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Public Service

Regulatory Feasibility Analysis of Reallocation of Inpatient Beds Between Curry General Hospital and Brookings Based Facilities

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EXECUTIVE SUMMARY

The following is an analysis of the regulatory feasibility of reallocating some portion of the inpatient bed capacity currently offered by Curry Health District d/b/a Curry Health Network ("Curry Health Network") at Curry General Hospital at a location in or near Brookings, Oregon (the "Brookings Facility"). This analysis specifically focuses on the unique benefits, appurtenant restrtictions, and required criteria associated with gaining and maintaining a Critical Access Hospital ("CAH") designation for inpatient services offered by Curry Health Network licensed facilities.This was undertaken by the authors and the Center for Public Service ("CPS") based on a contractual agreement with Curry Health Network and is submitted to Virginia Williams at Curry Health Network in satisfaction of the Statement of Work relating to that agreement. The analysis and conclusions herein were additionally reviewd by Philip Keisling, the most recent Executive Director of CPS and Interim Director Masami Nishishiba, Ph.D.

This analysis is based on a review of several sources. At the Federal level these included Chapter IV of Title 42 of the Code of Federal Regulations relating to Conditions of Participation in Medicare and Medicaid programs, with a specific focus on part 485 relating to CAHs as well as the Centers for Medicare and Medicaid Services ("CMS") State Operations Manual ("SOM") and federal caselaw reviewing CMS' interpretation of certain requirements. At the state level, this included review of Oregon Revised Statutes and Oregon Administrative Rules relating to the definition of hospitals, regulation and licensing of the same and the Certificate of Need process in Oregon. Additionally the authors reviewed information on Curry Health Network and Curry General Hospital from publicly available sources and searched for any applicable local regulations that could impact CAH status. Although each point is made in greater detail below, the fundamental conclusion is that any appreciable reallocation of inpatient bed capacity would imperil the designation of Curry General Hospital as a CAH, the Brookings Facility likely would not be eligible for designation as a CAH regardless of its relationship to Curry General Hospital and such a facility would likely require a Certificate of Need and license from the state of Oregon as a new "low occupancy acute care hospital".

There are several distinct elements of this analysis that are developed below:

1. Any reallocation to Brookings would likely make Curry General Hospital non-compliant as a CAH and no facility in Brookings would qualify for CAH status

The core elements of CAH designation are designation by the state, location in a rural environment and location at a 35 mile distance from another hospital. Although Curry General Hospital is itself exempt from this provision as a necessary provider with a pre-2006 designation, inpatient services in Brookings would not benefit from that exemption. It would not qualify as a relocation of Curry General Hospital as the Gold Beach facilty would remain in operation. Creating a new "remote location" of Curry General Hospital would cause the entirety of Curry General Hospital to be within 35 miles of Sutter Coast Hospital, in violation of the CAH Conditions of Participation ("COP"). If the new facility were to be a distinct Medicare provider, it would be within 35 miles of both Curry General Hospital and Sutter Coast Hospital and could not qualify as a CAH. Thus any such move would likely have severe financial implications for Curry Health Network as a whole.

2. Oregon would Consider the Brookings Facility a New Hospital Requiring a Certificate of Need and Licensing.

Unlike remote outpatient or specialized service locations which can be seen as satellite locations of an existing hospital, Oregon considers any facility with more than two inpatient beds to be a hospital. Any facility located more than seven miles from the current location of Curry General Hospital that starts providing general inpatient services will be seen as a new hospital, regardless of how it is organized relative to Curry General Hospital. This will require a Certificate of Need from the state as well as provision of several services beyond just beds to comply with regulations relating to "low occupancy acute care hospital(s)."

All of this suggests any reallocation of inpatient bed capacity to the Brookings area comes with significant regulatory burdens and will likely result in a minimzation or elimination of the CAH designation possessed by Curry General Hospital.

