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VIA OVERNIGHT MAIL – DELIVERY CONFIRMATION

Delaware Health Care Commission
Delaware Health Resources Board
Herman M. Holloway Sr. Health and Social Services Campus
1901 North DuPont Highway, Main Administration Building, First Floor
New Castle, DE 19720

RE: Comments in Opposition to the Certificate of Public Review Application of ChristianaCare Health System for a Georgetown Campus (Health Center and Neighborhood Hospital), Sussex County, Delaware

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Dear Members of the Delaware Health Care Commission and Health Resources Board:

I. Introduction and Statement of Interest

TidalHealth, Inc. ("TidalHealth") respectfully submits these comments in opposition to, or in the alternative to condition, the Certificate of Public Review ("COPR") application filed on or about June 2, 2026 by ChristianaCare Health System ("ChristianaCare" or the "Applicant") to develop a de novo health campus in Georgetown, Sussex County, comprising a Health Center and a co-located eight-bed emergency / eight-bed inpatient "Neighborhood Hospital" operated through a joint venture with Emerus Holdings, Inc. ("Emerus") (the "Project").

TidalHealth operates TidalHealth Nanticoke in Seaford, Delaware located approximately twenty minutes from the proposed Georgetown site together with TidalHealth Peninsula Regional and an integrated network of primary, specialty, emergency, and inpatient services across western and central Sussex County. TidalHealth is therefore a directly affected existing provider within the Applicant's stated primary service area and has standing to comment under the Board's review process. TidalHealth requests party status and the opportunity to submit supporting data and testimony at the public hearing.

TidalHealth supports expanded access to primary care, behavioral health, and specialty services in Sussex County and does not oppose the ambulatory Health Center component on its merits. TidalHealth's objection is directed at the acute-care Neighborhood Hospital, which suffers from two independent threshold defects it cannot be licensed under Delaware's existing Hospital Licensure Law, rendering the Application premature, and it is barred or materially restricted by the newly enacted Senate Bill 313 and which, in any event, does not satisfy the statutory criteria of 16 *Del. C.* § 9306.

II. Summary of Position

For the reasons detailed below, the Application, as submitted, cannot be approved as to the Neighborhood Hospital. Two independent threshold bars each defeat the acute-hospital component, and the Application separately fails on the merits:

- **Threshold bar one — not a hospital, or no licensure category (ripeness).** The Neighborhood Hospital either does not meet the threshold definition of a "hospital" under 16 Del. C. § 1001(a) because, on the Applicant's own description, it is emergency-forward and not "primarily engaged in providing inpatient services" or, if it is a hospital, fits no classification under § 1001(b), which recognizes only General, Long-term care, Psychiatric, Rehabilitation, and Surgical hospitals and no "micro-hospital" category (the enabling bill has not been enacted). On either branch the Board cannot lawfully authorize, and the Department cannot license, the facility as proposed, and the Application is premature.
- **Threshold bar two — SB 313 ownership and control.** Senate Bill 313, signed into law on July 20, 2026, establishes a moratorium through July 1, 2028 on for-profit acquisition of or control over nonprofit acute care hospitals and restricts the Board from processing certain acute-hospital COPR applications. Because Emerus, a for-profit entity, will hold a 49% interest in the Neighborhood Hospital and conduct its day-to-day operations, SB 313 bars or materially restricts approval as structured.
- **The two bars form a pincer.** If the microhospital category is not created, the facility is unlicensable (premature); if it is later created by the pending bill which defines a micro-hospital as "an acute care hospital" the facility falls squarely within SB 313's prohibition on for-profit-controlled acute care hospitals. There is no present path to approval as structured.
- On the merits, the Applicant concedes on the face of its Application that alternative providers of the proposed service are already readily accessible; relies on primary-care and mental-health shortage designations that do not evidence any shortage of emergency or inpatient beds; supplies no incumbent utilization data and no financial feasibility study; and proposes a structure that redistributes favorably-insured volume rather than adding net capacity.

