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Exhibit E

CONFIDENTIAL—SUBJECT TO PROTECTIVE ORDER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

In re United States of America and)
State of Michigan v.)
Hillsdale Community Health Center,)
W.A. Foote Memorial Hospital,)
d/b/a Allegiance Health, Community)
Health Center of Branch County, and)
ProMedica Health System, Inc.)
_____)

Case No. 5:15-CV-12311-JEL-DRG

Judge Judith E. Levy
Magistrate Judge David R. Grand

EXPERT REPORT OF SUSAN HENLEY MANNING, PHD

14 NOVEMBER 2016

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interrogatories by Allegiance.¹⁸ I have been asked to perform economic analysis to assess whether there has been a substantial and significant adverse effect on market competition and to analyze a balancing of any procompetitive and anticompetitive effects. I have been asked to evaluate and render an opinion on whether Plaintiffs' claims that an agreement not to market medical services reduced competition and harmed patients, physicians, and employers. For purposes of my analysis, I have been asked to assume that Allegiance and Hillsdale Hospital had an agreement that limited Allegiance's marketing of competing services in Hillsdale County to certain media.¹⁹

- 16) I have also been asked to review and, as appropriate, respond to reports and testimony provided by the Plaintiff Counsel's economics experts, Dr. Tasneem Chipty and Dr. Lawton R. Burns, in this matter, as they relate to assessment of competitive effects.²⁰

D. Summary of Conclusions

- 17) Allegiance Health and Hillsdale Hospital are horizontal competitors for some lower acuity inpatient and outpatient services generally available at community-based hospitals. Other hospitals competing to provide these lower acuity cardiology, orthopedics, and oncology services to Hillsdale County residents include the University of Michigan, Borgess Medical Center, Community Health Center of Branch County, ProMedica Bixby, Bronson Battle Creek and Methodist hospitals, and others.
- 18) Allegiance provides a substantial volume of higher acuity inpatient services to residents of Hillsdale County that Hillsdale Hospital does not offer. For these services, Allegiance and Hillsdale Hospital are not horizontal competitors. Allegiance competes with a number of other tertiary providers for higher acuity referrals in Hillsdale County, including Borgess Medical Center, the University of Michigan, St. Joseph Mercy Ann Arbor, Bronson Battle Creek and Methodist hospitals, and others.

¹⁸ For purposes of my analysis, I am asked to assume an agreement to limit marketing by Allegiance in Hillsdale County for services which both Allegiance and Hillsdale Hospital offer. I am not assuming that the alleged agreement resulted in an unreasonable restraint of competition. Whether or not the agreement resulted in an unreasonable restraint of competition is the inquiry I undertake in this Report.

¹⁹ I understand Henry Ford Allegiance has retained Lawrence W. Margolis of SPM Marketing & Communications, Inc. to assess Allegiance's marketing during the relevant time periods.

²⁰ FTI's Center for Healthcare Economics and Policy bills for my time at the hourly rate of \$750 and bills my supporting staff time at hourly rates ranging from \$440 to \$595 for this engagement. Neither FTI's compensation nor mine depend on the opinions I offer or the outcome of this matter.

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brand advertisement for the hospital and generated a “halo effect” in competing for other services. Combine with specific physician liaison and outreach programs to increase referrals, Allegiance appears to have been a strong competitor with others in providing inpatient and outpatient services to Hillsdale County residents. Plaintiffs’ experts dismiss this procompetitive business justification without providing any economic analysis to support their dismissal.

II. BACKGROUND ON HEALTHCARE SERVICES AT ISSUE**A. Inpatient, Outpatient and Physician Services**

- 24) Healthcare services are particularly diverse and span a range of distinctive services. In practice, healthcare providers offer a continuum of care, with some facilities better equipped to provide certain services depending on the technology required and complexity of the services. Health insurers evaluate the capabilities of each provider and seek to form networks that allow their patients access to the full continuum, including primary, secondary, tertiary, quaternary, and outpatient care.
- 25) Primary care services require limited resources, have low complexity, and are often preventive; as care has shifted from inpatient to outpatient locations, these services are most commonly provided on an outpatient basis, at locations such as physician offices, diagnostic clinics, and urgent care facilities.
- 26) Secondary services are more complex than primary services and require greater resource intensity, but still low acuity. These services are typically performed in a hospital or ambulatory surgical center setting.
- 27) Tertiary care services are more complex still, requiring facilities to have a fairly high degree of specialization, and often are more invasive and/or use larger, more costly technology and resources. These services are rarely performed outside a hospital. Hospitals vary to the level of tertiary care they provide; more complex tertiary care is often provided at larger, regional medical centers and teaching hospitals.
- 28) Quaternary care is even more complex and encompasses the highest acuity, technologically-demanding cases, such as organ transplants, severe burn, and experimental procedures. Fewer hospitals are equipped to handle such patients due to the special resources required to perform these healthcare services.
- 29) There are no definitive dividing lines between these types of services. The perceived complexity and technology requirements that define one group of care

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compared with another can vary among providers. The higher the complexity of care, the more costly (typically) the service is, as a result of the specialized technology required and greater staff training. Quaternary services are, therefore, easier to define, but there remains no clear consensus.

- 30) Healthcare services can typically be divided into two categories: inpatient and outpatient. Inpatient services are those for which a patient is formally admitted into the hospital and require at least one overnight stay. Outpatient services are those that do not require an overnight stay. A third type of service, observation services, are those that are hospital-delivered outpatient services that allow an inpatient admission if required.
- 31) Outpatient services include a range of care provided outside the hospital setting. This includes physician visits, imaging, therapeutic services, and, increasingly, outpatient surgery. Outpatient services generally are considered primary or secondary services.
- 32) Plaintiffs' complaint claims that Allegiance and Hillsdale Hospital are horizontal competitors "in the provision of healthcare services in south-central Michigan."²² Plaintiffs do not define the specific services encompassed by "healthcare services." Nor do they specifically define healthcare services as the relevant product market.
- 33) Plaintiffs' experts in this matter, Dr. Chipty and Dr. Burns also do not offer an opinion or supporting analysis defining a relevant product market. I understand that it is Plaintiffs' burden to define a relevant product market to assess the competitive effects of an alleged agreement. Not knowing the definition, or at a minimum, the contours of the relevant product market in which Plaintiffs' experts are assessing competitive effects, I examine the competitive effects in the context of (1) inpatient services, (2) outpatient services, and (3) competing services offered by both Allegiance and Hillsdale Hospital.²³

B. Geographic Area Implicated by the Alleged Anticompetitive Conduct

- 34) Allegiance and Hillsdale Hospital draw most of their patients from South-Central Michigan. The closest large cities to these counties are Ann Arbor to the east, Lansing to the north, and Kalamazoo to the west. Detroit is about an hour and a half east of Allegiance.

²² Complaint at ¶ 35.

²³ I reserve the opportunity to respond with an opinion and supporting analysis in response to any proffered market definition should Plaintiffs' experts offer such an opinion on the relevant product market for purposes of assessing the competitive effects of the alleged Agreement.