A. Background and Regulatory Frameworks

The Federal government and the state of Oregon have long recognized the unique role rural healthcare facilities play in the provision of basic health needs. To ensure access to a full range of services in these locations, the Social Security Act (which authorizes and governs Medicare and Medicaid) was amended in 1997 to include a provision (42 U.S.C. § 1395i-4) entitled the "Medicare Rural Hospital Flexibility Program". This program in turn permits states to create "rural health networks" including at least one designated Critical Access Hospital ("CAH"). 42 U.S.C. §§ 1395i-4(b-c). The CAH status permits hospitals to be paid on a reasonable cost basis (101 percent of cost) rather than the prospective patient systems ("PPS") applicable to most other Medicare providers. CMS 2017. Additionally, there are statutory grant funds available to states and hospitals specifically to address issues relating to rural health. 42 U.S.C. §1395i-4(g).

There are a number of requirements relating to CAH designation relating to technical capacity and provision of services that are beyond the scope of this analysis. The basic requirements, however, are (1) designation by the state, (2) location in a rural area, (3) compliance with a distance requirement and (4) a limitation on the number of beds. 42 U.S.C. § 1394i-4(c)(2). The distance requirement is generally that the hospital must be "more than a 35-mile drive (or, in the case of mountainous terrain or in areas with only secondary roads available, a 15-mile drive) from a hospital or another CAH." 42 U.S.C. § 1394i-4(c)(2). There is a grandfather provision for hospitals designated as "necessary providers" before 2006 which allows state waivers of the 35-mile provision. However, CMS regulations state that the 35-mile rule applies to all "off-campus provider based locations" operated under an existing CAH hospital's provider agreement created or acquired after January 1, 2008, regardless of whether or not the CAH is a necessary provider. 42 C.F.R. § 485.610(e). Any "off-campus provider based location" that does not meet this requirement not only is itself ineligible for the benefits of CAH status but actually makes the existing CAH provider agreement "subject to termination." 42 C.F.R. § 485.610(e)(3).

In addition to Federal regulations, the state of Oregon has a number of provisions relating to the operation of inpatient facilities. Most relevant to the current discussion are the laws and regulations relating to the certificate of need ("CON") process. Although rural hospitals are generally exempt from the CON process, one area that always requires a CON is the development of a "new hospital." O.A.R. 333-555-0000, 333-555-0010. A "new hospital" is defined by rule as "any facility that did not offer inpatient hospital services on a regular basis within its service area within the prior 12-month period and is initiating or proposing to initiate such services." O.A.R. 333-555-0010(2), O.R.S. § 442.015(20). "By rule, the "service area of an existing general hospital . . . shall not extend beyond a seven-mile radius from the main hospital campus." O.A.R. 333-555-0010(2).

The critical defining element of a hospital is the provision of generalized inpatient care. Particularly statute defines a hospital as a location that is "capable of providing 24-hour inpatient care to two or more individuals who have an illness or injury" along with providing medical, nursing, laboratory, pharmacy and dietary services. O.R.S. § 442.015(16); O.A.R. 333-555-0000(19) (adopting statutory definition for rules). This places essentially any facility providing general inpatient services in a different category than a "satellite" of a hospital. This rule-defined category of remote locations only includes facilities limited to providing outpatient, psychiatric or emergency services. O.A.R. 333-555-0000(45).

Currently, Curry Health Network owns and operates a hospital and several medical clinics. The locations include Curry General Hospital and Curry Medical West in Gold Beach, Curry Family Medical in Port Orford, and Curry Medical Center in Brookings. Curry General Hospital is an 18-bed inpatient facility in Gold Beach, Oregon providing 24-hour care. Curry Health Network 2019. This facility has been designated as a CAH by the state of Oregon as part of a rural health network since 2004, and currently operates under a CAH provider agreement for Medicare services. Curry Health Network 2018. Preserving the CAH designation of Curry General Hospital is very important to viability of the Curry Health Network as a whole. Curry Health Network 2018 ("the financial impact [of losing CAH status] would likely have been immense.").