III. Grounds for Denial or Conditioning of the Application

The Application fails on three independent bases. The Neighborhood Hospital component is defeated by two threshold bars the absence of any Delaware licensure category for the proposed facility, which renders the Application premature (Part A), and Senate Bill 313 (Part B). Separately, and in any event, the Application does not satisfy the statutory review criteria of 16 *Del. C.* § 9306 (Part C). Parts A and B are advanced in the alternative: Part A contends in part that the facility is not a "hospital" at all, while Part B applies if the facility is treated as an acute care hospital; the Applicant cannot escape both.

A. Threshold Bar One: The Neighborhood Hospital Either Is Not a "Hospital" Under § 1001(a) or, If It Is, Has No Licensure Category—Either Way, the Application Is Premature

The COPR process authorizes the establishment of, and determines need for, a health-care facility under 16 *Del. C.* Chapter 93. The Neighborhood Hospital cannot be approved on either of two independent grounds, pleaded in the alternative. First, the facility may not satisfy the threshold statutory definition of a "hospital" in 16 *Del. C.* § 1001(a) at all, because it does not appear to be "primarily engaged in providing inpatient services." Second, if it is a hospital, Delaware law recognizes no licensure classification into which it fits, because § 1001(b) provides only for General, Long-term care, Psychiatric, Rehabilitation, and Surgical hospitals, and no "micro-hospital" or "neighborhood hospital" classification has been enacted. On either branch, the Board cannot lawfully authorize and the Department of Health and Social Services cannot license—the facility as proposed, and the Application is premature.

1. The facility may not meet the threshold definition of a "hospital" under § 1001(a).

Section 1001(a) defines a "hospital" as an organization with a governing body, an organized medical and professional staff, and inpatient facilities, operating 24 hours per day, 7 days per week, and "primarily engaged in providing inpatient services." By the Applicant's own description, the Neighborhood Hospital does not appear to satisfy that predicate. The Application states that the facility will "focus on 24/7 emergency care and low acuity inpatient care"; that its eight inpatient beds are "intended for short-stay and community-based hospitalization"; and that the facility is designed to "reduce unnecessary inpatient utilization" and to act as a "release valve for overcrowded emergency departments." Those are the hallmarks of an emergency-forward facility whose inpatient function is ancillary not one primarily engaged in providing inpatient services.

The bed configuration confirms the point. The facility has eight emergency beds and eight short-stay inpatient beds, but emergency beds turn over many times per day while inpatient beds do not, so projected emergency encounters will substantially exceed inpatient admissions. The Applicant, moreover, has supplied no quantified projection of inpatient admissions or inpatient days the revenue and utilization schedules for emergency and inpatient services are left blank or withheld and has therefore not carried its burden to demonstrate that the facility is primarily engaged in providing inpatient services. A facility that is not primarily engaged in inpatient services is not a "hospital" under § 1001(a); it is, functionally, a freestanding emergency department with a small inpatient annex a facility type Delaware likewise does not separately license.

TidalHealth advances this ground **in the alternative** and does not concede that the facility is a hospital. If the Board concludes that the facility is a hospital, it is an *acute care hospital* and the Senate Bill 313 bar in Part B applies; if the Board concludes that it is not, there is no hospital for the Board to approve. Either way, the acute-hospital component fails. This defect is not cured by the pending microhospital legislation, which would define a micro-hospital as "an acute care hospital that meets the requirements of § 1001(a)" expressly preserving the "primarily engaged in providing inpatient services" test.

