STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Lexington County Health Services District Inc., d/b/a Lexington Medical Center, Petitioner, vs. South Carolina Department of Health and Environmental Control, Prisma Health-Midlands, Providence Hospital, LLC d/b/a Providence Health, Providence Health Northeast, Providence Health Fairfield, and Kershaw Hospital, LLC d/b/a KershawHealth Medical Center, Respondents.	Docket No. 20-ALJ-07-0108-CC **ORDER DENYING CROSS-MOTIONS FOR SUMMARY JUDGMENT**

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to cross motions for summary judgment filed by Prisma Health Midlands (PHM) and Lexington County Health Services District Inc., d/b/a Lexington Medical Center (LMC). PHM filed its Motion for Summary Judgment on August 28, 2020. On September 14, 2020, LMC filed a Response in Opposition to PHM's motion and its own Motion for Summary Judgment. On September 17, 2020, the South Carolina Department of Health and Environmental Control (Department or DHEC) filed a Response in Support of PHM's Motion for Summary Judgment. Based upon a thorough review of the Motions and the parties' filings, I conclude both parties' motions should be denied.

BACKGROUND

On or about October 23, 1996, Baptist Healthcare System of South Carolina, Inc., (Baptist Hospital) and Richland Memorial Hospital submitted an Application for a Certificate of Public

Advantage (COPA)[1] to serve the Midlands service area[2] of South Carolina. Pursuant to the cooperative agreement for which the COPA was sought, Baptist Hospital and Richland Memorial Hospital would enter into a joint operating agreement to create a locally controlled non-profit health care system. The purpose of the joint operating agreement was to "allow the hospitals to continue their charitable missions during an era of fiscal restraints and to produce significant benefits for the community that could not be achieved by the hospitals if they were to remain separate." The summary of the project in the Application included a number of "assurances" regarding the well-being of the community, including an assurance that "[c]ompetition from Lexington and Columbia/HCA hospitals, as well as from other hospitals in the System's core service area, will help to ensure that the hospitals continue to be efficient, low-cost, high quality hospitals."

Notice of the Application was published in the State Register, and LMC participated in the COPA review process as an affected person. The South Carolina Attorney General (Attorney General) also participated in the review process. On May 8, 1997, the Department notified Baptist Hospital and Richland Memorial Hospital by letter that it had decided to issue a COPA to the BR Health System, Inc. for the incorporation of a nonprofit entity to operate the hospital of the Sponsoring Organizations as a single unit, the Sponsoring Organizations being: (1) Baptist Healthcare System of South Carolina, Inc, Columbia and Easily, South Carolina and (2) Richland Memorial Hospital, Columbia, South Carolina. On October 6, 1997, pursuant to an order of this Court, DHEC issued Certificate of Public Advantage (COPA-97-01) to BR Health System, Inc. (BR Health), the non-profit entity incorporated to operate the hospitals as a single entity. The COPA included twenty-five conditions with which BR Health was required to comply. BR Health later changed its name to Palmetto Health Alliance/Palmetto Health. The original COPA was amended in 2003 to remove some conditions after Palmetto Health had fulfilled some of its obligations under the original conditions of the COPA.

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[1] A certificate of public advantage is "the formal approval, including any conditions or modifications, by the Department [of Health and Environmental Control] of a contract, business or financial arrangement, or other activities or practices between two or more health providers, health providers networks, or health care purchasers that might be construed to be violations of state of [sic] federal laws." S.C. Code Ann. Regs. 61-31 § 102(2) (2012).

[2] The Midlands service area includes the following counties: Fairfield, Kershaw, Lexington, Newberry, Orangeburg, Richland, and Sumter.

In late 2017, Palmetto Health and Upstate Affiliate Organization d/b/a Greenville Health System (GHS) entered into an affiliation agreement to form Prisma Health (Prisma), a non-profit South Carolina Corporation. Prior to closing the transaction, Palmetto Health and GHS contacted the Department to determine whether the affiliation between the two health systems implicated COPA-97-01. DHEC determined the COPA was not implicated, and it remained in place with Palmetto Health. After Prisma Health was formed, Palmetto Health changed its name to Prisma Health–Midlands (PHM).