Curry Health Network's existing CAH Medicare provider agreement for Curry General Hospital also covers the Curry Medical Center in Brookings as an "off-campus site" providing outpatient care. In 2018, CMS initially took the position that the Curry Medical Center in Brookings made Curry General Hospital non-compliant with the distance rule of CAH status. Curry Health Network 2018. This was in part because of the distance from the Curry Medical Center to Sutter Coast Hospital – approximately 24.9 miles from Brookings along US-101. Curry Health Network 2018, Google Maps. Additionally, CMS took the position that a Sutter Health affiliated clinic in Brookings was, in effect, a branch of

Sutter Coast Hospital and too close to Curry General Hospital to satisfy the distance requirement, as Brookings itself is approximately 28.5 miles from Curry General Hospital's location in Gold Beach along US-101. Curry General Hospital was able to establish to CMS' satisfaction that it was a necessary provider exempt from the 35-mile rule as to its main campus. Curry Health Network 2018. It was also able to show that its relationship with Curry Medical Center pre-dated the rules on using off-campus sites to determine compliance with the distance requirements for CAH eligibility. Based on these findings, Curry Medical Center and the Sutter Health clinic location could not be used as a basis for terminating Curry General Hospital's CAH provider agreement. Curry Health Network 2018.

The Curry Health Network Board of Directors is interested in exploring regulations surrounding the concept of hospital services with inpatient beds in Brookings. A hypothetical Brookings Facility is perceived by some as potentially more convenient or desirable given the fact that a larger population of Curry County residents are located in or near Brookings than in Gold Beach. Currently, no inpatient services are available in Brookings proper. At the same time, it is our understanding that any shift would only be partial rather than an elimination of inpatient services at the Gold Beach location.

B. Any Reallocation of Beds to Brookings Would Likely Make Curry General Hospital Non-Compliant as a CAH and no Brookings Facility Could Qualify for CAH Status

The CAH conditions of participation ("COP") do not have regulations that match the description Curry Health Network would apply to this proposal of "'splitting current licensed, inpatient beds". This is because the COP are written in terms such as "hospital" and "facility" rather than licensing inpatient beds. The regulations make clear that the location of a "main provider" CAH is determined from the main campus of a hospital that operates "satellite facilities" or "remote locations of hospitals". 42 C.F.R. §§ 413.65(a), 485.610(e). For purposes of this analysis, therefore, a relocation to a Brookings facility has been analyzed under three scenarios: (1) a "relocation" to the Brookings facility consistent with 42 C.F.R. § 485.610(d); (2)the creation of a new provider-based "remote location" of Curry General Hospital to Brookings consistent with 42 C.F.R. 485.610(e); and (3) the creation of a new, distinctly licensed inpatient facility in Brookings.

It is likely that any move of inpatient services to Brookings under Curry Hospital Hospital's existing CAH provider agreement would be seen by CMS as a basis for terminating the agreement. A partial move does not qualify as a relocation as the term *relocation* is indicative of the hospital facility as a whole. The creation of the Brookings facility could be organized as a "provider-based" "remote location" of Curry General Hospital. However, CMS has already taken the position that Sutter Coast Hospital is too close to Brookings for any facility located within it to satisfy the obligations of a CAH if the rules apply to it in their current iteration. Curry General Hospital was only able to overcome CMS' prior position because of factors that would not be relevant to a remote location, which would in turn subject the entire Curry General Hospital CAH provider agreement to termination. Additionally, CMS's interpretation of the distance rule has been upheld in court against challenges linked to its definition of "primary" and "secondary" roads, so barring a change in either the rule or the law such a move carries significant risks. The only way to preserve Curry General Hospital's CAH status *and* operate the Brookings Facility would be to open a distinct entity in Brookings with its own Medicare provider agreement – but that facility would not be eligible for CAH status, resulting in reimbursement challenges that would likely make financial viability a substantial challenge.