2. If it is a hospital, the facility fits no existing licensure classification.

Assuming the facility qualifies as a hospital, Delaware law still provides no classification for it. Section 1001(b) recognizes only General, Long-term care, Psychiatric, Rehabilitation, and Surgical hospitals; there is no micro-hospital or neighborhood-hospital classification, and the draft Senate bill that would add one has not been enacted. A General hospital must provide on-site diagnostic x-ray, clinical laboratory, operating-room service, and an emergency department. The Neighborhood Hospital offers imaging (x-ray, CT, and ultrasound) and emergency and short-stay inpatient care but no operating room and no surgical services; it therefore fails the General classification, cannot qualify as a Surgical hospital (which by definition requires operating-room and surgical services), and is plainly neither Long-term care, Psychiatric, nor Rehabilitation. Section 1001(c) relieves only hospitals classified under (b)(2) through (b)(5) from the General-hospital service requirements; a microhospital is not among them and cannot escape the operating-room requirement it fails to meet.

3. On either branch, the Application is premature and unripe for review.

Because the proposed facility either is not a hospital Delaware law recognizes or cannot be licensed in any existing classification, the Application asks the Board to approve a facility whose lawful existence depends on a future, contingent act of the General Assembly that has not occurred and may never occur. Any approval would be advisory or conditional on a law that does not exist, and would require the Board to adjudicate need for a facility outside the statutory licensure scheme. This is a paradigmatic unripe controversy. It also implicates the Board's jurisdiction, as Chapter 93 does not authorize the approval of a facility type Delaware law does not recognize. The appropriate disposition is to dismiss the Neighborhood Hospital component without prejudice, or hold it in abeyance, pending enactment of an applicable licensure category and a demonstration of compliance with Senate Bill 313.

4. Private accreditation is not a Delaware license.

The Application states that the facility will comply with "all regulatory and accreditation criteria for microhospitals" and relies on DNV/NIAHO accreditation. But Delaware has no such regulatory criteria or category. Private accreditation cannot substitute for a statutory classification the General Assembly has not created. That Delaware law permits the Department to accept an accrediting organization's survey in lieu of an annual licensure inspection does not create a category; it presupposes that the facility already occupies a licensable one.

5. Requested action; the likely "provider-based" workaround fails.

At a minimum, the Board should require the Applicant to identify the specific existing Delaware licensure category under which it intends to operate the Neighborhood Hospital and to demonstrate that the facility, as designed, satisfies that category's on-site service requirements. To the extent the Applicant contends the facility will be licensed as a provider-based department or satellite of an existing ChristianaCare hospital, that contention fails: the Applicant's licensed Delaware hospitals are located in New Castle County, well beyond the proximity limits generally applicable

to provider-based status, and such status would in any event cure neither the § 1001 classification gap nor the Senate Bill 313 concerns addressed in Part B.

B. Threshold Bar Two (Ownership): The Neighborhood Hospital Is Barred or Restricted by Senate Bill 313

On July 20, 2026, after this Application was filed, the Governor signed Senate Bill 313 (153rd General Assembly), amending Titles 16 and 29 of the Delaware Code. The Act establishes a moratorium, effective through July 1, 2028, on the acquisition of, or acquisition of control over, nonprofit acute care hospitals by entities other than charities or not-for-profit entities, and it restricts the Health Resources Board from processing certain acute-hospital COPR applications. Because the Neighborhood Hospital is to be owned 49% by Emerus, a for-profit entity that will also conduct its day-to-day operations, SB 313 bars or materially restricts approval of the acute-hospital component as presently structured. This bar is independent of, and reinforced by, the licensure defect in Part A: the pending bill that would create a microhospital category defines the facility as "an acute care hospital," placing it squarely within SB 313 the moment such a category exists.

1. The Neighborhood Hospital is an "acute care hospital" within the meaning of the Act.

SB 313 defines an "acute care hospital" as a hospital under 16 *Del. C.* § 1001, excluding facilities that *exclusively* provide psychiatric, rehabilitative, or long-term care services. The Neighborhood Hospital comprises eight licensed emergency beds and eight acute inpatient beds, will seek hospital accreditation, and provides neither exclusively psychiatric, rehabilitative, nor long-term care. On the Applicant's own description of the facility and expressly under the definition in the pending microhospital bill, it is an acute care hospital subject to the Act.