In 2019, Prisma and LifePoint Health entered negotiations for Prisma to purchase three of its South Carolina hospitals and a freestanding emergency department (FSED): Providence Downtown, Providence Northeast, Kershaw Health, and Fairfield County FSED (collectively "the Assets"). On September 13, 2019, Prisma and LifePoint Health entered into a Letter of Intent (LOI) for Prisma or one of its affiliates to purchase the Assets. Prisma made an initial good faith deposit of $5 million on September 13, 2019, when the LOI was executed. The LOI also provided for an addition $5 million deposit upon execution of an Asset Purchase Agreement (Agreement). PHM was eventually designated as the Prisma affiliate that would purchase the Assets.

On December 13, 2019, before executing the Agreement, PHM notified the Department that it intended to acquire the Assets and requested the Department to approve the acquisition of the Assets, amend the COPA to include the Assets under the existing COPA, and make such modifications to the COPA as it deemed necessary. The letter included PHM's analysis of how acquiring the Assets would integrate with the COPA and benefit the community. The exact submissions PHM made to the Department are not entirely clear but PHM did not submit an application to the Department for a new COPA. The Department determined PHM's request might materially impact the benefits or disadvantages to the community to be served and, therefore, the Department further determined PHM's request to extend the COPA to the cover the Assets required "another review" under section 508 of Regulation 61-31 (§ 508).

Thereafter, on February 20, 2020, the Department contacted the Attorney General to request an opinion on how "another review" under § 508 should be interpreted. In its request to the Attorney General, the Department put forth its own interpretation—that it is within the Department's "discretion to conduct the review it deems appropriate based on the facts and circumstances involved including, but not limited to, the significance of the proposed change, and any exigent circumstances as found by DHEC or as represented to DHEC by the parties to the

cooperative agreement." In a response dated February 25, 2020, the Attorney General opined the Department's interpretation "would likely be given considerable deference by the courts as a reasonable interpretation." Op. S.C. Atty' Gen., 2020 WL 1068931 (Feb. 25, 2020). As a result of the information it received from PHM, the Department determined to conduct its review of the proposed transaction pursuant to § 508 without public notice, public comment, or a hearing. In particular, the Department acknowledges PHM represented to it that LifePoint Health would not consummate the sale if the Department publicly noticed the transaction and thereafter conducted a review. PHM provided the Department with information regarding potential consequences should the transaction not be completed, like staff layoffs and reduced safety net services. The Department found these representations persuasive and determined not to have a public review.

In a letter dated February 28, 2020, the Department stated that "[a]s a result of [our] review, and having given substantial consideration to all information provided by PHM to the Department regarding the proposed transaction, the Department has determined that the ongoing conditions of the COPA shall be amended as follows to provide for the addition of the [LifePoint Health] assets." On March 2, 2020, the Agreement was executed. Pursuant to the Agreement, the acquisition is required to close on or before one year from the date the Agreement was executed, or March 2, 2021. PHM will be the sole owner of the Assets once the transaction is closed.

On March 13, 2020, LMC requested a final review conference before the Department's Board (Board).[3] Thereafter, on March 27, 2020, the Department published notice of the amended COPA in the State Register. On April 21, 2020, the Board refused to hold a final review conference and the staff decision became the final agency decision. On May 14, 2020, LMC filed a request for contested case with this Court.

DISCUSSION

The parties moved for summary judgment pursuant to Rule 68 of the Rules of Procedure for the Administrative Law Court (SCALC Rules) and Rule 56 of the South Carolina Rules of Civil Procedure (SCRCP). SCALC Rule 68 allows the South Carolina Rules of Civil Procedure to be applied in contested cases at the discretion of the presiding judge. Rule 56(c), SCRCP, provides a motion for summary judgment shall be granted "if the pleadings, depositions, answers

[3] Because there was no public notice of the request for the amended COPA, it is unclear how LMC became aware of the request and the transaction.

to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "Where cross motions for summary judgment are filed, the parties concede the issue before us should be decided as a matter of law." *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011); *see also Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, 319 n.2, 731 S.E.2d 869, 872 n.2 (2012) ("[T]he parties filed cross motions for summary judgment, thereby indicating the parties' belief that further development of the facts was unnecessary.").

"In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 378–79, 534 S.E.2d 688, 692 (2000). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "[B]ecause summary judgment is a drastic remedy, it should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues." *Lord v. D & J Enterprises, Inc.*, 407 S.C. 544, 553, 757 S.E.2d 695, 699 (2014). "Summary judgment is not appropriate where further inquiry into the facts is desirable to clarify the application of the law." *Rothrock v. Copeland*, 305 S.C. 402, 405, 409 S.E.2d 366, 368 (1991). Moreover, "[s]ummary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts." *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 378, 534 S.E.2d 688, 692 (2000).