1. Moving some Curry General Hospital Inpatient Beds to Brookings does not fall within the CMS definition of "Relocation"

The CAH designation is linked to the idea of supplying healthcare to underserved populations and minimizing the risk that rural hospitals will shut down for financial reasons. At the same time, there is a concern that providers might try to game the regulation by changing their locations after designation. For this reason, CMS has both crafted regulations relating to the impact of a relocation on CAH status and the operation of remote facilities by CAH providers. If Curry General Hospital were truly to relocate, it might be able to preserve its CAH designation, but what is currently proposed does not fall within the definition of 'relocation' as CMS uses the term.

Curry General Hospital is in a limited subcategory of CAH providers – ones designated as necessary providers by their respective states prior to January 1, 2006. Curry Health Network 2018; 42 C.F.R. § 485.610(c); 42 U.S.C. § 1395i-4(B)(i)(II). This status exempts the Curry General Hospital facility from the provisions of the ordinary distance requirements of the CAH law. However, that status is linked to the physical facility that was the subject of the designation. 42 C.F.R. § 485.610(d). If the physical facility is relocated, the CAH's relocation is "considered a cessation of business" with the termination of CAH status unless the CAH can show it meets three conditions – retaining at least 75 percent of the same (1) service area, (2) services, and (3) staff as at the prior location. 42 C.F.R. § 485.610(d).

Whether a true relocation of Curry General Hospital to Brookings could satisfy these criteria or not, it is clear the current proposal is not a relocation as that term is used by CMS. Under the proposal under examination, Curry General Hospital would remain open at its present Gold Beach location and would continue to operate at its existing facility. A splitting of operations is not consistent with the language of relocating a singular facility or providing services at a new location (singular). Moreover, even if it somehow could be argued to be a relocation, a partial movement of beds would be unlikely to result in the new location providing at least 75 percent of the same services and 75 percent of staff. Thus, while Curry General Hospital itself may at some point be able to relocate in its entirety and retain its CAH status, the proposed shift would not appear to qualify as a relocation.

2. A New, Remote Location of Curry General Hospital in Brookings Would Be Subject to the 35 Mile Rule

As discussed in the background, Curry Health Network currently operates Curry Medical Center as an "off campus site" in Brookings. In particular, Curry Medical Center is considered an "off-campus, provider-based location" under the CMS COP. 42 C.F.R. § 485.610(e)(2). CMS explicitly includes both outpatient and inpatient facilities associated with a main provider within this umbrella category, although it regulates them as distinct sub-categories of such locations as discussed below. 42 C.F.R. §§ 413.65(a)(2), 485.610(e)(2). This means that Curry Medical Center operates under the same Medicare provider agreement as Curry Health Network, including the benefits of CAH status.

As originally implemented, regulations on CAH status did not consider off campus locations when applying CAH distance requirements. Under existing regulations, any such facility that is "created or acquired" after January 1, 2008 has to independently meet the distance requirements for a CAH. 42 C.F.R. § 485.610(e)(2). This is true regardless of whether or not the main facility was designated as a "necessary provider" and thus is itself exempt from the distance requirement. If the off-campus provider-based location does not independently meet the distance requirement, the "CAH's provider agreement will be subject to termination" unless the relationship with the off-campus location is terminated. 42 C.F.R. § 485.610(e)(3).

Curry Health Network has recent evidence that CMS is aggressively looking to enforce this provision. Curry Medical Center was an independent basis cited by CMS for challenging Curry General Hospital's CAH status in 2018, for example, based on its location in relationship to Sutter Coast. Curry Health Network 2018. It was only by showing that Curry Medical Center's relationship to Curry General Hospital pre-dated the change in regulation that this objection was overcome.

