**ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS
TO AID PUBLIC COMMENT**
***In the Matter of Universal Health Services, Inc.
and Psychiatric Solutions, Inc., File No. 101-0142***

I. INTRODUCTION

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") and Psychiatric Solutions, Inc. ("PSI"). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that would otherwise result from UHS's acquisition of PSI. Under the terms of the proposed Consent Agreement, UHS is required to divest four psychiatric facilities and eleven affiliated clinics operating in three local acute inpatient psychiatric care markets to acquirers who receive the approval of the Commission. The proposed Consent Agreement also requires UHS to divest all related assets and real property necessary to ensure that the buyer(s) of the divested facilities will be able to quickly and fully replicate the competition that would have otherwise been eliminated by the acquisition. Finally, UHS and PSI have agreed to an Order to Hold Separate and Maintain Assets ("Hold Separate Order") that requires UHS to maintain and hold separate the facilities to be divested pending their final divestiture pursuant to the Consent Agreement.

The proposed Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission again will review the proposed Consent Agreement and comments received, and decide whether it should withdraw the Consent Agreement, modify the Consent Agreement, or make it final.

On May 16, 2010, UHS and PSI entered into a merger agreement under which UHS proposes to acquire all of the outstanding voting securities of PSI for approximately $2.0 billion in cash, and to assume approximately $1.1 billion of PSI debt. The Commission's complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by removing an actual, direct, and substantial competitor from three local markets for acute inpatient psychiatric care. The proposed Consent Agreement would remedy the alleged violations by requiring complete divestitures in each of the three markets. These divestitures will replace the competition that otherwise would be lost in these markets as a result of the proposed acquisition.

II. THE PARTIES

UHS, headquartered in King of Prussia, Pennsylvania, owns or operates 25 general acute care hospitals and 102 behavioral health facilities located in 32 states, Washington, D.C., and Puerto Rico. It is one of the nation's largest hospital management companies, with 2009 revenues totaling approximately $5.2 billion. In 2009, UHS's 102 behavioral health facilities generated approximately $1.3 billion in revenue (25% of total revenues) from nearly 8,000 licensed beds and over 2 million patient days.

PSI, headquartered in Franklin, Tennessee, operates 94 inpatient behavioral health facilities in 32 states, Puerto Rico, and the U.S. Virgin Islands. The 11,000 licensed beds at these facilities accounted for 2.8 million patient days in 2009. The company also manages 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%.

III. 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 Herfindahl-Hirschman Index ("HHI") 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 1428 to 2610 points above pre-acquisition levels. The proposed acquisition also would result in UHS controlling approximately 60 percent or more of the acute inpatient psychiatric beds in each of the affected markets.

The presumption of anticompetitive harm created by the steep increases in market concentration is further supported by evidence of the intense rivalry between UHS- and PSI-owned facilities that would be eliminated by the proposed acquisition. In each of the local markets, consumers 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 would cause anticompetitive harm by enabling UHS to profit by unilaterally raising the reimbursement rates negotiated with commercial health plans. These costs are ultimately passed on to 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 is unlikely to deter or counteract the anticompetitive effects of the proposed acquisition. Among other entry barriers, regulatory requirements pose substantial barriers to entrants attempting to establish new psychiatric facilities or to expand their offerings in the relevant markets. In particular, Delaware and Puerto Rico require Certificates of Need in order to enter or significantly expand the number of beds provided in the market. The availability of suitable land, local zoning regulations, and Medicare and Medicaid certifications also impact significantly the ability of firms to enter or expand. As a result, new entry sufficient to achieve a significant market impact is unlikely to occur in a timely manner in these markets.

IV. THE PROPOSED CONSENT AGREEMENT

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 to be divested 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.