2. The COPR bar (16 Del. C. § 9304(b)).

As amended, § 9304(b) provides that a person other than a charity or not-for-profit entity may not submit and the Board may not accept, process, review, or act upon an application for a Certificate of Public Review for the construction, development, establishment, or acquisition of an acute care hospital, and that any application filed in violation is void and of no legal effect. The statutory definition of "person" expressly includes a joint venture and a limited liability company. The entity that will own and establish the Neighborhood Hospital is the ChristianaCare–Emerus joint venture, an entity that is 49% for-profit owned and is not a charity or not-for-profit. The Board therefore may not process or approve the Application to the extent it seeks to establish an acute care hospital owned and operated other than by a charity or not-for-profit entity.

3. The change-of-control moratorium (29 Del. C. § 2534) and its presumptions.

Section 2534 voids, through July 1, 2028, any transaction by which a person other than a charity or not-for-profit acquires the power to direct the management, policies, or clinical practices of a nonprofit acute care hospital. A change of control is presumed where the for-profit party, directly or through affiliates, (i) holds 25% or more of the voting or membership interests in the hospital or in the entity through which its licensed inpatient or emergency services are conducted; (ii) holds

governance or contractual rights to appoint, remove, or approve board members or executive officers; or (iii) holds veto or consent rights over material operational, financial, or strategic decisions. Emerus's 49% interest is nearly double the 25% threshold, and its role in the day-to-day management and operations of the Neighborhood Hospital implicates the governance and veto presumptions as well. The Act was expressly drafted to reach minority stakes and sub-majority governance rights, and the burden falls on the Applicant to rebut the resulting presumption of control.

4. Attorney General Conversion Act notice and review (29 Del. C. §§ 2531–2532).

SB 313 also amends the definition of a "not-for-profit healthcare conversion transaction" to include a joint venture that places a material amount of a nonprofit healthcare entity's assets or operations with a for-profit party, and to include the transfer or lease of a nonprofit acute care hospital's primary facility real estate (the land and buildings housing its licensed inpatient and emergency services) to a for-profit party. Such transactions require at least 180 days' advance written notice to the Attorney General, with contemporaneous copies to the Governor and the Secretary of the Department of Health and Social Services. At a minimum, the ChristianaCare–Emerus joint venture should be referred for Conversion Act review, and the Board should require the Applicant to disclose how the Georgetown facility real estate will be owned or leased, and by whom.

5. Requested action on the ownership bar.

TidalHealth respectfully submits that the Board should decline to process or approve the Neighborhood Hospital component as void under § 9304(b); refer the joint venture to the Attorney General under § 2532; and, in all events, compel production of the full joint-venture, operating, and real-estate agreements so that ownership and control may be assessed against SB 313. The Applicant may contend that a de novo facility falls outside these provisions; that contention is unavailing on the statutory text and, at minimum, cannot be resolved in the Applicant's favor on the present record.

IV. Requested Relief

For the foregoing reasons, TidalHealth respectfully requests that the Board:

- Grant TidalHealth party status and the opportunity to present data and testimony at the public hearing;
- Decline to accept, process, or act upon the Application as to the Neighborhood Hospital as premature—on the ground that the facility either does not meet the definition of a "hospital" under 16 *Del. C.* § 1001(a) or, if it does, falls within no licensure classification Delaware law recognizes—and dismiss that component without prejudice or hold it in abeyance pending enactment of an applicable category;

- Independently decline to process or approve the Neighborhood Hospital as void under 16 *Del. C.* § 9304(b), and refer the ChristianaCare–Emerus joint venture to the Attorney General for review under 29 *Del. C.* § 2532; and
- Direct the Applicant to identify the intended Delaware licensure category and to produce the full joint-venture, operating, and real-estate agreements, the redacted financial schedules, an independent financial feasibility study, and an independent Sussex County emergency-department and inpatient bed-need analysis before the Board acts.

TidalHealth appreciates the Board's consideration and stands ready to provide any additional information the Board may find helpful.

Respectfully submitted,

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