Here, PHM moves for summary judgment on the following three grounds:

1. The Department has the statutory authority to amend the COPA at issue and to determine if and what type of review is appropriate for an amendment;
2. The ALC does not have the authority to rule on LMC's allegation that Regulation 61-31, section 508, is void for vagueness;[4] and
3. The Department, in exercising its authority to amend the COPA, is not required to follow the provisions of Regulation 61-31 that are applicable to new applications.

[4] This appears to be an anticipated response to LMC's motion for summary judgment rather than a ground for summary judgment for PHM.

PHM asserts these three grounds constitute issues of law for which there are no relevant material facts in dispute.

LMC moves for summary judgment on the following three grounds:

1. The proposed sale/transaction requires a new application under section 44-7-530 of the South Carolina Code and Chapters 2, 3, and 4 of Regulation 61-31, and the Department lacks the authority to circumvent a new application;
2. The Department's Interpretation of the phrase "another review" in Regulation 61-31, section 508, is arbitrary, capricious, and manifestly contrary to the law; and
3. As-applied, Regulation 61-31, section 508, is void for vagueness.

While the parties' grounds for summary judgment are somewhat distinct, both PHM's and LMC's motions concern whether the transaction in this case requires a new COPA application or an amendment to the existing COPA, and, if an amendment is sufficient, what kind of review is the Department required to undertake when approving an amendment?

New Application or Amendment?

LMC submits that, as a matter of law, PHM and LifePoint Health must submit a new COPA application as provided by section 44-7-530 of the South Carolina Code in order to allow for review of the proposed transaction as set forth in sections 44-7-540 to 560 of the COPA Act and Chapters 2, 3 and 4 of Regulation 61-31, and that DHEC lacks the authority to circumvent that process by way of additional conditions to COPA-97-01. LMC argues the transaction at issue, as represented by the Agreement, fits squarely within the definition of a cooperative agreement that must be approved before a COPA can be issued. In the alternative, LMC argues that even if the Assets can be added to the COPA through an amendment, the review process required by § 508 for substantial changes requires the same or substantially similar review to that which is conducted for a new application.

PHM argues that a new application is not necessary in these circumstances because the Agreement underlying the transaction does not qualify as a new cooperative agreement. PHM also argued at the summary judgment hearing that it is not requesting an amendment to the COPA, but, rather, it is requesting the Assets to be approved and subsumed into the COPA once the COPA holder, PHM, becomes the owner of the Assets. Further, PHM argues that the Department, in exercising its authority to amend the COPA pursuant to § 508, is not required to follow sections

540 to 560 of the COPA Act and Chapters 2, 3 and 4 of Regulation 61-31.[5] PHM submits that the Department has broad discretionary authority to determine what kind of review it undertakes for a substantial amendment on a case by case basis.

For the reasons below, the Court concludes the Agreement underlying the transaction does not qualify as a cooperative agreement requiring a new application. However, the Court further concludes because the acquisition of the Assets by PHM does not qualify as the kind of transaction that is regulated under the COPA Act, and the Assets are not part of the original cooperative agreement underlying the existing COPA, the Assets cannot be subsumed into the existing COPA.

Purpose of COPA Act

In resolving these motions and interpreting the COPA Act, it is important to consider the purpose of the COPA Act. The purpose of the COPA Act is to encourage providers to cooperate when it will benefit the public by giving antitrust prosecutorial immunity to the providers.

In enacting the COPA legislation, the General Assembly found:

> (1) that the cost of improved health technology and scientific methods contributes significantly to the increasing cost of health care;
>
> (2) that **cooperative agreements** among hospitals, health care purchasers, and other health care providers would foster improvements in the quality of health care for South Carolinians, moderate cost increases, improve access to needed services in rural areas, and enhance the likelihood that rural hospitals can remain open;

