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November 6, 2026

Rec. WV HealthCare Authority
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Via Hand Delivery
Robert Cheren, Chairman
c/o Gordon Lane, Jr., Esq.
Interim Executive Director
& General Counsel
West Virginia Health Care Authority
Certificate of Need Program
100 Dee Drive
Charleston, WV 25311

Re: Charleston Area Medical Center, Inc.,
CON File No. 26-12-13814-X

Dear Chairman Cheren,

On November 2, 2026, Charleston Area Medical Center ("CAMC") submitted a Request for Determination of Reviewability ("RDOR") seeking a determination from the West Virginia Health Care Authority (the "Authority") that the development of "a fully equipped medical clinic on wheels" is not subject to certificate of need ("CON") review. CAMC explains that the new clinic is being offered in partnership with Ronald McDonald House of Southern West Virginia and will deliver care to "women of child-bearing age, pregnant women, postpartum mothers, and children up to age 18[.]" CAMC's RDOR, p. 1. We represent Herbert J. Thomas Memorial Hospital Association d/b/a Thomas Memorial Hospital ("TMH") which provides services similar to those under review in the above-captioned matter and which will be significantly affected by the project proposed therein. Accordingly, TMH constitutes an "Affected Person" with respect to the project pursuant to W. Va. Code § 16-2D-2(1)(E). Please accept this letter as a request for Affected Person status by TMH. As further discussed below, TMH respectfully submits that CAMC has failed to establish that its proposal is not subject to CON review.

CAMC's request contains a fundamental problem: it has no CON for the mobile services it proposes to establish—and it needs one. The mobile mammography determination on which CAMC relies permitted the addition of a second unit **under an existing CON**. Here, CAMC has **no underlying CON** to expand upon. Simply put, CAMC must first obtain the CON that its request assumes it already has.

CAMC proposes to develop a new ambulatory health care facility. An ambulatory health care facility is defined as "a facility that provides health services to noninstitutionalized and nonhomebound persons on an outpatient basis[.]" W. Va. Code § 16-2D-2(8). The development of an ambulatory health care facility is subject to review pursuant to W. Va. Code § 16-2D-8(a)(1),

which requires a CON for "[t]he construction, development, acquisition or other establishment of a health care facility," and W. Va. Code § 16-2D-8(b)(7), which requires a CON for "[e]stablishing an ambulatory care center[.]" Accordingly, the Authority has required providers to obtain CON approval prior to developing mobile ambulatory health care services. *See, e.g., West Virginia University Hospitals, Inc.*, CON File No. 18-1/2/3/4/5/6/7/8/9/10-11411-P (Decision awarding CON for mobile lung cancer screening services to residents of the rural areas in West Virginia dated May 28, 2019); *West Virginia University Hospitals, Inc.*, CON File No. 08-WV-8744-P (Decision awarding CON for mobile mammography services dated October 28, 2008); *Accurate Mobile-X-Ray, L.L.C.*, CON File No. 00-9/11-7084-X/P (Decision awarding CON to provide mobile x-ray, EKG, and Holter Monitor services dated January 4, 2002); *Osteoporosis Diagnostic Mobil Services*, CON File No. 00-WV-7099-X/P (Decision awarding CON to offer mobile bone densitometry services dated June 1, 2001); *Mobile Medical Modalities Limited*, CON File No. 96-1/2/3-5863-P (Decision awarding CON to offer mobile diagnostic testing, imaging, and screening services dated February 25, 1997). CAMC's proposal to add an "additional" mobile unit is no different than a proposal to add an additional off-campus outpatient clinic; there is no statutory basis for a rule that would allow CAMC to add additional mobile clinics without obtaining CON approval for each new clinic. CAMC should be required to demonstrate that its project meets all of the criteria for issuance of a CON to establish a new ambulatory health care facility, including demonstrating compliance with the CON law and regulations, as well as the State Health Plan Standards for Ambulatory Care Centers. *See id.*

Just this past year, the Supreme Court of Appeals of West Virginia ("SCAWV") made clear that the Authority cannot apply unwritten rules exempting otherwise reviewable health services from CON review. *See St. Joseph's Hosp. of Buckhannon, Inc. v. Stonewall Jackson Mem'l Hosp. Co.*, 252 W. Va. 526, 534, 923 S.E.2d 456, 464 (2025) (holding that both the Authority and the ICA erred by applying an unwritten and legally unsupported guideline).[1] Here, the application of an unwritten rule exempting the addition of new mobile clinics from CON review would be equally unfounded. Such a rule is unsupported by the statutory text and must therefore be rejected.

CAMC's reliance on *Herbert J. Thomas Memorial Hospital Association d/b/a Thomas Hospitals and West Virginia University Hospitals, Inc. d/b/a West Virginia University Hospitals*, CON File No. 24-12-12954-X (Decision dated May 8, 2024) is misplaced. CON File No. 24-12-12954-X is distinguishable because, in that case, "WVUH currently ha[d] a certificate of need to provide mobile mammography services," and "[t]he addition of a second bus operated by [TMH was] consistent with this certificate of need." *Id.* at p. 1. Specifically, CON File No. 08-WV-8744-P granted WVUH a CON for "the implementation of a mobile mammography service throughout the State of West Virginia." *West Virginia University Hospitals, Inc.*, CON File No. 08-WV-8744-