It might be argued by some that moving inpatient beds would only be an expansion or change of the pre-existing relationship between Curry General Hospital and Curry Medical Center that was found to be exempt from the distance requirements.[1] However, CMS defines an off-campus location providing inpatient services distinctly from one that provides other healthcare services; the former is a "remote location of a hospital" whereas the latter is a "department". 42 C.F.R. § 413.65(a)(2). They are treated distinctly in terms of evaluative criteria and licensing, and are described separately in the regulations relating to provider-based entities. CMS would likely take the position that offering inpatient services in Brookings under Curry General Hospital's CAH provider agreement as creating a new "remote location of a hospital" subject to the provisions of 42 C.F.R. § 485.610(e)(2-3). This argument would be buttressed by the fact Oregon law and regulations would see any such offer would be a "new hospital" requiring a certificate of

[1] This review did not locate any caselaw, CMS interpretations or OIG advisory opinions on this precise question. Curry Health Network could request an OIG advisory opinion should there be an interest in pursuing the proposed Brookings Facility.

need and distinct license as discussed in greater detail below.

Under such an interpretation, the proposed Brookings Facility would likely be seen by CMS as failing the distance test under 42 C.F.R. § 485.610(e)(2). CMS has already taken this position once, and there is no reason to think they would change their stance now. On its face, it would be difficult to place a location close to Brookings that was not also within 35 miles drive of Sutter Coast Hospital. CMS could conceivably argue that the Sutter clinic in Brookings also renders the Brookings Facility ineligible regardless of Curry General Hospital's designation as a necessary provider. If the Brookings Facility failed this test, by the express terms of 42 C.F.R. § 485.610(e)(3) the entire CAH agreement with Curry General Hospital would be subject to termination.

There is one ambiguity in the regulations and law that is worth discussing briefly in this context. Although the statute and regulations repeatedly state that the distance requirement is reduced to 15 miles where only "secondary roads" are available, the term primary and secondary roads are not defined. See 42 C.F.R. § 485.610(e)(3). The United States Geological Survey draws a distinction between primary and secondary highways based on physical features such as median strips and multiple lanes. CMS State Operations Manual Ch. 2, § 2256A. If this type of road criteria were applied uniformly then an assessment of US 101 between Brookings and Sutter Coast Hospital would be warranted. However, CMS has created a definition of "primary road" in its State Operations manual that expands upon the USGS criteria to include all designated US highways, including all portions of the National Highway system, the Interstate System and all US-Numbered Highways. CMS State Operations Manual Ch. 2, § 2256A. CMS has further clarified that it strictly applies the designation categorically and without consideration of "any issues raised by CAH applicants or other parties concerning the physical features of any specific US Highiway or portion thereof when making a CAH location determination." CMS 2015 at 4. Thus, under CMS' application of this definition all portions of US 101 are automatically primary regardless of designation under USGS standards, and the Brookings Facility would be deemed too close to Sutter Hospital and jeopardize Curry General Hospital's CAH provider agreement. CMS has further clarified that distance is considered a threshold requirement – if it is not met, CMS is not even supposed to conduct an eligibility survey of a location. CMS State Operations Manual Ch. 2, § 2256A.

It is of course possible to bring a legal challenge to CMS' application of the distance rule on either its determination that the Brookings Facility is a "remote location" of Curry General Hospital acquired or created after the critical date or its determination as to the definition of primary roads. However, any such claim would have to surmount a high legal bar, as agency actions can generally only be set aside when they are arbitrary and capricious under the Administrative Procedure Act or in the case of CMS factual findings supported by "substantial evidence" under the Social Security Act. 5 U.S.C. § 706(2)(A); 42 U.S.C. § 405(g); 42 U.S.C. § 1395cc(h). Research revealed no caselaw specifically on whether adding inpatient services at a grandfathered off-campus provider-based location is subject to the requirements of 42 C.F.R. § 485.610(e)(2) but as noted it would be consistent with the differing classifications of remote locations of hospitals and departments as well as the state of Oregon's treatment of the location. As to the road classification, there is one case on point out of the Fifth Circuit that upheld the State Operations Manual definition and one district court case in the Ninth Circuit that used it without challenge. *Baylor County Hosp. Dist. v. Price*, 850 F. 3d 257, 259-60, 262-65 (5th Cir. 2017); *United States V. San Bernardino Mts. Cmty. Hosp. Dist.*, 2018 U.S.Dist. LEXIS 166889, *15-16 (C.D. Ca. 2018). Placing any new inpatient beds in Brookings as an element of Curry General Hospital's CAH provider agreement thus poses significant risks to that status.

