Date: February 20, 2024

To: Mark Benton, Chief Deputy Secretary for Health, NC Department of Health and Human Services

From: Drs. Clay Ballantine, Brian England, Scott Joslin, Bruce Kelly, Robert Kline, Allen Lalor, Mike Messino
Missy Harris, Pastor and former Mission Hospital chaplain
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Karen Sanders, RN Patient Advocate
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Re: Plan of Correction for HCA Mission Hospital

As longtime members of and participants in the medical community in Asheville, Buncombe County, and the region, we submit the following comments and questions on the CMS-approved Plan of Correction (POC) to address the Immediate Jeopardy findings issued by CMS earlier this month. Collectively, we represent 231 years of experience working in Mission Hospital and the Mission system, so we are well positioned to assess the proposed remedies.

In short, we believe that the POC is insufficient to address the shortcomings evidenced by the Immediate Jeopardy findings. We further believe that implementation of the POC as approved will continue to leave patients at Mission Hospital at risk of harm. Because we were not able to influence the content of the POC, we now strongly urge DHHS to heed our concerns and aggressively monitor compliance with the POC.

In this memo, we have identified four major concerns and several questions for DHHS.

1. Staffing.
   The POC does not address what we believe to be the primary driver in each of the Immediate Jeopardy situations (and many of the other cases discussed in the CMS report): the lack of adequate, experienced staffing. Medical providers, patients, and others have repeatedly decried the lack of staff, and nurses have repeatedly filed Objection to Staffing forms. CMS's findings of Immediate Jeopardy confirm that lack of staffing is key, and that the standard for adequate staffing laid out in 42 CFR 482.23(b) is not being met.

   In addition to not having enough staff, particularly nurses, another problem is staffing nurses with insufficient experience. This, again, is a comment we have heard for years about HCA's staffing choices. For example, pre-HCA, Mission required nurses in the ER to have several years of experience in other parts of the hospital before working in the ER. By contrast, under HCA, nurses in the StaRN Residency program can be placed in the ER as their first placement after graduation from nursing school. Regardless of the

quality of the StaRN program, new nurses are not prepared for the stressful and chaotic conditions of the ER.

However, in the POC, rather than committing to specific targets to increase nurses, CNAs, techs, and other support staff, or committing to place nurses appropriately based on experience, HCA instead focuses heavily on process, education, huddles, and documentation. While improvements in these areas might be warranted and welcome, they will not address the chronic problems that result from understaffing. These solutions are also more focused on individuals being the problem rather than the systemic lack of staff and resources.

In short, HCA's response offers only bureaucratic solutions to what is fundamentally a workforce issue.

HCA needs to increase support staff, hire more experienced nurses, place nurses in the appropriate place for their level of experience, and commit to maintain these higher staffing levels permanently. These are the primary steps needed to ensure patient safety and high quality care over the long term, and any POC that does not include them will fail.

Had the POC not already been approved, we would have urged you to require HCA to establish clear staffing and experience targets and target nurse-patient ratios for permanent (as opposed to travelers) nursing positions and to report periodically on their progress toward those goals. Since the POC has been approved, however, we now implore you to ask the following questions and gather additional staffing information when you return to the hospital for inspection:

- Would you examine staffing data, including the number of staff in different positions and the level of experience of the nurses, from pre-sale through today? This data is important hospital-wide, but it is most critical for the ER.
- Does HCA close ER beds when staffing is low? If so, how often and to achieve what staffing ratio?
- If HCA keeps records of patient to nurse ratios or another measure of staffing levels, it could be instructive to see what those numbers were when each of these Immediate Jeopardy incidents occurred as compared to other times.
- We note that seven of the nine incidents occurred on a Tuesday. While ER patient volumes are variable, weekends and Mondays are often very heavy. It could be instructive to see whether HCA intentionally and consistently dropped staffing in the ER on Tuesdays.
- Is there any consistency to how many nurses call out in a given shift? If that is a relatively predictable number, or even a predictable range, does HCA schedule more staff to account for the absences? Do they call in nurses who are available to get to full staffing? Or do they simply leave the staff who are present to make up for the absent staff?

- Nurses often file Objection to Staffing forms when they believe they have been given unsafe numbers of patients. Would you request these forms and examine them for trends?

A question for you is, if HCA is deemed to be in compliance with the POC later this month, what is your recourse if the approved plan proves to be inadequate over time? Can you require a revised plan with more specific requirements for staffing levels and experience?

Again, as providers with decades of experience in the hospital, we know that the primary problem is inadequate staffing and experience. No level of improved process, education, huddles, or documentation will change that. **We again strongly urge you to keep this in mind as you perform your inspections. We further urge you to hold HCA, to the degree you are able as part of the monitoring process, to hiring, placement, and patient ratio standards that are necessary to correct the Immediate Jeopardy instances on a permanent basis.**

2. Target Compliance Levels. Given the seriousness of harm to and deaths of patients described in the Immediate Jeopardy situations, the target compliance levels of 90%, to be monitored for only five quarters, is completely inadequate. Even one preventable death is too many. **We therefore request frequent, unannounced inspections and detailed monitoring during the time provided in the POC and further request that the monitoring period be extended, if at all possible.**

3. Withheld documents and incomplete interviews. The CMS report states clearly that HCA repeatedly withheld documents from DHHS surveyors, did not allow the surveyors to hold documents, and never followed up with DHHS surveyors on some matters despite promising to do so. The report also indicates that a number of people with knowledge of the Immediate Jeopardy situations were not made available to DHHS,

   We are, frankly, astonished that surveyors from a regulatory agency would tolerate this stonewalling, especially given the egregious situations they were uncovering. We are concerned that DHHS may not have gathered a complete picture of the situation at the hospital, and we ask why CMS approved the POC despite missing information in multiple cases. **Given the seriousness of harm to and deaths of patients detailed in the CMS report, we strongly urge that, as part of any follow up monitoring and inspections, the interviews that were not conducted be completed and all documents requested be turned over to DHHS for review and further recommendations. We further request that all future investigations require complete transparency in documenting evidence.**

4. Third Party Monitor. Given the concerns raised above and our overall belief that the approved POC is insufficient to address patient safety issues on a permanent basis, **we request that an unaffiliated, non-conflicted third party well-versed in hospital**

systems be assigned by CMS to closely monitor HCA's execution of the POC. The ideal situation would be for this person or team to be embedded in the hospital on a daily basis but, absent that, we would encourage that person or team to make inspections on a frequent and unannounced basis. Again, we realize the POC has been approved and that it does not contain this requirement but, if CMS has the opportunity to impose this remedy, we strongly encourage it.

We thank you for your agency's work to ensure patient safety in western North Carolina. We are grateful for the surveys, reporting, and recommendations for Immediate Jeopardy that constitute the basis of CMS's action and the POC. We also ask, however, that you remain vigilant, aggressive, and insistent in your future inspections, that you ask hard questions, that you talk to the staff and not just management, and that you not let HCA place limitations on your compliance review. Please also view us as a resource. We have tasked ourselves with holding HCA accountable and restoring what has been lost at Mission Hospital, and we put our collective wisdom and experience at your service.