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[5] In its summary judgment motion, PHM argues the Department has the statutory authority to amend COPAs. PHM cites to §309 and § 508 of Regulation 61-31 for the Department's authority to modify a COPA like the one at issue. In response, LMC asserts PHM misapprehended the issue it raised in this case, which is better described as whether the Department "can approve a proposed transaction between Prisma Health/PHM and LifePoint Health by way of 'amendment' to the COPA issued 23 years ago, rather than requiring Prisma Health/PHM and LifePoint Health to engage in the process set forth in the COPA Act and Regulation 61-31 to receive a COPA, starting with the submission of an application." LMC further argues that to the extent PHM's Motion seeks judgment as a matter of law that the Department, generally, has the authority to approve, monitor, and regulate an amendment to the COPA at issue, the Motion should be denied because the function of the court is not to give opinions on abstract matters but to decide actual controversies. In other words, LMC argues the Department's general authority to amend a COPA or amend this COPA is not at issue; rather, the specific issue in this case is whether an amendment is appropriate under the facts of this case.

Since there appears to be no controversy over the Department's general authority to approve amendments to COPAs, there is no issue for the Court to resolve in this regard. *See Byrd v. Irmo High Sch.*, 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996) ("Before any action can be maintained, there must exist a justiciable controversy."); *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 25, 630 S.E.2d 474, 477 (2006) ("A justiciable controversy exists when there is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute that is contingent, hypothetical, or abstract."). Accordingly, it is not necessary to address this issue on summary judgment. *See id.*

(3) that federal and state antitrust laws may prohibit or discourage **cooperative agreements** that are beneficial to South Carolinians and that such agreements should be encouraged; and

(4) that competition as currently mandated by federal and state antitrust laws should be **supplanted by a regulatory program to permit and encourage cooperative agreements between hospitals, health care purchasers, or other health care providers when the benefits outweigh the disadvantages caused by their potential adverse effects on competition.**

S.C. Code Ann. § 44-7-505 (2018) (emphasis added). With these findings in mind, the General Assembly set forth that the intent of the COPA Act is "to require the State to provide . . . regulation, and control over approved cooperative agreements through the department and the Attorney General," and based upon that "regulation, and control of cooperative agreements" healthcare providers are provided immunity "from civil liability and criminal prosecution under federal or state antitrust laws." S.C. Code Ann. § 44-7-520(A) (2018). Section 44-7-560(A) further provides "[t]he department shall issue a certificate of public advantage for a cooperative agreement." Therefore, the underlying document from which the grant of immunity springs is the "cooperative agreement." and thus a COPA cannot be issued without a cooperative agreement to support it.[6]

Accordingly, we must determine whether the transaction at issue represents a "cooperative agreement," an amendment to an existing cooperative agreement, or neither.

Cooperative Agreement

The COPA Act defines "cooperative agreement" as follows:

an agreement between two health providers, health provider networks, or purchasers or among more than two health care providers, health provider networks, or purchasers for the sharing, allocation, or referral of patients or the sharing or allocation of personnel, instructional programs, support services and facilities, medical, diagnostic or laboratory facilities, procedures, equipment, or other health care services traditionally offered by health care facilities or other health care providers **or the acquisition or merger of assets among or by two or more health providers**, health provider networks, or health care purchasers,

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[6] *See also*, § 44-7-520(B) ("A health care provider, health provider network, or health care purchaser may negotiate, enter into, and conduct business pursuant to a cooperative agreement without being subject to damages, liability, or scrutiny under any state antitrust law."); § 44-7-530 ("Parties to a cooperative agreement may apply to the department for a certificate of public advantage."); § 44-7-560(A) ("The department shall issue a certificate of public advantage for a cooperative agreement if it determines that . . . ."); § 44-7-570(A) ("The department shall actively monitor and regulate agreements approved under this article and may request information whenever necessary to ensure that the agreements remain in compliance with the conditions of approval."); § 44-7-580 (The department shall maintain on file all cooperative agreements for which certificates of public advantage remain in effect.").

> provided the agreement does not involve price-fixing or predatory pricing or illegal tying arrangements.

S.C. Code Ann. § 44-7-510 (2018) (emphasis added). Significantly, this case does not involve a merger between hospitals systems but rather an acquisition by PHM. Based upon the plain language of the statute, a cooperative agreement can exist for "the acquisition . . . of assets among or by **two or more** health providers." *Id.* (emphasis added); *see Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute."). Therefore, in order for an acquisition to qualify as a cooperative agreement, two or more healthcare providers must acquire assets; one healthcare provider purchasing assets does not qualify. § 44-7-510. Stated otherwise, a single purchaser does not fall within the unambiguous language defining a "cooperative agreement" as an acquisition of assets by two or more or a group.