3. A New Hospital in Brookings Could Not Obtain CAH Status

Alternatively, a facility could be placed in Brookings that did not rely on Curry General Hospital's existing CAH provider agreement. Assuming that such a request survived the Oregon state certificate of need and licensing process, complied with all local regulations and was truly independent of Curry General Hospital, it might not impact Curry General Hospital's existing CAH status. However, any such facility would not itself qualify for CAH reimbursement, and it would have to be done in a manner that assured CMS that Curry Health Network wasn't simply attempting to skirt existing regulations. As a result it is unlikely to be a viable option.

Curry General Hospital's status as a necessary provider exempts it from the distance requirement for CAH status. In theory, this means that a new hospital can be placed anywhere within Curry General Hospital's area of operations without jeopardizing its CAH status. However, any such hospital would be too close to Curry General Hospital to qualify as a CAH itself. Additionally, as discussed above the Brookings Facility would also be too close to Sutter Coast to qualify. Thus, even if Curry General Hospital were to retain its CAH status the new facility would not be able to obtain it.

As a further consideration, Curry General Hospital's designation as a necessary provider can be withdrawn by the state of Oregon. If a truly independent hospital were to be established in Brookings, the state of Oregon might be justified in revisiting the necessary provider designation. If that designation is terminated, so would Curry General Hospital's exemption from the CAH distance requirements and overall eligibility. Thus while theoretically possible, establishing an independent new inpatient hospital in Brookings seems like it would not be a viable option for Curry Health Network.

C. Oregon would Consider the Brookings Facility a New Hospital Requiring a Certificate of Need and Licensing

Distinct from the question of CMS regulation and the CAH designation, the state of Oregon would require a CON and license for this project. As noted in the background section, generally speaking Oregon exempts rural hospitals like Curry General Hospital from the CON process. However, the proposed Brookings Facility falls squarely into the definition of "new hospital" used by the Oregon legislature and Oregon Health Authority. All such new hospitals require a CON prior to licensure, regardless of their affiliation with a rural hospital.

Oregon's statutory definition of "new hospital" is, in relevant part simply "[a] facility that did not offer hospital services on a regular basis within its service area within the prior 12-month period and is initiating or proposing to initiate such services." O.R.S. § 442.015(20). The threshold for what constitutes a hospital is similarly broad, applying to all facilities that can provide 24-hour inpatient care to two or more individuals and provides at least medical, nursing, laboratory, pharmacy and dietary services. O.R.S. § 442.015(16). This defnition has also expressly been adopted as controlling in regulations. O.A.R. 333-555-0000(19). Hence, essentially any facility providing generalized inpatient care is a "hospital" and cannot be considered a "satellite" of another "hospital". By comparison, "satellites" are defined by rule as including facilities limited to providing outpatient, psychiatric or emergency services. O.A.R. 333-555-0000(45).

As a matter of the CON process, the administrative rules adopt these definitions and again re-state that a new hospital is simply "any facility that did not offer inpatient hospital services on a regular basis within its service area within the prior 12-month period and is initiating or proposing to initiate such services." OAR 333-550-0000(1), OAR 333-550-0010(2). Once again, the defining trait is the provision of inpatient services. The statute does not define services area directly. However, the administrative rules are clear that it "shall not extend beyond a seven-mile radius from the main hospital campus." O.A.R. 333-550-0010(2).

