

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

GEISINGER HEALTH

and

EVANGELICAL COMMUNITY  
HOSPITAL,

*Defendants.*

Civil Action No.: 4:20-cv-01383-MWB

**UNITED STATES' UNOPPOSED MOTION AND MEMORANDUM  
IN SUPPORT OF ENTRY OF FINAL JUDGMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA”), the United States of America moves the Court to enter the amended proposed Final Judgment filed in this civil antitrust proceeding on May 17, 2021 (Dkt. No. 51-1) (attached as Exhibit A). As set forth in the Stipulation and Order entered by this Court on March 10, 2021 (Dkt. No. 47), Defendants Geisinger Health and Evangelical Community Hospital (collectively “Defendants”) stipulated that the Final Judgment could be filed with and entered by the Court, upon the motion of the United States or upon the Court’s own motion, at any time after compliance with the requirements of the APPA and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent.

The amended proposed Final Judgment may be entered at this time without further proceedings if the Court determines that entry is in the public interest. 15 U.S.C. § 16(e). The Competitive Impact Statement (“CIS”) and Response of Plaintiff United States to Public Comments on the Proposed Final Judgment (“Response to Public Comments”) filed in this matter on March 3, 2021 and August 31, 2021, respectively (Dkt. No. 46 and Dkt. No. 52), explain why entry of the amended proposed Final Judgment is in the public interest. The United States is also filing a Certificate of Compliance (attached as Exhibit B) showing that the parties have complied with all applicable provisions of the APPA and certifying that the 60-day statutory public comment period has expired.

## **I. BACKGROUND**

On February 1, 2019, Geisinger Health (“Geisinger”) and Evangelical Community Hospital (“Evangelical”) entered into a partial-acquisition agreement (the “Collaboration Agreement”) pursuant to which Geisinger would, among other things, acquire 30% of Evangelical. On August 5, 2020, the United States filed a civil antitrust Complaint seeking to enjoin the Collaboration Agreement. The Complaint alleges that the likely effect of this transaction would be to substantially lessen competition and unreasonably restrain trade in the market for inpatient hospital services in central Pennsylvania in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 1 of the Sherman Act, 15 U.S.C. § 18. This loss of competition would likely result in higher prices, lower quality, and reduced access to high-quality inpatient hospital services in central Pennsylvania.

On March 3, 2021, the United States filed a proposed Final Judgment, a Stipulation and Order, and a CIS describing the events giving rise to the alleged violation and the proposed Final Judgment. The Stipulation and Order, which was agreed to by the parties and which was entered

by the Court on March 10, 2021 (Dkt. No. 47), provides that the proposed Final Judgment may be entered by the Court once the requirements of the APPA have been met. The proposed Final Judgment requires Geisinger to cap its ownership interest in Evangelical at 7.5% and requires Defendants to eliminate other entanglements between them that would allow Geisinger to influence Evangelical. Defendants are also each required to establish robust antitrust compliance programs.

On May 17, 2021, the United States and Defendants filed a Joint Notice of Amended Proposed Final Judgment (the “Joint Notice”), attaching an amended proposed Final Judgment. (Dkts. 51, 51-1). The amended proposed Final Judgment removed provisions from the Collaboration Agreement (including its attachments) that did not conform with the proposed Final Judgment and corrected typographical errors in those documents. The amended proposed Final Judgment is identical in all respects to the original proposed Final Judgment except for a change to the definition of the “Amended and Restated Collaboration Agreement” to reflect the date of execution and title of the revised, updated agreement.

Entry of the amended proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

## **II. COMPLIANCE WITH THE APPA**

The Certificate of Compliance filed with this Motion and Memorandum states that all the requirements of the APPA have been satisfied. In particular, the APPA requires a 60-day period for the submission of written comments relating to the proposed Final Judgment. 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed the proposed Final Judgment and the CIS with the Court on March 3, 2021, published the proposed Final Judgment and CIS in the

*Federal Register* on March 10, 2021 (see 86 Fed. Reg. 13,735 (2021)), and caused a summary of the terms of the proposed Final Judgment and the CIS, along with directions for the submission of written comments, to be published in *The Washington Post* for seven days from March 8, 2021 through March 14, 2021, and in *The Daily Item* for seven days from March 9, 2021 through March 14, 2021 and on March 16, 2021. The public comment period concluded on May 17, 2021. The United States determined that it would consider any additional comments that were received by June 7, 2021, in order to afford the public time to review the Joint Notice and the amended proposed Final Judgment, which had been posted to the Antitrust Division's website. The United States received five comments. Pursuant to 15 U.S.C. § 16(d), the United States filed a Response to Public Comments on August 31, 2021 (Dkt. No. 52) and published it and the public comments in the *Federal Register* on September 14, 2021, 86 Fed. Reg. 51,183 (2021).

### III. STANDARD OF JUDICIAL REVIEW

Before entering the amended proposed Final Judgment, the APPA requires the Court to determine whether the amended proposed Final Judgment “is in the public interest.” 15 U.S.C. § 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, “shall consider”:

- (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
- (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A), (B). Section 16(e)(2) of the APPA states that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. § 16(e)(2). In its CIS and Response to Public Comments, the United States explained the meaning and the proper application of the public interest standard under the APPA to this case and now incorporates those statements by reference.

**IV. ENTRY OF THE AMENDED PROPOSED FINAL JUDGEMENT IS IN THE PUBLIC INTEREST**

The United States alleged in its Complaint that Geisinger’s partial acquisition of Evangelical would substantially lessen competition and unreasonably restrain trade in the market for the provision of inpatient general acute-care services in a six-county region in central Pennsylvania in violation of Section 7 of the Clayton Act and Section 1 of the Sherman Act. As explained in the CIS and the Response to Public Comments, the amended proposed Final Judgment is designed to eliminate the likely anticompetitive effects of the transaction alleged by the United States by (1) capping Geisinger’s ownership interest in Evangelical; (2) preventing Geisinger from exerting control or influence over Evangelical; and (3) prohibiting Geisinger and Evangelical from sharing competitively sensitive information. The public, including affected competitors and customers, has had the opportunity to comment on the amended proposed Final Judgment. As explained in the CIS and the Response to Public Comments, entry of the amended proposed Final Judgment is in the public interest.

**V. CONCLUSION**

For the reasons set forth in this Motion and Memorandum and in the CIS and the Response to Public Comments, the United States respectfully requests that the Court find that the amended proposed Final Judgment is in the public interest and enter the amended proposed Final Judgment.

Dated: September 14, 2021

Respectfully submitted,

/s/ Natalie Melada

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COUNSEL FOR PLAINTIFF

UNITED STATES OF AMERICA

**CERTIFICATE OF SERVICE**

I, Natalie Melada, hereby certify that on September 14, 2021, I electronically filed the foregoing United States' Unopposed Motion and Memorandum in Support of Entry of Final Judgment through the Court's CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Natalie Melada  
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