Notably, although it conducted another review in this matter, the Department's interpretation is consistent with the statute's clear exclusion of a single-buyer acquisition from qualifying as a cooperative agreement under the COPA Act. Specifically, the Department asserts this is a "simple sale or transfer of assets from one entity, LifePoint, to another entity, PHM" and "[t]his is not an acquisition of assets among or by two or more health care providers." The Department further explains that, unlike the transaction that formed PHM and produced the original COPA (joint operating agreement between Baptist Hospital and Richland Memorial Hospital), the parties to the Agreement will not have a continuing cooperative agreement or relationship after the sale is complete.

Under the undisputed facts before the Court, Richland Memorial Hospital and Baptist Hospital are not themselves acquiring the Assets. If Richland Memorial Hospital and Baptist Hospital, in their individual legal capacities, if they still exist, decided to cooperate in the purchase of the Assets, then the agreement memorializing this transaction may qualify as a cooperative agreement because "two or more" healthcare providers would be purchasing the Assets. *See* § 44-7-510. However, as PHM has repeatedly stated, it is acting in its capacity as a single entity in acquiring the Assets. Therefore, the Court must view this transaction as the acquisition of assets

by a single buyer. Similarly, even though Prisma has been involved during negotiations surrounding the transaction, Prisma is not the party who will actually purchase the Assets.[7]

Since, this is an acquisition involves only one buyer, it does not qualify as a cooperative agreement under the COPA Act. *See* § 44-7-510. And because this transaction cannot qualify as a cooperative agreement, it does not qualify for a COPA. Moreover, it is evident a transaction that does not qualify for a COPA does not require a new application for a COPA. Accordingly, I conclude the parties' Agreement underlying the transaction does require a new application or a new COPA because it does not qualify as a cooperative agreement to begin with. Therefore, I deny LMC's Motion for Summary Judgment to the extent LMC asks this Court to find as a matter of law that the addition of the Assets requires a new COPA application.

Amendment

Additionally, the Court finds PHM cannot use an amendment[8] to subsume the Assets it purchased into the Richland Memorial Hospital and Baptist Hospital COPA. Notably, the COPA sanctioned the cooperative agreement between Richland Memorial Hospital and Baptist Hospital to merge their assets and operate jointly as a single entity. PHM's amendment would add assets which are part of a distinctly different hospital system and therefore completely change the nature of the original cooperative agreement. Yet, PHM seeks to avoid the appearance of profoundly altering the "cooperative agreement" between Baptist Hospital and Richland Memorial Hospital under the pretense it is simply adding a few new conditions to regulate the inclusion of these distinctly different hospitals into the agreement. More importantly, the amendment not only materially changes the underlying justification for the COPA's approval, but it would provide anti-trust protection to a single buyer that would not have access to COPA protections. The addition of the new hospital system into the Richland Memorial Hospital and Baptist Hospital COPA, when Richland Memorial Hospital and Baptist Hospital still maintain a legal existence, is thus outside the scope of the COPA law's purposes.

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[7] LMC has argued there is a genuine issue of material fact as to who is purchasing the Assets; however, I find it is clear that PHM will be the sole owner of the Assets at the conclusion of the transaction and PHM has further asserted it is a single entity on numerous occasions in this litigation.

[8] At the hearing, PHM argued that it was not amending the COPA but simply requesting that conditions be added to the COPA to accommodate the purchase of the Assets. It is beyond this Court's ability to understand how the changes to the conditions of a COPA as a result of acquiring several hospitals is not an amendment to the COPA.

This conclusion is supported by § 309 of Regulation 61-31. While § 309 is listed under the regulatory provisions providing for "Disposition of Application," its provisions reflect the purpose of the COPA Act. Indeed, as set forth by the South Carolina Supreme Court in *CFRE, LLC v. Greenville County Assessor*, a statute

> must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect. We therefore should not concentrate on isolated phrases within the statute. Instead, we read the statute as a whole and in a manner consonant and in harmony with its purpose.

395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (citations and quotation marks omitted); *see also Murphy v. S.C. Dep't of Health & Envtl. Control*, 396 S.C. 633, 723 S.E.2d 191 (2012) ("Regulations are interpreted using the same rules of construction as statutes.").