Thus, given that Brookings is over 20 miles south of Gold Beach, and given that the current understanding of the proposed Brookings Facility would encompass more than one inpatient bed, such a facility would be subject to Oregon's CON process. In particular, assuming the resulting Brookings Facility were established as a partial relocation of the capacity of Curry General Hospital, it would be reviewed as a "low occupancy acute care hospital." OAR 333-500-0032(2)(b). This type of facility is required to provide no more than 25 inpatient beds and a more limited set of services than a general hospital, but is still required to have an emergency department.

Based on a review of the OAR and advice put forth by OHA, it is unclear if the proposed Brookings Facility could meet the CON criteria. Demonstrating need for acute inpatient beds and facilities is governed by OAR Chapter 333, Division 590. It is an operating assumption of OHA that demand for such services are declining and will continue to decline, subject to documentation by an applicant that they are filling an unmet need. OAR 333-590-0030(3). Thus, unless Curry General Hospital can document some basis for countering that and other assumptions, the application may be viewed unfavorably.

Although a formal CON calculation would require significant data, there is reason to think that a CON process could be complicated for a Brookings Facility. The key assessment to justify a certificate of need for new beds is whether the peak daily bed census resulting from a calculation of expected demand exceeds the "present number of acute inpatient beds within 50 miles by road of the populations to be served." OAR 333-590-0050(11-12). Any calculation of need in Brookings would therefore have to include Sutter Coast Hospital's beds as potentially available as well as the existing beds at Curry General Hospital. As written, the CON provisions do not seem to permit an assumption that Curry General Hospital's bed count would be reduced as a means of demonstrating a need for new acute beds in Brookings. Of course, it may be possible to seek a waiver or adjustment in light of the nature of this proposal. See OAR 333-500-0065.

D. Any Reallocation of Beds to Brookings Carries Significant Regulatory Costs and Imperils the CAH Status of Curry General Hospital

Relocating already authorized acute inpatient care beds from one location to another within Curry County on its face seems simple. However, moving more than two beds from Curry General Hosptial to a location in or around Brookings would trigger a Certificate of Need process in Oregon, which would require significant investment in data gathering, calculation and monitoring of the administrative process. The result of this process is unclear, especially as it would have to account for the availability of both Sutter Coast Hospital and the existing Curry General Hospital as alternative suppliers of these services.

The proposed Brookings Facility would also raise significant questions about Curry General Hospital's CAH provider agreement. This would not count as a relocation of Curry General Hospital under the applicable CMS regulations. Any new facility would likely be considered by CMS to be a new "remote location" of Curry General Hospital if it operated under Curry General Hospital's existing CAH agreement. As such, its location within 35 miles of Sutter Coast Hospital would subject the entire agreement to termination. If the Brookings Facility were somehow instituted as a truly independent facility, whatever remained of Curry General Hospital might be able to preserve its CAH status, but the new facility would never be eligible and would have to be run truly distinctly from Curry General Hospital. On the whole, what might seem like a simple action is fraught with potential risks for Curry Health Network as a whole.

Materials Reviewed

42 C.F.R. § 413.65
42 C.F.R. § 485.601 et seq.
5 U.S.C. § 706(2)(A)
42 U.S.C. § 405(g)
42 U.S.C. § 1395i-4
42 U.S.C. § 1395cc(h)
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O.A.R. 333-500-0000 et seq.
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O.A.R. 333-555-0000 et seq.
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O.A.R. 333-580-0000 et seq.
O.A.R. 333-585-0000 et seq.
O.A.R. 333-590-0000 et seq.
O.R.S. § 441.025
O.R.S. § 442.015
O.R.S. § 442.315
O.R.S. § 442.470
United States v. San Bernardino Mts. Cmty. Hosp. Dist. (C.D. Ca. 2018). 2018 U.S.Dist. LEXIS 166889.