[1] In *Stonewall*, Stonewall Jackson Memorial Hospital Co. ("SJMH") sought and obtained an RDOR from the Authority for the relocation of its acute care hospital to a newly constructed health care facility near the intersection of Interstate 79 and U.S. Highway 33 near Weston, West Virginia. 252 W. Va. at 528-29, 923 S.E.2d at 458-59. The Authority found that SJMH's project was not subject to CON review because, "despite [SJMH's] proposal to construct a new health care facility, the Authority had an unwritten guideline that a certificate of need is unnecessary if a healthcare provider is merely 'relocating' from an existing building to a newly constructed one." 252 W. Va. at 528, 923 S.E.2d at 458. The ICA affirmed that decision. *Id.*, 923 S.E.2d at 458. The SCAWV, however, reversed. The SCAWV explained that "it is undisputed that [SJMH's] plans include the erection of a new hospital building for the provision of health services for its patients" and that "Section 8(a)(1), by its clear and unambiguous terms, required Stonewall to seek a certificate of need from the Authority for its new hospital project." 252 W. Va. at 534, 923 S.E.2d at 464.

P at p. 17. This CON was consistent with an additional mobile mammography unit operated by TMH because TMH and WVUH were sister corporations with the same direct parent.[2] On information and belief, neither CAMC nor Ronald McDonald House has a CON to offer mobile services of the kind proposed here. No CON is referenced in CAMC's RDOR, and CAMC and Ronald McDonald House are not related corporations.

Moreover, in CON File No. 24-12-12954-X, the proposed expansion was limited to pre-existing mammography services approved in CON File No. 08-WV-8744-P and did not encompass other types of ambulatory health care services or expand the approved service area. Pursuant to W. Va. Code § 16-2D-8(a)(12), the CON law requires full review and approval for "[t]he addition of health services offered by or on behalf of a health care facility which were not offered on a regular basis by or on behalf of the health care facility within the 12-month period prior to the time the services would be offered." Similarly, a CON is required for "[a] substantial change in an approved health service for which a certificate of need is in effect," which includes, *inter alia*, "[t]he addition of a health service offered by or on behalf of the health care facility which was not offered by or on behalf of the facility within the 12-month period before the month in which the service was first offered." W. Va. Code § 16-2D-8(a)(10) & W. Va. Code § 16-2D-2(46). CAMC lacks a CON for the project set forth within its RDOR and cannot develop or otherwise establish an ambulatory health care facility with Ronald McDonald House without one. *See* W. Va. Code § 16-2D-8(a)(10) & (12).

The addition of new types of mobile ambulatory health care services for which an unmet need has not been established constitutes a substantial change in the approved services and requires additional CON approval. In CON File No. 18-1/2/3/4/5/6/7/8/9/10-11411-P, for example, WVUH sought and obtained CON approval for a mobile CT unit even though it had previously sought and obtained a CON in CON File No. 08-WV-8744-P to provide mobile mammography services for breast cancer screening throughout West Virginia. Thus, unless CAMC can demonstrate that it has previously received CON approval to offer mobile services identical to those proposed in the RDOR within the same service area that will be served by its project, CON File No. 24-12-12954-X has no bearing on this case.[3]

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[2] The Authority has consistently found that services provided by related corporations on the same site are not subject to certificate of need review. *See, e.g., United Physicians Care*, CON File No. 17-6-11030-X (Decision dated March 8, 2017); *United Physicians Care*, CON File No. 16-5-10895-X (Decision dated September 28, 2016); *United Physicians Care*, CON File No. 16-8-10754-X (Decision dated March 21, 2016); *Ronceverte Physician Group, LLC*, CON File No. 13-4-9855-X (Decision dated April 22, 2013).

[3] CAMC does have various exemptions for "[s]hared health services between two or more hospitals licensed in West Virginia providing health services made available through existing technology that can reasonably be mobile[.]" *See, e.g., Charleston Area Medical Center, Inc.*, CON File No. 23-3-12629-X (Exemption letter dated March 21, 2023); *Charleston Area Medical Center, Inc.*, CON File No. 24-6-13006-X (Exemption letter dated July 8, 2024). The proposed services are clearly not consistent with this exemption because the purpose of the proposed unit is to provide medical services in "underserved areas" and "reduc[e] reliance on emergency rooms for care," not to share services between existing hospitals. CAMC's RDOR, p. 1. Moreover, and importantly, the exemptions available under W. Va. Code § 16-2D-11 require the submission of specific information to the Authority, and CAMC has not submitted the information required to claim such an exemption for the project proposed here. *See* W. Va. Code § 16-2D-11(a); *see also* W. Va. Code R. § 65-29-4.1.e.4.

Finally, even if CON File No. 24-12-12954-X was on point (it is not), that case simply cannot support the application of an unwritten rule that has no basis in the statutory text. As the SCAWV explained in the *Stonewall* case, "the Authority is free to abandon its earlier unwritten guideline for interpreting the certificate-of-need statutes, particularly where, as here, the Authority becomes cognizant that its prior interpretation is inconsistent with or limits its statutory authority, and 'goes beyond the meaning that the statute can bear.'" 252 W. Va. at 533, 923 S.E.2d at 463. In other words, the Authority should not persist in an erroneous position until it is reversed on appeal, but should proactively seek to correct its errors and conform to the CON statute.

Accordingly, CAMC has failed to demonstrate that its project is not subject to CON review, and the Authority should inform CAMC that its project will require a CON.

Sincerely,

ALAINA N. CRISLIP

ANC

cc: David E. Jarrett (*via U.S. Mail*)