter or counteract the anticompetitive effects of the proposed acquisition. While regulatory barriers to opening a new psychiatric facility or unit are lower in Texas and New Mexico than in other states (*e.g.*, there are no Certificate of Need regulations in either state), local zoning regulations, Medicaid and Medicare certifications, and the need to develop strong relationships with local patient referral sources hinder the ability of firms to enter the market. Cuts to Medicaid funding may also affect the financial incentive of a provider to offer inpatient psychiatric services. Thus, it is unlikely that new entry or expansion sufficient to achieve a significant market impact will occur in a timely manner.

IV. THE PROPOSED CONSENT AGREEMENT

The proposed Consent Agreement wholly remedies the anticompetitive effects in the El Paso/Santa Teresa market by requiring UHS to divest Peak, located in Santa Teresa, New Mexico, and its associated operations and businesses within six months after issuance of the Decision and Order. The potential acquirer of Peak is subject to prior approval of the Commission. The Consent Agreement also provides that, if Peak is not sold to an approved acquirer within six months, a Divestiture Trustee will be appointed and empowered to divest both Peak and Mesilla Valley. The purpose of this provision is to address the uncertainty of whether Peak alone is sufficient to attract an acquirer that would compete as effectively as UHS competed prior to the merger.

Until completion of the requisite divestiture(s), UHS is required to abide by the Order to Hold Separate and Maintain Assets, which includes a requirement that UHS hold Peak separate from its other businesses and facilities, and a requirement to take all actions necessary to maintain the economic viations,cr5u1.36 0 TD0 Tc( )Tj/TT4 anty ofm requirement for acquisitions of acute inpatient psychiatric service providers in the local area, as