Section 309 provides that a COPA "if issued, is only valid for the project described in the application including parties involved, services to be offered, mergers or consolidations approved, or other factors as set forth in the application, except as it may be modified in accordance with these regulations." S.C. Code Ann. Regs. 61-31 § 309. Although § 309 allows modifications, adding the Assets would not merely be a modification to the original terms of the cooperative agreement that was approved, it would completely change the Richland Memorial Hospital and Baptist Hospital "project." Specifically, PHM is not requesting to amend the way Richland Memorial Hospital and Baptist Hospital cooperate together under the COPA; rather, PHM desires to take assets it will acquire independently and make them subject to a COPA by which it was created. This is not a "change" to the agreement as contemplated by § 508 because PHM is not changing the cooperative agreement between Richland Memorial Hospital and Baptist Hospital. Reg. 61-31 § 508 ("If an applicant amends, alters, or otherwise changes the agreement after receipt of a Certificate of Public Advantage, the Department will decide whether or not the amendment is substantial and thereby requires another review."). PHM is acquiring the assets of a competitor who is being removed from the market but with whom no cooperative agreement was negotiated or established.

Moreover, not every change in circumstances should be sanctioned by an amendment or modification to a COPA as evidenced by section 308 of Regulation 61-31 (§ 308). Section 308 provides that certain changes to a COPA during the application process "constitute a new application." The application process is the time during which it would be easiest to accommodate an amendment. Yet, section 308 requires a new application under certain circumstances. It is

therefore logical that certain changes requested after the COPA is issued would also rise to the level of requiring a new application or fall outside the scope of the original project. A change that falls outside the scope of an existing COPA is more evident when, as is the case here, the change is not requested by the parties to the cooperative agreement underlying the COPA. PHM, thus cannot amend the COPA in the way it seeks. Indeed, to find otherwise, would allow PHM to claim its acquisition of practically any assets fits within the spirit of the COPA between Richland Memorial Hospital and Baptist Hospital.

In sum, PHM seeks to add assets under the COPA's coverage that are outside the scope of the existing COPA and for which the transaction does not qualify for a new cooperative agreement/COPA. In coming to this conclusion, I disagree with the implication that PHM's "holding" of the COPA elevates its authority, particularly as a party, in seeking a modification of the COPA. Rather, the COPA was simply an approval by the Department of a joint operating agreement of two parties—Richland Memorial Hospital and Baptist Hospital—who still have a technical legal existence. The Department's approval offers protection for hospitals based upon their cooperation with each other. But the "cooperative agreement" cannot be extended to achieve the objective of protecting a single hospital entity's expansion of its operations from antitrust challenges.

Accordingly, I deny PHM's Motion for Summary Judgment to the extent it asks the Court to conclude as a matter of law that the Assets can be covered by the existing COPA through an amendment or additional conditions, or otherwise subsumed under the existing COPA.

Conclusion

I conclude as a matter of law that PHM's acquisition of the Assets does not qualify for a new COPA and the Assets cannot be brought under the existing COPA. Because I find neither parties' interpretation of the law to be correct, neither party is entitled to summary judgment and the motions must be denied. *See* Rule 56(c), SCRCP (providing summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law"). Furthermore, because extending the existing COPA's coverage over the Assets through an amendment is inappropriate, I do not reach whether the Department's interpretation and application of "another review" under §508 is correct

as a matter of law. I also decline to engage in an analysis of "another review" that would merely be an exercise in dicta.

ORDER

IT IS THEREFORE ORDERED that PHM's Motion for Summary Judgment is DENIED.

IT IS FURTHER ORDERED that LMC's Motion for Summary Judgment is DENIED.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

November 2, 2020
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

Stephanie Perez
Judicial Law Clerk

November 2, 2020
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Chief Administrative Law Judge
Case No. 20-ALJ-07-0108-CC

Lexington County Health Services District
d/b/a Lexington Medical Center, *Petitioner/Respondent,*

v.

South Carolina Department of Health and Environmental Control, Prisma Health – Midlands, Providence Hospital, LLC d/b/a Providence Health, Providence Health Northeast, Providence Health Fairfield, and Kershaw Hospital, LLC d/b/a Kershaw Health Medical Center, *Respondents,*

OF WHOM Prisma Health – Midlands is Appellant.

NOTICE OF APPEAL

EXHIBIT 1